

# Amador Regional Sanitation Authority

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*“Servicing Amador City, Martell, & Sutter Creek”*

## AGENDA

**SEPTEMBER 28, 2022**

**10:00 A.M. SPECIAL Meeting**

**33 Church Street, Sutter Creek CA 95685**

**The Agenda can be found on the City of Sutter Creek’s Website: [www.cityofsuttercreek.org](http://www.cityofsuttercreek.org)**

**THIS MEETING WILL BE CONDUCTED IN-PERSON AT 33 CHURCH STREET**

**and available by Zoom:**

**Join Zoom Meeting**

**<https://us02web.zoom.us/j/9568520224>**

**or**

**Dial by phone:**

**301-715-8592**

**Meeting ID: 956 852 0224**

**Public comment will be accepted by email at [info@cityofsuttercreek.org](mailto:info@cityofsuttercreek.org). All emails must be received prior to the start of the meeting.**

- 10:00 a.m.**
- 1. REGULAR MEETING: CALL TO ORDER AND ESTABLISH A QUORUM –**
  - 2. PLEDGE OF ALLEGIANCE TO THE FLAG**
  - 3. PUBLIC FORUM**  
*Discussion items only, no action to be taken. Any person may address the Board at this time upon any subject within the jurisdiction of the Amador Regional Sanitation Authority; however, any matter that requires action may be referred to staff and/or Committee for a report and recommendation for possible action at a subsequent Board meeting. Please note – there is a five (5) minute limit per topic.*
  - 4. INFORMATION/CORRESPONDENCE**  
*This section provides informational updates regarding staff activities and operations where no Board action is required.*
    - A. Engineer’s Report**  
*For information only.*
  - 5. CONSENT AGENDA**  
*Items listed on the consent agenda are considered routine and may be enacted in one motion. Any item may be removed for discussion at the request of the Board or the Public.*

A. Minutes of September 28, 2022

*Recommendation: Approve Minutes of September 28, 2022*

B. Approval of Warrants

*Recommendation: Approve warrants.*

C. 2021-22 Budget Update

*Recommendation: For information only.*

D. System Status Report

*Recommendation: For information only.*

E. AB361 Teleconference Requirements

*Recommendation:*

(1) make the findings that there has been declared a State of Emergency by the Governor of the State of California and state or local officials are recommending or imposing measures to promote social distancing, and

(2) the General Manager is hereby authorized and directed to take all actions necessary to conduct open and public meetings for ARSA in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

**6. GENERAL MANAGER'S REPORT**

A. Status Report

*Recommendation: For information.*

B. Meeting date change: Request from staff to possibly change standing meeting date to the 4<sup>th</sup> Thursday of the month.

*Recommendation: Determine if the fourth Thursday of the month can be accommodated.*

**7. BOARD MEMBER REPORTS**

**8. CLOSED SESSION**

A. **CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**

Pursuant to Gov. Code § 54956.9(d)(1):

Amador Regional Sanitation Authority v. City of Ione, et al.

(Case No. 22-CV-12824)

**9. REPORT FROM CLOSED SESSION**

**ADJOURN**



# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

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**TO:** ARSA BOARD OF DIRECTORS  
**MEETING DATE:** OCTOBER 26, 2022  
**FROM:** MATT OSPITAL, PE  
**SUBJECT:** PROJECT STATUS UPDATE

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**RECOMMENDATION:**

For information only.

The following is a status update of all projects WGA is currently working on:

1. **Henderson Underdrain Repair** – Revised plans and response to initial round of DSOD comments was submitted to DSOD at the end of May. A second round of comments was received on 9/28/22. From a call this week with DSOD, their estimated approval date is January or February of 2023. Depending on the amount of precipitation this winter, the current plan would be to bid the project in early 2023 and commence construction late summer 2023. Stantec (design engineers) recommended the District purchase some of the long lead materials items (piping) to help with construction schedule. We will be working on bringing that forward within the next several months.
2. **CIP** – Continuing cost estimates and exhibits for various capital improvement projects. Meeting with operations staff on 10/27/22 to discuss project list.
3. **Henderson and Preston Reservoir Dam Emergency Action Plans (EAPs)** – Review with local safety agencies has been completed, and the Emergency Action Plans was resubmitted to the State on 10/25/22 via email. State reviewer reassured us that they are very close to final approval.

# Amador Regional Sanitation Authority

*"Servicing Amador City, Martell, & Sutter Creek"*

## MINUTES SPECIAL MEETING OF THE BOARD OF DIRECTORS September 28, 2022

**Present:**

Robin Peters, Chairman  
Jim Swift, Board Member  
Susan Bragstad, Board Member  
Frank Axe, Board Member

**Absent:**

Richard Forster, Vice Chairman

**Staff Present:**

Amy Gedney  
Karen Darrow  
Frank Splendorio  
Matt Green (zoom)

### 1 REGULAR MEETING: CALL TO ORDER AND ESTABLISH A QUORUM

- Meeting called to order by Chairman Peters at 10:00 A.M.

### 2 PLEDGE OF ALLEGIANCE TO THE FLAG

- Chairman Peters led the Pledge of Allegiance.

### 3 PUBLIC FORUM- None.

### 4 INFORMATION/CORRESPONDENCE

- A. Engineer's Report

*For information only.*

ARSA General Manager Gedney noted that this will become a regular report moving forward to help keep the Board updated on upcoming projects.

### 5 CONSENT AGENDA

- Items listed on the consent agenda are considered routine and may be enacted in one motion. Any item may be removed for discussion at the request of the Board or the Public.*

#### A. Minutes of August 31, 2022

*Recommendation: Approve Minutes of August 31, 2022*

#### M/S Axe/Swift to Approve Item A, as presented.

**AYES:** Axe, Bragstad, Swift and Peters

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Forster

**MOTION CARRIED**

#### B. Minutes of September 16, 2022

*Recommendation: Approve Minutes of September 16, 2022*

#### M/S Swift/Axe to Approve Item B, as presented.

**AYES:** Axe, Bragstad, Swift and Peters

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Forster

**MOTION CARRIED**

#### C. Approval of Warrants

*Recommendation: Approve warrants.*

**M/S Swift/Axe to Approve Item C, as presented.**

**AYES:** Axe, Bragstad, Swift and Peters

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Forster

**MOTION CARRIED**

**D. 2021-22 Budget Update**

*Recommendation: For information only.*

So Noted.

**E. System Status Report**

*Recommendation: For information only.*

So Noted.

**6. GENERAL MANAGER'S REPORT**

General Manager Gedney reported that ARSA is irrigating 24/7 which is creating overtime that would not be necessary if Ione was taking water.

Board member Bragstad asked what it cost to irrigate. General Manager Gedney said staff would get back to her with that information.

**7. BOARD MEMBER REPORTS- None.**

**8. CLOSED SESSION**

**A. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**

Pursuant to Gov. Code § 54956.9(d)(1):

Amador Regional Sanitation Authority v. City of Ione, et al.

(Case No. 22-CV-12824)

**9. REPORT FROM CLOSED SESSION**

No reportable action.

**ADJOURN**

The meeting was adjourned at 10:52 a.m.

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Karen Darrow, Secretary

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Robin Peters, Chairman

Date Approved:

## Warrant List

October 2022

Date	Name/Account	Type	Num	Amount
<b>10/26/2022</b>	<b>Best Best &amp; Krieger, LLP</b>	<b>Check</b>	<b>1687</b>	
09/29/2022	Legal- CDCR V. ARSA	Bill	946152	1,411.28
09/29/2022	Legal - General Business	Bill	946150	1,714.22
10/14/2022	Legal - General Business	Bill	948148	7,850.22
10/14/2022	Legal- CDCR V. ARSA	Bill	948147	38,111.66
				<u>49,087.38</u>
<b>10/26/2022</b>	<b>Calif Special Districts Association</b>	<b>Check</b>	<b>1688</b>	
10/01/2022	Membership Dues	Bill	2560-2022/23	1,250.00
				<u>1,250.00</u>
<b>10/26/2022</b>	<b>City of Sutter Creek</b>	<b>Check</b>	<b>1689</b>	
10/13/2022	Contract with COSC	Bill	2022-10	20,812.75
	Overtime	Bill	2022-10	12,387.81
				<u>33,200.56</u>
<b>10/26/2022</b>	<b>EDCO Enterprises, Inc.</b>	<b>Check</b>	<b>1690</b>	
10/04/2022	O&M Structure - Henderson video	Bill	21790	1,400.00
				<u>1,400.00</u>
<b>10/26/2022</b>	<b>Hunt &amp; Sons, Inc.</b>	<b>Check</b>	<b>1691</b>	
09/30/2022	Fuel	Bill	768061	475.98
10/15/2022	Fuel	Bill	816639	613.55
				<u>1,089.53</u>
<b>10/26/2022</b>	<b>Ione ACE Hardware</b>	<b>Check</b>	<b>1692</b>	
09/21/2022	Repairs & Maintenance	Bill	A438330	64.39
10/06/2022	Repairs & Maintenance	Bill	A440215	73.10
10/11/2022	Repairs & Maintenance	Bill	A440956	141.33
10/13/2022	Repairs & Maintenance	Bill	B167486	14.00
10/15/2022	Repairs & Maintenance	Bill	A441513	42.02
				<u>334.84</u>
<b>10/26/2022</b>	<b>SDRMA</b>	<b>Check</b>	<b>1693</b>	
10/11/2022	Risk Management - Liabilty	Bill	7097-2023	66.32
				<u>66.32</u>
<b>10/26/2022</b>	<b>Weber, Ghio &amp; Associates, Inc.</b>	<b>Check</b>	<b>1694</b>	
09/14/2022	Engineering - Genereal	Bill	10694	150.00
10/11/2022	Engineering - Genereal	Bill	10816	2,249.13
10/11/2022	Engineering - Henderson Dam	Bill	10817	5,342.33
10/11/2022	Inundation mapping - EAP	Bill	10818	2,425.75
				<u>10,167.21</u>

## Amador Regional Sanitation Authority (ARSA)

## Budget vs. Actual

July through September 2022

	Budget	Jul - Sep 22	% of Budget	YE Projections
<b>Income</b>				
Interest Income	150.00	19.94	13.29%	150.00
Reimbursed Expenses	19,000.00	0.00	0.0%	19,000.00
Use Fee Revenue				
Amador City	18,823.00	4,705.75	25.0%	18,823.00
Amador Water Agency	95,768.00	23,942.00	25.0%	95,768.00
City of Sutter Creek	521,321.00	130,330.25	25.0%	521,321.00
<b>Total Use Fee Revenue</b>	<b>635,912.00</b>	<b>158,978.00</b>	<b>25.0%</b>	<b>635,912.00</b>
<b>Total Income</b>	<b>655,062.00</b>	<b>158,997.94</b>	<b>24.27%</b>	<b>655,062.00</b>
<b>Expense</b>				
Employee Services				
Contract with COSC	249,753.00	56,103.83	22.46%	249,753.00
Overtime	15,000.00	18,973.70	126.49%	40,000.00
Operations				
Audit & Accounting	6,000.00	4,500.00	75.0%	6,000.00
Contingency	50,860.00	0.00	0.0%	50,860.00
Engineering				
Inundation mapping	10,000.00	228.00	2.28%	10,000.00
Engineering	25,000.00	1,429.90	5.72%	25,000.00
Flood Control	2,100.00	0.00	0.0%	2,100.00
Fuel	13,000.00	2,520.62	19.39%	13,000.00
General Supplies	500.00	344.75	68.95%	500.00
Legal	50,000.00	3,478.08	6.96%	50,000.00
Membership Dues	1,700.00	309.44	18.2%	1,700.00
O&M Building/Structures	1,500.00	0.00	0.0%	1,500.00
O&M Equipment	0.00	1,993.37	100.0%	2,000.00
Repairs & Maintenance	20,000.00	1,080.67	5.4%	20,000.00
Risk Management - Liability	21,000.00	21,005.00	100.02%	21,005.00
Taxes/Fees/Licenses	68,000.00	1,402.21	2.06%	68,000.00
Tertiary Treatment Fees	95,000.00	16,992.75	17.89%	95,000.00
Vehicle Maintenance	5,000.00	35.31	0.71%	5,000.00
Weed Control	1,500.00	0.00	0.0%	1,500.00
<b>Total Expense</b>	<b>635,913.00</b>	<b>130,397.63</b>	<b>20.51%</b>	<b>662,918.00</b>

## Amador Regional Sanitation Authority (ARSA)

10/19/22

## Balance Sheet

Accrual Basis

As of September 30, 2022

	Sep 30, 22
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
10000 · Checking - Umpqua	575,201.66
10010 · Savings - Umpqua	297,131.41
Total Checking/Savings	872,333.07
Accounts Receivable	
11000 · Accounts Receivable	476,934.00
Total Accounts Receivable	476,934.00
Total Current Assets	1,349,267.07
Fixed Assets	
101707 · Capital Replacement Fund	292,432.03
101708 · ARSA District	15,588.59
150620 · Long Term Assets Structures	1,884,800.13
150621 · Long Term Assets Structures Dep	-1,884,800.15
150630 · Long Term Assets Equipment	151.00
150631 · Long Term Assets Equipment Depr	-151.00
35000 · Investment in Capital Assets	841,648.00
Total Fixed Assets	1,149,668.60
Other Assets	
120000 · Note Receivable	450,000.00
120100 · Accrued Interest Receivable	166,430.19
Total Other Assets	616,430.19
<b>TOTAL ASSETS</b>	<b>3,115,365.86</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 · Accounts Payable	3,670.13
Total Accounts Payable	3,670.13
Total Current Liabilities	3,670.13
Total Liabilities	3,670.13
Equity	
30000 · Opening Balance Equity	2,956,020.55
32000 · Retained Earnings	-389,647.61
Net Income	545,322.79
Total Equity	3,111,695.73
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>3,115,365.86</b>

4:35 PM

10/17/22

**Amador Regional Sanitation Authority (ARSA)**

**Reconciliation Summary**

**10000 · Checking - Umpqua, Period Ending 09/30/2022**

	Sep 30, 22
Beginning Balance	480,363.81
Cleared Transactions	
Checks and Payments - 8 items	-30,131.14
Deposits and Credits - 4 items	158,981.99
Total Cleared Transactions	128,850.85
Cleared Balance	609,214.66
Uncleared Transactions	
Checks and Payments - 3 items	-34,013.00
Total Uncleared Transactions	-34,013.00
Register Balance as of 09/30/2022	575,201.66
Ending Balance	575,201.66

4:31 PM

10/17/22

**Amador Regional Sanitation Authority (ARSA)**

**Reconciliation Summary**

**10010 Savings - Umpqua, Period Ending 09/30/2022**

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	Sep 30, 22
Beginning Balance	297,123.92
Cleared Transactions	
Deposits and Credits - 1 item	7.49
Total Cleared Transactions	7.49
Cleared Balance	297,131.41
Register Balance as of 09/30/2022	297,131.41
Ending Balance	297,131.41



Date	Sutter Creek WWTP Flow (mg)	Sutter Creek WWTP (ac ft)	Bowers Irrigation (mg)	Bowers Volume irrigated (ac ft)	Henderson Freeboard	Volume in Henderson (af)	Henderson Outflow (mg)	Henderson outflow (ac ft)	Hoskins Irrigation (mg)	Hoskins Volume irrigated (ac ft)	Mule Creek Inflow (mg)	Mule Creek Inflow (ac ft)	Preston Freeboard	Volume in Preston (af)	Capacity Remaining in Preston (ac ft)	Outflow to Ione (mg)	Volume sent to Ione (ac ft)	TOTAL Ac Ft of Effluent in the system	TOTAL Remaining Capacity for Winter (ac ft)	TOTAL USED FOR IRRIGATION (ac ft)
<b>2014</b>																			0.0	
1/31/2014	6.8	20.9	0.0	0.0	15'8"	97.4	7.1	21.8	0.0	0.0	3.4	10.4	17'1"	40.9	194.1	0.0	0.0		489.7	0.0
2/28/2014	12.3	37.7	0.0	0.0	11'5"	168.1	5.5	16.9	0.0	0.0	12.1	37.1	11'9"	90.0	145.0	0.0	0.0	258.15	369.9	0.0
3/31/2014	13.9	42.7	0.0	0.0	8'	238.5	7.3	22.4	0.0	0.0	0.0	0.0	13'2"	75.1	159.9	0.0	0.0	313.63	314.4	0.0
4/30/2014	11.0	33.8	0.0	0.0	6'2"	281.3	13.6	41.7	0.0	0.0	0.0	0.0	8'7"	128.4	106.6	5.2	16.0	409.68	218.3	16.0
5/31/2014	8.8	27.0	0.0	0.0	5'9"	291.5	12.2	37.4	0.0	0.0	0.0	0.0	12'3"	84.6	150.4	21.9	67.2	376.13	251.9	67.2
6/30/2014	8.2	25.2	8.2	25.2	7'1"	259.5	9.7	29.8	4.5	13.8	45.2	138.7	9'1"	121.9	113.1	28.4	87.2	381.35	246.7	126.1
7/31/2014	8.0	24.6	7.8	23.9	9'9"	201.0	13.0	39.9	4.7	14.4	31.4	96.4	10'3"	107.3	127.7	37.4	114.8	308.29	319.7	153.1
8/31/2014	8.4	25.8	5.8	17.8	11'6"	166.5	15.1	46.3	4.6	14.1	11.1	34.1	16'6"	45.4	189.6	38.9	119.4	211.9	416.1	151.3
9/30/2014	8.2	25.2	5.2	16.0	14'4"	117.6	16.4	50.3	4.6	14.1	10.1	31.0	19'3"	26.5	208.5	27.7	85.0	144.1	483.9	115.1
10/31/2014	8.1	24.9	3.7	11.4	17'7"	71.7	15.7	48.2	3.2	9.8	5.8	17.8	18'5"	31.7	203.3	14.1	43.3	103.34	524.7	64.4
11/30/2014	8.2	25.2	3.2	9.8	19'	55.1	16.2	49.7	0.8	2.5	0.0	0.0	13'3"	74.2	160.8	0.1	0.3	129.31	498.7	12.6
12/31/2014	16.0	49.1	0.0	0.0	13'1"	138.2	7.1	21.8	0.0	0.0	0.0	0.0	10'9"	101.4	133.6	0.0	0.0	239.55	388.5	0.0
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>117.9</b>	<b>361.8</b>	<b>33.9</b>	<b>104.0</b>			<b>138.9</b>	<b>426.3</b>	<b>22.4</b>	<b>68.7</b>	<b>119.1</b>	<b>365.5</b>				<b>173.7</b>	<b>533.1</b>		<b>0.0</b>	<b>705.8</b>
<b>2015</b>																			0.0	
1/31/2015	9.7	29.8	0.0	0.0	10'	195.8	4.2	12.9	0.0	0.0	0.0	0.0	10'5"	105.3	129.7	0.0	0.0		326.8	0.0
2/28/2015	13.3	40.8	0.0	0.0	7'1"	259.5	6.6	20.3	0.0	0.0	0.0	0.0	8'8"	127.3	107.7	0.0	0.0	386.76	241.2	0.0
3/31/2015	9.7	29.8	0.0	0.0	6'5"	275.3	12.3	37.7	1.7	5.2	0.1	0.3	6'8"	154.9	80.1	0.0	0.0	430.16	197.8	5.2
4/30/2015	8.5	26.1	0.0	0.0	5'9"	291.5	19.2	59.0	5.6	17.2	0.0	0.1	5'8"	169.7	65.3	8.8	27.0	461.25	166.8	44.2
5/31/2015	8.2	25.1	0.0	0.0	5'7"	295.7	12.7	38.9	7.3	22.4	0.0	0.0	9'3"	119.7	115.3	22.6	69.3	415.38	212.6	91.8
6/30/2015	7.2	21.9	5.7	17.4	8'7"	225.7	20.7	63.5	10.1	30.9	15.8	48.4	8'9"	126.2	108.8	28.3	86.8	351.83	276.2	135.2
7/31/2015	7.2	22.1	6.6	20.3	12'3"	152.8	22.7	69.7	10.0	30.7	24.8	76.1	8'1"	135.1	100.0	32.6	100.1	287.82	340.2	151.1
8/31/2015	7.5	23.0	7.5	23.0	15'9"	96.2	16.9	51.9	10.3	31.6	23.3	71.5	7'2"	147.7	87.3	32.6	99.9	243.94	384.1	154.5
9/30/2015	7.6	23.3	5.8	17.8	19'6"	49.7	14.6	44.8	6.5	19.9	15.6	47.8	8'9"	126.2	108.8	31.4	96.2	175.89	452.1	133.9
10/31/2015	7.8	23.9	4.5	13.8	24'1"	12.7	19.7	60.5	5.8	17.8	0.0	0.0	10'9"	101.4	133.6	23.0	70.6	114.09	513.9	102.2
11/30/2015	8.4	25.8	0.0	0.0	21'1"	34.5	3.9	12.1	0.0	0.0	0.0	0.0	14'6"	62.3	172.7	10.9	33.4	96.76	531.2	33.4
12/31/2015	13.4	41.1	0.0	0.0	17'2"	76.9	9.8	30.1	0.0	0.0	0.0	0.0	14'	67.0	168.0	6.6	20.2	143.89	484.1	20.2
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>108.4</b>	<b>332.6</b>	<b>30.1</b>	<b>92.3</b>			<b>163.4</b>	<b>501.3</b>	<b>57.3</b>	<b>175.8</b>	<b>79.6</b>	<b>244.2</b>				<b>196.6</b>	<b>603.5</b>		<b>0.0</b>	<b>871.6</b>

ARSA SYSTEM FLOW AND VOLUME  
2014 - Present

Date	Sutter Creek WWTP Flow (mg)	Sutter Creek WWTP (ac ft)	Bowers Irrigation (mg)	Bowers Volume irrigated (ac ft)	Henderson Freeboard	Volume in Henderson (af)	Henderson Outflow (mg)	Henderson outflow (ac ft)	Hoskins Irrigation (mg)	Hoskins Volume irrigated (ac ft)	Mule Creek Inflow (mg)	Mule Creek Inflow (ac ft)	Preston Freeboard	Volume in Preston (af)	Capacity Remaining in Preston (ac ft)	Outflow to Ione (mg)	Volume sent to Ione (ac ft)	TOTAL Ac Ft of Effluent in the system	TOTAL Remaining Capacity for Winter (ac ft)	TOTAL USED FOR IRRIGATION (ac ft)
2016																			0.0	
1/31/2016	19.0	58.2	0.0	0.0	12'1"	155.8	12.4	38.0	0.0	0.0	0.0	0.0	11'4"	94.7	140.3	3.9	12.1	250.47	377.5	12.1
2/29/2016	10.7	32.8	0.0	0.0	10'9"	180.9	17.8	54.6	0.0	0.0	0.0	0.0	8'7"	128.4	106.6	4.0	12.4	309.27	318.7	12.4
3/31/2016	17.7	54.2	0.0	0.0	8'7"	225.7	15.1	46.3	0.0	0.0	0.0	0.0	5'7"	171.0	64.0	3.4	10.3	396.64	231.4	10.3
4/30/2016	10.7	32.8	0.0	0.0	8'5"	229.3	13.7	42.0	0.0	0.0	0.0	0.0	5'7"	171.0	64.0	9.1	27.8	400.29	227.7	27.8
5/31/2016	9.3	28.5	0.0	0.0	9'9"	201.0	23.0	70.7	0.0	0.0	0.0	0.0	7'7"	141.9	93.1	27.3	83.8	342.85	285.2	83.8
6/30/2016	8.3	25.3	2.9	8.9	14'4"	117.6	32.2	99.0	2.2	6.6	0.0	0.0	9'8"	114.5	120.5	36.0	110.4	232.06	395.9	125.9
7/31/2016	9.0	27.6	9.0	27.6	20'1"	43.8	25.4	78.0	5.3	16.4	35.9	110.3	7'6"	143.1	92.0	40.9	125.6	186.84	441.2	169.5
8/31/2016	9.2	28.2	9.2	28.2	22'3"	24.9	8.7	26.6	3.2	9.9	32.9	101.0	8'3"	132.8	102.2	44.1	135.4	157.68	470.3	173.6
9/30/2016	8.3	25.5	6.3	19.2	25'8"	5.0	10.8	33.2	2.2	6.6	10.3	31.6	13'2"	75.1	159.9	37.5	115.1	80.06	547.9	140.9
10/31/2016	11.0	33.8	2.5	7.6	23'2"	18.4	5.9	18.2	0.0	0.0	4.0	12.3	14'4"	63.8	171.2	6.4	19.5	82.18	545.8	27.2
11/30/2016	11.2	34.5	0.0	0.0	20'8"	38.2	5.3	16.3	0	0.0	0.0	0.0	14'2"	65.4	169.6	0.0	0.0	103.6	524.4	0.0
12/31/2016	16.5	50.5	0.0	0.0	16'8"	83.5	10.4	32.0	0.0	0.0	0.0	0.0	11'6"	92.8	142.2	0.0	0.0	176.32	451.7	0.0
Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)	140.8	432.0	29.8	91.5			180.8	554.9	12.9	39.6	83.2	255.2				212.6	652.5		0.0	783.5
2017																			0.0	
1/31/2017	30.9	94.8	0.0	0.0	9'3"	211.4	10.7	32.8	0.0	0.0	0.0	0.0	6'8"	154.9	80.1	0.0	0.0	366.25	261.8	0.0
2/28/2017	26.5	81.3	0.0	0.0	4'1"	334.2	10.2	31.4	0.0	0.0	0.0	0.0	4'4"	190.6	44.4	0.0	0.0	524.72	103.3	0.0
3/31/2017	15.5	47.6	0.0	0.0	1'5"	408.4	14.1	43.3	0.0	0.0	0.0	0.0	1'5"	240.4	-5.4	1.5	4.7	648.74	-20.7	4.7
4/30/2017	16.1	49.5	0.0	0.0	1'6"	405.9	34.9	107.3	0.0	0.0	0.0	0.0	1'8"	235.9	-0.9	5.9	18.2	641.82	-13.8	18.2
5/31/2017	9.6	29.4	0.0	0.0	3'7"	347.5	38.0	116.6	2.7	8.4	0.0	0.0	1'2"	244.9	-9.9	27.4	83.9	592.42	35.6	92.4
6/30/2017	8.9	27.3	8.0	24.6	6'7"	271.3	36.0	110.5	8.8	27.0	0.0	0.0	3'2"	209.8	25.2	36.2	111.2	481.07	146.9	162.7
7/31/2017	8.6	26.4	8.7	26.7	11'	176.1	35.0	107.4	10.7	32.8	0.0	0.0	6'11"	151.3	83.7	41.8	128.3	327.34	300.7	187.8
8/31/2017	8.8	27.0	8.7	26.7	13'9"	127.0	20.6	63.1	8.6	26.4	0.0	0.0	7'6"	143.1	92.0	12.1	37.3	270.02	358.0	90.3
9/30/2017	8.7	26.7	8.7	26.7	16'2"	90.3	18.3	56.2	11.9	36.5	0.0	0.0	6'10"	152.5	82.5	0.0	0.0	242.81	385.2	63.2
10/31/2017	8.0	24.6	8.1	24.9	17'4"	74.8	13.8	42.3	9.4	28.8	0.0	0.0	9'7"	115.5	119.5	17.2	52.6	190.33	437.7	106.3
11/30/2017	11.5	35.3	0.9	2.7	14'10"	121.6	9.7	29.8	7.4	22.7	0.0	0.0	11'1"	97.5	137.5	27.2	83.5	219.1	408.9	108.9
12/31/2017	9.5	29.2	0.0	0.0	12'9"	143.9		0.0	6.3	19.3	0.0	0.0	10'6"	104.4	130.7	0.0	0.0	248.26	379.7	19.3
Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)	162.6	499.0	43.1	132.2			241.3		65.8	202.0	0.0	0.0				169.3	519.6		0.0	853.9

ARSA SYSTEM FLOW AND VOLUME  
2014 - Present

Date	Sutter Creek WWTP Flow (mg)	Sutter Creek WWTP (ac ft)	Bowers Irrigation (mg)	Bowers Volume irrigated (ac ft)	Henderson Freeboard	Volume in Henderson (af)	Henderson Outflow (mg)	Henderson outflow (ac ft)	Hoskins Irrigation (mg)	Hoskins Volume irrigated (ac ft)	Mule Creek Inflow (mg)	Mule Creek Inflow (ac ft)	Preston Freeboard	Volume in Preston (af)	Capacity Remaining in Preston (ac ft)	Outflow to Ione (mg)	Volume sent to Ione (ac ft)	TOTAL Ac Ft of Effluent in the system	TOTAL Remaining Capacity for Winter (ac ft)	TOTAL USED FOR IRRIGATION (ac ft)
<b>2018</b>																			0.0	
1/31/2018	13.6	41.7	0	0.0	9"7"	206.1	8.4	25.8	0	0	0	0.0	8"8"	128.4	106.6	0.0	0.0	334.5	293.5	0.0
2/28/2018	8.7	26.7	0	0.0	7"10"	240.4	5.1	15.7	0	0.0	0	0.0	8"3"	133.9	101.1	0.0	0.0	374.3	253.7	0.0
3/31/2018	22.1	67.8	0	0.0	4"1"	332.9	8.00	24.6	0	0.0	0	0.0	5"11"	164.1	70.9	0.0	0.0	497	131.0	0.0
4/30/2018	14.1	43.3	0	0.0	3"9"	342.6	23.8	73.0	6.0	18.4	0	0.0	3"3"	200.9	34.1	1.2	3.5	543.5	84.5	21.9
5/31/2018	9.3	28.5	0	0.0	3"10"	340.6	16.9	51.9	9.9	30.4	0	0.0	8"2"	133.9	101.1	27.7	85.0	474.5	153.5	115.4
6/30/2018	8.4	25.8	5.3	16.3	5"8"	295.1	21.2	65.1	9.6	29.5	0	0.0	15"1"	59.6	175.4	37.7	115.8	354.7	273.3	161.5
7/31/2018	9.3	28.5	9.2	28.2	10"0"	193.7	35.4	108.6	9.5	29.2	0	0.0	22"0"	17.0	218.0	42.9	131.5	210.7	417.3	188.9
8/31/2018	9.7	29.8	9.7	29.8	11"7"	163.6	12	36.8	5.8	17.8	0	0.0	20"9"	22.0	213.0	0.0	0.0	185.6	442.4	47.6
9/30/2018	9	27.6	9	27.6	13"11"	123.9	16	49.1	10.7	32.8	0	0.0	19"3"	36.2	198.8	0.0	0.0	160.1	467.9	60.5
10/31/2018	8.9	27.3	8.9	27.3	15"2"	106.0	16.2	49.7	10.0	30.7	0	0.0	11'	45.6	189.4	0.0	0.0	151.6	476.4	58.0
11/30/2018	10.5	32.2	5.8	17.8	15"1"	107.2	14.9	45.7	5.6	17.2	0	0.0	14"10"	60.9	174.1	0.0	0.0	168.1	459.9	35.0
12/31/2018	11.7	35.9	0	0.0	13"6"	131.2	15.2	46.6	0	0.0	0	0.0	11"2"	94.9	140.1	0.0	0.0	226.1	401.9	0.0
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>135.3</b>	<b>415.2</b>	<b>47.9</b>	<b>147.0</b>	<b>0</b>		<b>193.1</b>		<b>67.1</b>	<b>205.9</b>	<b>0</b>	<b>0.0</b>	<b>0</b>			<b>109.4</b>	<b>335.9</b>		<b>0.0</b>	<b>688.8</b>
<b>2019</b>																			0.0	
1/31/2019	17.4	53.4	0	0	10"5"	185.4	36.7	112.6	0	0	0	0.0	8"3"	132.8	102.2	0	0	318.2	309.8	0.0
2/28/2019	23.3	71.5	0	0.0	6"6"	271.9	4.8	14.7	0	0.0	0	0.0	6"6"	157.3	77.7	0	0.0	429.22	198.8	0.0
3/31/2019	20.2	62.0	0	0.0	3"6"	350.4	7.6	23.3	0	0.0	0	0.0	4"8"	185.2	49.8	0	0.0	535.64	92.4	0.0
4/30/2019	11.9	36.5	0	0.0	2"9"	271.4	15.8	48.5	4.2	12.9	0	0.0	3"2"	209.8	25.2	2	6.1	481.19	146.8	19.0
5/31/2019	12.7	39.0	0	0.0	3"6"	350.4	24.0	73.7	5.8	17.8	0	0.0	4"8"	185.2	49.8	20.9	64.1	535.64	92.4	81.9
6/30/2019	10	30.7	5.2	16.0	5"10"	288.5	26.5	81.3	12.3	37.7	0	0.0	7"3"	146.6	88.4	29	89.0	435.06	192.9	142.7
7/31/2019	7.6	23.3	9.9	30.4	8"11"	217.9	22.9	70.3	13.8	42.4	0	0.0	14"7"	61.5	173.5	40.6	124.6	279.44	348.6	197.3
8/31/2019	10	30.7	10	30.7	10"7"	184.2	13.4	41.1	11.8	36.2	0	0.0	17"2"	40.3	194.7	6.2	19.0	224.52	403.5	85.9
9/30/2019	9.6	29.5	9.4	28.8	12"6"	148.3	13.7	42.0	10.4	31.9	0	0.0	17"1"	40.9	194.1	0	0.0	189.23	438.8	60.8
10/31/2019	9	27.6	9	27.6	14"3"	119.6		0.0	12.2	37.4	0	0.0	16"5"	46.0	189.0	0	0.0	165.61	462.4	65.1
11/30/2019	7.2	22.1	5.1	15.7	14"1"	121.6	9.3	28.5	5.7	17.5	0	0.0	14"11"	58.5	176.5	0	0.0	180.14	447.9	33.1
12/31/2019	12.6	38.7	0	0.0	12"3"	152.2	0	0.0	0	0.0	0	0.0	13"2"	75.1	159.9	0	0.0	227.3	400.7	0.0
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>151.5</b>	<b>464.9</b>	<b>48.6</b>	<b>149.1</b>	<b>0</b>		<b>174.7</b>		<b>76.2</b>	<b>233.8</b>	<b>0</b>	<b>0.0</b>	<b>0</b>			<b>98.7</b>	<b>302.9</b>		<b>0.0</b>	<b>685.9</b>

ARSA SYSTEM FLOW AND VOLUME  
2014 - Present

Date	Sutter Creek WWTP Flow (mg)	Sutter Creek WWTP (ac ft)	Bowers Irrigation (mg)	Bowers Volume irrigated (ac ft)	Henderson Freeboard	Volume in Henderson (af)	Henderson Outflow (mg)	Henderson outflow (ac ft)	Hoskins Irrigation (mg)	Hoskins Volume irrigated (ac ft)	Mule Creek Inflow (mg)	Mule Creek Inflow (ac ft)	Preston Freeboard	Volume in Preston (af)	Capacity Remaining in Preston (ac ft)	Outflow to Ione (mg)	Volume sent to Ione (ac ft)	TOTAL Ac Ft of Effluent in the system	TOTAL Remaining Capacity for Winter (ac ft)	TOTAL USED FOR IRRIGATION (ac ft)
<b>2020</b>																			0.0	
1/31/2020	10.3	31.6	0	0.0	11'2"	172.9	8.5	26.1	0	0	0	0.0	12'2"	85.5	149.5	0	0	258.4	369.6	0.0
2/29/2020	8	24.6	0	0.0	10'7"	184.2	3.5	10.7	0	0.0	0	0.0	11'7"	91.9	143.1	0	0.0	276.08	351.9	0.0
3/31/2020	12.85	39.4	0	0.0	8'11"	214.9	7.4	22.7	0	0.0	0	0.0	10'1"	109.4	125.6	0	0.0	324.26	303.7	0.0
4/30/2020	12.61	38.7	0	0.0	7'8"	246.1	6.3	19.3	0	0.0	0	0.0	10'8"	102.4	132.6	8.84	27.1	348.5	279.5	27.1
5/31/2020	8.2	25.2	1.4	4.3	8'6"	227.5	4.2	12.9	7.5	23.0	0	0.0	13'11"	67.8	167.2	23.9	73.3	295.3	332.7	100.7
6/30/2020	8.3	25.5	8.3	25.5	11'6"	166.5	6.3	19.3	5.7	17.5	0	0.0	19'6"	25.1	209.9	28.9	88.7	191.6	436.4	131.7
7/31/2020	8.3	25.5	8.3	25.5	14'11"	108.5	19.2	58.9	3.9	12.0	0	0.0	15'10"	50.7	184.3	0	0.0	159.2	468.8	37.4
8/31/2020	8.3	25.5	8.3	25.5	17'11"	67.6	13.3	40.8	2.3	7.1	0	0.0	14'0"	67.0	168.0	0	0.0	134.56	493.4	32.5
9/30/2020	8.2	25.2	8.2	25.2	19'2"	53.3	8.4	25.8	2.3	7.1	14	43.0	13'0"	76.8	158.2	13.9	42.7	130.09	497.9	74.9
10/31/2020	8.8	27.0	8.8	27.0	21'2"	33.7	11.9	36.5	2.4	7.4	0	0.0	17'9"	36.2	198.8	23.4	71.8	69.86	558.1	106.2
11/30/2020	9.1	27.9	3.5	10.7	22'	26.8	7.62	23.4	2.3	7.1	0	0.0	18'8"	30.1	204.9	30.7	94.2	56.89	571.1	112.0
12/31/2020	9.9	30.4	0	0.0	21'0"	35.9	8.8	27.0	0	0.0	0	0.0	16'8"	44.1	190.9	0	0.0	79.97	548.0	0.0
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>112.86</b>	<b>346.3</b>	<b>46.8</b>	<b>143.6</b>	<b>0</b>		<b>105.42</b>		<b>26.4</b>	<b>81.0</b>	<b>14</b>	<b>43.0</b>	<b>0</b>			<b>129.64</b>	<b>397.8</b>		<b>0.0</b>	<b>622.5</b>
<b>2021</b>																			0.0	
1/31/2021	12.6	38.7	0	0	17'6"	72.7	3.9	12.0	0	0.0	0	0.0	15'3"	55.6	179.4	0	0	128.3	499.7	0.0
2/29/2021	10.9	33.4	0	0	16'1"	91.5	2.6	8.0	0	0.0	0	0.0	14'9"	60.0	175.0	0	0.0	151.49	476.5	0.0
3/31/2021	11.9	36.5	0	0	13'1"	138.2	3.5	10.7	0	0.0	0	0.0	14'7"	61.5	173.5	0	0.0	199.65	428.4	0.0
4/30/2021	10.2	31.3	0	0	14'7"	113.7		0.0	0	0.0	0	0.0	16'11"	42.2	192.8	20.7	63.5	155.85	472.2	63.5
5/31/2021	10.7	32.8	6.6	20.3	19'10"	46.3	27.2	83.5	0	0.0	0	0.0	21'4"	15.7	219.3	36.2	111.1	61.97	566.0	131.3
6/30/2021	10.4	31.9	7.4	22.7	21'5"	31.6	8.7	26.7	0	0.0	0	0.0	20'10"	18.0	217.0	1.9	5.8	49.6	578.4	28.5
7/31/2021	10.2	31.3	7.1	21.8	22'1"	26.2	3.9	12.0	0.2	0.5	0	0.0	21'0"	17.2	217.8	0	0.0	43.39	584.6	22.3
8/31/2021	10.1	31.0	6.9	21.2	22'6"	23.0	5.6	17.2	2	6.1	0	0.0	21'6"	15.0	220.1	0	0.0	37.96	590.0	27.3
9/30/2021	9.7	29.8	5.2	16.0	23'8"	15.2	6.9	21.2	1.7	5.2	0	0.0	21'0"	17.2	217.8	0	0.0	32.38	595.6	21.2
10/31/2021	13.8	42.3	3.6	11.0	20'5"	40.6	5	15.3	0	0.0	0	0.0	19'1"	27.5	207.5	0	0.0	68.06	559.9	11.0
11/30/2021	11.7	35.9	0	0.0	18'11"	56.0	7.9	24.2	0	0.0	0	0.0	18'1"	33.9	201.1	0	0.0	89.89	538.1	0.0
12/31/2021	21.2	65.1	0	0.0	14'2"	120.2		0.0	0	0.0	0	0.0	14'8"	60.8	174.2	0	0.0	180.98	447.0	0.0
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>143</b>	<b>440</b>	<b>37</b>	<b>113</b>			<b>75</b>		<b>4</b>	<b>12</b>	<b>0</b>	<b>0.0</b>	<b>0</b>			<b>59</b>	<b>180</b>		<b>0.0</b>	<b>305.2</b>
<b>2022</b>																			0.0	
1/31/2022	12.9	39.6	0	0	12'9"	142.9	6.2	19.0	0	0	0	0.0	13'9"	69.4	165.7	0	0	212.25	415.8	0.0
2/29/2022	10.6	32.5	0	0	12'0"	157.3	5.5	16.9	0	0	0	0.0	12'10"	78.5	156.5	0	0	235.79	392.2	0.0
3/31/2022	11	33.8	0	0	11'8"	163.4	2.7	8.3	0	0	0	0.0	12'1"	86.4	148.6	1.6	4.9	249.83	378.2	4.9
4/30/2022	12.7	39.0	0	0	11'3"	171.3	9.1	27.9	0	0	0	0	10'1"	109.4	125.6	0.1	0.2	280.62	347.4	0.2
5/31/2022	12.1	37.1	0	0	12'2"	154.3	11.7	35.9	0	0	0	0	9'0"	122.9	112.1	1.7	5.2	277.21	350.8	5.2
6/30/2022	11.2	34.4	10.1	31.0	14'3"	118.9	11.2	34.4	7.2	22.1	0	0	8'11"	124.0	111.0	5	15.3	242.9	385.1	68.4
7/31/2022	11.6	35.60	11.6	35.6	16'3"	89.2	9.4	28.8	8.1	24.9	0	0	9'3"	119.7	115.3	0	0	208.9	419.1	60.5
8/31/2022	9.8	30.07	9.8	30.1	18'1"	65.6	8.4	25.8	7.7	23.6	0	0	9'8"	114.5	120.5	0.5	1.5	180.1	447.9	55.2
9/30/2022	8.5	26.08	7.6	23.3	9'8"	48.9	8.6	26.4	6.5	19.9	0	0	9'9"	113.4	121.6	0.9	2.8	162.3	465.7	46.0
10/31/2022																				
11/30/2022																				
12/31/2022																				
<b>Total Flow (mg) or Total Annual Volume Irrigated (Ac ft)</b>	<b>100.4</b>	<b>308.1</b>	<b>39.1</b>	<b>120.0</b>					<b>29.5</b>	<b>90.5</b>						<b>9.781</b>	<b>30.0</b>			<b>240.5</b>

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

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**TO:** ARSA BOARD OF DIRECTORS  
**MEETING DATE:** OCTOBER 26, 2022  
**FROM:** FRANK SPLENDORIO  
**SUBJECT:** TELECONFERENCE MEETINGS

---

**RECOMMENDATION:**

- (1) make the findings that there has been declared a State of Emergency by the Governor of the State of California and state or local officials are recommending or imposing measures to promote social distancing, and
- (2) the General Manager is hereby authorized and directed to take all actions necessary to conduct open and public meetings for ARSA in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

**BACKGROUND:**

As amended by AB 361, Government Code section 54953(e) of the Brown Act makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions.

A required condition is that a State of Emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558. It is further required that state or local officials have recommended or imposed measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees.

Staff recommends the Board, by motion, (1) makes the findings that there has been declared a State of Emergency by the Governor of the State of California and state or local officials are recommending or imposing measures to promote social distancing, and that (2) the General Manager is hereby authorized and directed to take all actions necessary to conduct open and public meetings for ARSA in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

This Motion will take effect immediately upon its approval and shall be effective until the earlier of 30 days from the adoption thereof, or such time the Board adopts a subsequent Resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the ARSA Board may continue to virtually meet.

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

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## STAFF REPORT

**TO:** ARSA BOARD OF DIRECTORS  
**MEETING DATE:** October 28, 022  
**FROM:** Amy Gedney and Frank Splendorio  
**SUBJECT:** Status Update Regarding Ongoing Litigation Against City of Ione

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### RECOMMENDATION:

Receive Informational Update and Status Report re Lawsuit Against Ione.

### BACKGROUND:

Beginning in March of 2022, Ione has, with little exception, refused to accept wastewater from ARSA. Ione complained that there was a hydrogen sulfide smell. To attempt to alleviate the odor, ARSA started sodium chloride injections, but Ione shut down the water again. Shutting down the system results in the build up of hydrogen sulfide gases.

In May 2022, ARSA requested that Ione receive discharges from Preston Reservoir again. Ione, however, claimed that the water smelled and refused to take the full amount. While ARSA devised a new setup to treat the water in Preston Reservoir, Ione refused to let the water run long enough to allow the new setup to work properly. Ione gave no notice and stopped the discharge again.

In June 2022, as the days became hotter, Ione asked for water from ARSA from Preston. ARSA accordingly expedited payment for a new chemical in order to eliminate any odors from the water. After delivering five-acre feet (or 1,629,255 gallons) of water, Ione again shut off the water. In the previous year, ARSA discharged 20 acre feet (or 6,517,020 gallons) to Ione in April, and Ione made no complaints about the smell after 10 acre feet (or 3,258,510 gallons) was delivered. . Recognizing that continuing to send water to Preston Reservoir could be problematic, in June staff stopped sending water to Preston Reservoir for use at the golf course and began irrigating at the Hoskins Ranch. (Previously we were sending water to Preston so that there would be 300 ac feet available for use at Castle Oaks golf course.)

On multiple occasions from March through August 2022, ARSA requested that Ione receive water from ARSA so that Preston Reservoir is emptied before the end of the irrigation season, and the beginning the rainy season, in order to ensure that Preston Reservoir does not spill over during the coming rainy season.

The table below outlines how many acre feet per month Ione has taken.

**Table 1. Amount of water taken by Ione March – September.**

Month	Acre Feet Taken	Acre Feet Remaining in Preston Reservoir
March	4.9	148.6
April	0.2	125.6
May	5.2	112.1
June	15.3	111
July	0	115.3
August	1.5	120.5
September	2.8	121.6
TOTAL	30	

ARSA staff continued to request that Ione take water. On August 31, 2022, Ione refused to accept any wastewater from ARSA. On September 8, 2022, ARSA provided written notice to Ione's Interim City Manager, that Ione's refusal to accept wastewater from ARSA constitutes a breach of the Wastewater Agreement. After ignoring the September 8, 2022, correspondence, Ione again began accepting wastewater from Preston Reservoir on September 19, 2022, only taking 400,000 gallons (or 1.22 acre feet) on that day, which was reduced to only 200,000 gallons (or 0.61 acre feet) on September 20, 2022 due to purported water quality issues concerning the wastewater. Due to the uncertainty and risk of Preston having too much water heading into the rainy season, on September 20, 2022, ARSA legal counsel filed a complaint against Ione. On September 21, 2022, Ione staff was served and immediately notified their operator to cease taking water from ARSA.

On September 23, 2022, ARSA sent another letter to Ione imploring Ione to cease refusing to accept wastewater from ARSA from Preston Reservoir before the irrigation season ends in order to reduce the risk of Preston Reservoir spilling over during the upcoming rainy season. Ione ignored that letter and ARSA then filed its Temporary Restraining Order, TRO, against Ione.

In its TRO, ARSA's Engineer showed, based on his modeling, that Preston would spill over in the April timeframe if certain rain conditions occurred and Ione continued to refuse to take water.

It is important to note that, during all times mentioned above, the only complaints ARSA received were due to water and/or alleged permit violations. Both of these issues the Regional Board said did not justify Ione's refusal to accept wastewater as noted below.

## **DISCUSSION:**

### ***Complaint Against Ione***

On September 20, 2022, ARSA filed a complaint for injunctive and declaratory relief against the City of Ione and CDCR. (See Attachment 1.)

The lawsuit was premised on the fact that Ione's failure to accept ARSA's wastewater from Preston Reservoir — in violation of its contractual obligation to do so — is unjustified and an abject dereliction of its duty without basic regard of the health and safety of the public. Such failure created an imminent, public health crisis that require an emergency order from the Court to force them to take the wastewater from Preston as their contract requires.

### ***TRO Granted***

ARSA's request for an emergency order has already been twice vindicated by the Amador County Superior Court. On September 29, 2022, ARSA filed a Temporary Restraining Order against Ione. (See Attachment 2.) The trial court immediately granted ARSA's TRO on that day (Attachment 3).<sup>1</sup>

### ***Preliminary Injunction Granted***

On October 10<sup>th</sup>, after considering Ione's opposition to the TRO, the Court again ruled in ARSA's favor, issuing an order and preliminary injunction requiring Ione to immediately accept 500,000 gallons of wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons. (See Attachment 4 and 5, Ione's Opposition and ARSA's Reply to Opposition, respectively.)

That Order (see attachment 6) which represents the second time in this lawsuit that Ione was ordered to accept ARSA's water, became effective October 11, 2022.

This is a critical fact, because in granting a TRO and then the preliminary injunction mandating that Ione take the water, the Court (twice) was required to find that (a) ARSA has a greater likelihood of prevailing on the merits of its lawsuit against Ione, and that (b) the irreparable harm that would result from Ione not taking the water (flooding of wastewater from Preston Reservoir into neighborhoods) outweighs any claimed or supposed harm Ione has alleged.

### ***Regional Board's September 9, 2022 Letter***

It is worth noting that on September 9, 2022, prior to the lawsuit being filed, the Regional Board had already issued correspondence to ARSA, Ione, and the Golf Course addressing the balancing of harms issue and stating the overflowing of Preston is a far worse outcome. (Attachment 7.) The Regional Board's September 9, 2022, letter declared that "the capacity issues at Preston [Reservoir] are presenting an even greater risk to water quality and public health than potential nuisance concerns related to the treatment of wastewater from Preston."

So, all told, by October 10, 2022, the Regional Board and two Judges at Amador County Superior Court had declared Ione not taking the water is an imminent, public health harm, greater than any alleged harm Ione may have contended.

### ***Ione's Request to Modify Court's Order***

Notwithstanding this Order, tending before the Court now is Ione's ex parte application to *modify* the preliminary injunction to reduce the total gallons per day to 200,000, or to condition Ione's acceptance of 500,000 gallons per day on ARSA's installation of a surface pump at Preston Reservoir. (See Attachment 8.)

Even if we were to assume the hydrogen sulfide condition is a valid excuse, it would only cover Ione's noncompliance for *three* days – October 18 through 20, 2022. Indeed, Ione has offered no

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<sup>1</sup> However, Ione immediately appealed the TRO on procedural grounds and it was granted because the Judge ruled in ARSA's favor without first considering an opposition by Ione.



justification for its failure to comply with the Order between October 11 and 14, 2022, or since October 20, 2022.

### ***ARSA's Opposition to Ione's Request to Modify the Court's Order***

In our opposition to the request for modification to the TRO (Attachment 9), we show the hydrogen sulfide condition at Ione's treatment plant is also not a valid excuse for Ione's violation of the Order from October 18 through 20, 2022, or any other period of time. According to an incident report, Ione's fire department took gas readings at two top vent pipes to test the amount of hydrogen sulfide (H<sub>2</sub>S). These readings showed H<sub>2</sub>S at only 1 part per million (PPM), but detected a combustible/explosive range above the lower explosion limit (LEL) of 10% at 13-14%.

While Ione's fire department's readings showed similar results on October 19, 2022, the combustible/explosive range dropped below the LEL to only 3% on October 20, 2022. The amount of H<sub>2</sub>S, however, increased to at least 200 PPM at that time. The oxygen levels from October 18 to 20, 2022, nevertheless remained constant, at 20.8%, 20.2%, and 20.8%.

Hydrogen sulfide is a common condition that exists in sewer and wastewater systems. It is a combustible and toxic gas that forms within sewer collection systems when the organic matter in the raw sewage decomposes and is caused by the lack of oxygen in the water over longer periods of time.

Setting aside the cause of the hydrogen sulfide, hydrogen sulfide does not generally pose a health hazard when it is properly monitored and mitigated. To address the presence of hydrogen sulfide, including at the levels detected by Ione's fire department between October 18 and 20, 2022, ventilation blowers are typically used to force air into the confined space at high enough volumes to exchange the air to dilute the concentration to a nonhazardous level. Indeed, in most cases, simply ventilating the utility access hole can reduce the levels of the gas present to a safe level for entry. Hydrogen sulfide may also be treated through the use of chemicals, including chlorine, sodium hypochlorite, or other products such as hydrogen peroxide-based oxidants.

To date, Ione has provided no evidence whatsoever reflecting any attempts to treat the hydrogen sulfide. Ione has instead simply shut down the system after detecting conditions that are common in wastewater systems and has elected to take no steps to treat the hydrogen sulfide. ARSA has tested the area around the Preston Reservoir for H<sub>2</sub>S, and no H<sub>2</sub>S has been detected. The hydrogen sulfide issues identified by Ione thus relate solely to tertiary effluent requirements *at their system*. These are part of the costs of providing tertiary treatment and therefore must be resolved by Ione as the operator of the tertiary treatment plant.

### ***Ione's Disobedience of Court's Order to Take Water***

Since October 11<sup>th</sup> (the effective date of the Order), Ione has chosen a perilous, grossly reckless path, without regard of human life and safety, by willfully disobeying the Court's order. Instead of doing the right thing, Ione has instead (a) unsuccessfully sought relief from the Court of Appeal, (b) delayed compliance in order to obtain assurances from the Central Valley Regional Water Quality Control Board ("Regional Board") that were already provided, and (c) created excuse after excuse for why it cannot accept wastewater from Preston Reservoir, the latest of which is high levels of hydrogen sulfide that is the result of Ione's own doing.

Meanwhile, aside from a period of roughly five days from October 14 through October 18, 2022, Ione has willfully disobeyed and violated the Order since October 11, 2022.

***ARSA's Contempt Application against Ione***

Contempt and sanctions are thus appropriate for Ione's noncompliance during these time periods. To that end, ARSA has also just filed contempt papers against Ione. (Attachment 10.)

Here, it is beyond controversy that Ione has willfully disobeyed and violated the Order. Although required to accept 500,000 gallons of wastewater per day from Preston Reservoir since October 11, 2022, Ione only accepted water from Preston Reservoir from October 14, 2022, through October 18, 2022. Ione has willfully disobeyed and violated the Order. Ione is able to comply with the Order, and there is no good cause or substantial justification for its failure to do so.

# **ATTACHMENT 1**

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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

22-CV- 12624

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No.  
Judge:

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

CASE ASSIGNED FOR ALL PURPOSES TO  
HON. J.S. HERMANSON  
CCP 170.6

B. Morris

1 Plaintiff AMADOR REGIONAL SANITATION AUTHORITY (“ARSA”) alleges as  
2 follows:

3 **PARTIES**

4 1. ARSA is now, and at all times mentioned in this Complaint was, a California joint  
5 powers agency established pursuant to the Joint Exercise of Powers Act, Government Code sections  
6 6500, et seq., responsible for providing wastewater conveyance and disposal services to its member  
7 agencies: the County of Amador and the Cities of Amador City and Sutter Creek, and located in  
8 the County of Amador, California.

9 2. ARSA is informed and believes and thereon alleges that Defendant CITY OF IONE  
10 (“IONE”) is now, and at all times mentioned in this Complaint was, a municipal corporation  
11 organized and existing under the laws of the State of California and located in the County of  
12 Amador, California.

13 3. ARSA is informed and believes and thereon alleges that Defendant CALIFORNIA  
14 DEPARTMENT OF CORRECTIONS AND REHABILITATION (“CDCR”) is now, and at all  
15 times mentioned in this Complaint was, a state agency organized and existing under the laws of the  
16 State of California and the owner of a series pipelines and reservoirs located in the County of  
17 Amador, California.

18 4. ARSA is unaware of the true names and capacities of those defendants sued herein  
19 as Does 1 through 20. ARSA is informed and believes and on such basis alleges that these  
20 fictitiously named defendants are in some way responsible for the harm sustained by ARSA as  
21 alleged in the Complaint. ARSA will amend this Complaint to allege the true names and capacities  
22 of the fictitiously named defendants when ascertained.

23 5. Defendants IONE, CDCR, and Does 1 through 20 (collectively, “DEFENDANTS”),  
24 and each of them, are and were at all times mentioned herein agents, employees, or partners of each  
25 other, and, in doing the acts alleged herein, each defendant was acting within the scope of his, her,  
26 or its authority as such agent, employee, or partner, with the information and consent of each  
27 defendant, and each ratified or approved the conduct of the defendants alleged herein.

28 ///

## **GENERAL ALLEGATIONS**

6. Wastewater from the City of Sutter Creek, Amador City, and the Martell community is treated by the Sutter Creek Wastewater Treatment Plant (“SUTTER CREEK WWTP”), which is owned and operated by the City of Sutter Creek. Secondary effluent from the SUTTER CREEK WWTP is conveyed through a series of pipelines and reservoirs, which make up a wastewater delivery and disposal system known as the “HENDERSON/PRESTON SYSTEM.”

7. The HENDERSON/PRESTON SYSTEM is comprised of an upper element and a lower element. The upper HENDERSON/PRESTON SYSTEM generally consists of the area from the outfall of the SUTTER CREEK WWTP to the Preston Youth Correctional Facility. The lower HENDERSON/PRESTON SYSTEM generally includes the components that lie below Preston Forebay to the outfall of the pipeline that conveys the secondarily treated wastewater from Preston Reservoir to IONE. IONE receives wastewater from the lower HENDERSON/PRESTON SYSTEM for tertiary treatment at its Castle Oaks Water Reclamation Plant (“COWRP”) for irrigation use at the Castle Oaks Golf Course.

8. The HENDERSON/PRESTON SYSTEM is owned by CDCR. Since in or about 1977, CDCR has leased the pipelines and reservoirs that make up the HENDERSON/PRESTON SYSTEM to ARSA. A copy of the current lease between ARSA and CDCR, Ground lease No. L-2070 (“LEASE”), executed on February 23, 2009, is attached hereto as Exhibit “A” and incorporated herein by this reference.

9. Under the LEASE, which does not expire until September 18, 2037, ARSA uses the HENDERSON/PRESTON SYSTEM (referred to in the LEASE as the “Premises”) to transport water and wastewater pursuant to a separate agreement between ARSA, CDCR, and IONE, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September 18, 2007 (“WASTEWATER AGREEMENT”), a copy of which is attached as Exhibit B to the LEASE.

10. The LEASE provides in relevant part the following regarding termination and injunctive relief: “The parties to this Lease hereto recognize that the Premises leased hereunder is part of a wastewater system, regulated under the California Water Code, and that termination of

1 this Lease is not practicable nor feasible as it would render an essential utility service inoperable,  
2 with no alternate means readily available to [CDCR] and [ARSA] to dispose of their effluent that  
3 is not in violation of their other permit obligations. Therefore, the parties to this Lease have deleted  
4 any reference herein to termination of this Lease for breach, and instead expressly agree that  
5 injunctive relief to cure any actual or threatened breach is appropriate, and agree that either party  
6 shall be entitled to seek equitable injunctive relief from a court of competent jurisdiction to enforce  
7 compliance with the obligations hereunder. Neither party shall be entitled to defend such action on  
8 the basis that injunctive relief is improper, or that monetary damages are adequate.”

9 11. The LEASE further provides that time is of the essence for each and all of the  
10 provisions, covenants, and conditions therein, and that the LEASE may not be modified except by  
11 a written instrument duly executed by the parties thereto.

12 12. Under its express terms, the WASTEWATER AGREEMENT governs the  
13 wastewater rights and obligations among ARSA, CDCR, and IONE, as well as the relationship and  
14 respective rights between ARSA, CDCR, and IONE with regard to the HENDERSON/PRESTON  
15 SYSTEM.

16 13. The WASTEWATER AGREEMENT allows ARSA to annually discharge 650 acre  
17 feet of treated wastewater to Preston Reservoir for disposal. The WASTEWATER AGREEMENT,  
18 however, provides that CDCR may annually discharge up to 350 acre feet of treated wastewater to  
19 Preston Reservoir, which amount is counted against ARSA’s 650 acre-foot disposal right. CDCR  
20 operates the Mule Creek State Prison (“MCSP”), wastewater from which is treated by CDCR at its  
21 MCSP Wastewater Treatment Plant (“MCSP WWTP”).

22 14. Pursuant to the WASTEWATER AGREEMENT, IONE is obligated annually to  
23 accept from ARSA/CDCR a combined total of 650 acre feet of secondarily treated wastewater from  
24 Preston Reservoir. Specifically, IONE must accept up to 95 acre feet of wastewater per month from  
25 April through September, and up to 10 acre feet of wastewater per month from October through  
26 March, but such limits may be waived by agreement of the parties in the event of an emergency  
27 and where necessary for the prevention of environmental damage or civil liabilities attendant to  
28 wastewater violations. The WASTEWATER AGREEMENT further provides that ARSA and

1 CDCR will continue to provide effluent from Preston Reservoir to the COWRP for use on the  
2 Castle Oaks Golf Course, if such effluent is available.

3 15. The term of the WASTEWATER AGREEMENT is 30 years and will not expire  
4 until September 18, 2037, the same date that the LEASE ends. While the WASTEWATER  
5 AGREEMENT allows IONE to terminate flows to the lower HENDERSON/PRESTON SYSTEM  
6 upon five-years' written notice, such right cannot be exercised unless IONE and CDCR have  
7 resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course, which includes,  
8 but is not limited to, obtaining any necessary water quality permits or permit modifications required  
9 by state law.

10 16. The WASTEWATER AGREEMENT also provides that it may be amended only by  
11 written instrument signed by all the parties thereto.

12 17. The WASTEWATER AGREEMENT further requires CDCR, IONE, and ARSA to  
13 work to obtain all necessary permits, approvals, and authorizations to carry out the WASTEWATER  
14 AGREEMENT in compliance with all pertinent Federal, State, and local laws and regulations.

15 18. The parties' wastewater discharges are regulated by the Central Valley Regional  
16 Water Quality Control Board ("REGIONAL BOARD"). The REGIONAL BOARD's Water  
17 Reclamation Requirements ("WRRs") Order No. 93-240 ("WRRs ORDER NO. 93-240") regulates  
18 the COWRP and flows thereto from the HENDERSON/PRESTON SYSTEM, while the  
19 REGIONAL BOARD's Waste Discharge Requirements ("WDRs") Order No. R5-2015-0129  
20 ("WDRs ORDER NO. R5-2015-0129") regulates the MCSP WWTP.

21 19. WRRs ORDER NO. 93-240 only permits wastewater treatment and reuse based on  
22 the flows to Preston Reservoir through the HENDERSON/PRESTON SYSTEM; it does not permit  
23 an alternative direct connection from CDCR to the COWRP. WRRs ORDER NO. 93-240 also does  
24 not recognize CDCR as a named discharger to the COWRP; WRRs ORDER NO. 93-240 names  
25 only ARSA, IONE, and Portlock International, Ltd. (Castle Oaks Golf Course) as the dischargers.

26 20. Aside from spray irrigation on land application areas, WDRs ORDER NO. R5-  
27 2015-0129 only permits disposal of wastewater to Preston Reservoir up to the maximum 350 acre-  
28 feet allowed under the WASTEWATER AGREEMENT. WDRs ORDER NO. R5-2015-0129



1 recognizes that “Preston Reservoir serves as a means of conveyance of effluent flows from the  
2 [ARSA] system and the [MCSP] WWTP to the City of Ione wastewater disposal system or to the  
3 [COWRP] for further treatment and reuse at the Castle Oaks Golf Course (under [WRRs ORDER  
4 NO. 93-240]).”

5 21. On or about July 19, 2017, IONE issued a letter purporting to provide five years’  
6 notice to ARSA to eliminate all flows to the lower HENDERSON/PRESTON SYSTEM under the  
7 WASTEWATER AGREEMENT. Said letter asserted growth in the community had made it  
8 possible for IONE and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf  
9 Course. The letter requested ARSA to eliminate all flows to the lower HENDERSON/PRESTON  
10 SYSTEM by July 31, 2022. A copy of said letter is attached as Exhibit “B” hereto and incorporated  
11 herein by this reference.

12 22. ARSA is informed and believes and thereon alleges that CDCR constructed, and has  
13 been utilizing, a direct connection from the MCSP WWTP to the COWRP, bypassing Preston  
14 Reservoir.

15 23. Since construction of a direct delivery system, the MCSP WWTP has been under  
16 investigation by the REGIONAL BOARD for problematic waste discharges. The REGIONAL  
17 BOARD has found that discharges from the MCSP WWTP are not authorized under WDRs ORDER  
18 NO. R5-2015-0129. The REGIONAL BOARD also found volatile organic compounds (“VOCs”)  
19 and semi-VOCs present in the MCSP WWTP’s effluent and ordered CDCR to submit a Report of  
20 Waste Discharge in order for the REGIONAL BOARD to amend existing WDRs or issue new  
21 WDRs.

22 24. Following CDCR’s submission of a Report of Waste Discharge, the REGIONAL  
23 BOARD issued a Revised Monitoring and Reporting Program to CDCR on October 21, 2021,  
24 imposing additional monitoring and reporting requirements for VOCs. The additional requirements  
25 are necessary to determine the effects of MCSP’s discharges on water quality, verify the effectiveness  
26 of existing WDRs to comply with applicable water quality objectives, evaluate MCSP’s compliance  
27 with the terms and conditions of its WDRs, and determine the need for revised requirements.

28 ///

1           25.     On the same day, the REGIONAL BOARD also issued a Revised Monitoring and  
2     Reporting Program under WRRs ORDER NO. 93-240, imposing requirements to monitor and report  
3     the COWRP's influent and effluent for VOCs.

4           26.     Due to IONE's ongoing failure to provide adequate reclaimed water for the Castle  
5     Oaks Golf Course, namely its failure to obtain the water quality permits or permit modifications  
6     required by state law necessary to allow for the provision of adequate reclaimed water to the Castle  
7     Oaks Golf Course without use of the HENDERSON/PRESTON SYSTEM, any notice issued to  
8     date by IONE purporting to terminate its obligation to accept wastewater from ARSA, including  
9     its July 19, 2017, letter, is void and of no force and effect.

10          27.     On or about December 3, 2021, ARSA sent separate correspondence to both IONE  
11     and CDCR to confirm ARSA's right to dispose secondarily treated wastewater through the lower  
12     HENDERSON/PRESTON SYSTEM pursuant to the WASTEWATER AGREEMENT, copies of  
13     which are respectively attached as Exhibits "C" and "D" hereto and incorporated herein by this  
14     reference.

15          28.     On or about January 19, 2022, IONE provided a response to ARSA's December 3,  
16     2021, correspondence, a copy of which is attached as Exhibit "E" hereto and incorporated herein  
17     by this reference. IONE's January 19, 2022, correspondence reaffirmed its intention to cease  
18     services with ARSA as of July 19, 2022, but indicated a willingness to extend the date upon entry  
19     into a new agreement with a new fee structure.

20          29.     On or about January 28, 2022, ARSA sent further, separate correspondence to both  
21     IONE and CDCR setting forth ARSA's right to deliver secondary effluent through the lower  
22     HENDERSON/PRESTON SYSTEM pursuant to the WASTEWATER AGREEMENT and the  
23     WRRs ORDER NO. 93-240, copies of which are respectively attached as Exhibits "F" and "G"  
24     hereto and incorporated herein by this reference.

25          30.     On or about February 3, 2022, ARSA responded directly to IONE's January 19,  
26     2022, correspondence, informing IONE that any action taken to prevent, reduce, interrupt, interfere  
27     with, or circumvent ARSA from delivering its effluent to IONE would be a breach of the  
28     WASTEWATER AGREEMENT and a violation of the WRRs ORDER NO. 93-240, but accepted

1 IONE's offer to meet and confer regarding the matter. A copy of ARSA's February 3, 2022, letter  
2 is attached as Exhibit "H" hereto and incorporated herein by this reference.

3 31. In or about March 2022, ARSA and IONE began engaging in substantive  
4 discussions regarding the outstanding issues concerning ARSA's discharge of wastewater from  
5 Preston Reservoir to the COWRP. In furtherance of these discussions, IONE transmitted  
6 correspondence to ARSA outlining several deal points for negotiation of a new agreement on or  
7 about July 20, 2022, a copy of which is attached as Exhibit "I" hereto and incorporated herein by  
8 this reference. IONE's July 20, 2022, correspondence stated that negotiation of a new agreement  
9 would extend its willingness to accept wastewater under the WASTEWATER AGREEMENT until  
10 either approval of the new agreement by IONE and ARSA, or February 1, 2024, if no new  
11 agreement was reached.

12 32. On or about July 29, 2022, ARSA provided its response to IONE's July 20, 2022,  
13 correspondence, a copy of which is attached as Exhibit "J" hereto and incorporated herein by this  
14 reference. While ARSA expressed its willingness to attempt to negotiate a new agreement, ARSA  
15 advised IONE that ARSA was prepared to seek all available remedies under the law should IONE  
16 refuse to accept wastewater from ARSA through the lower HENDERSON/PRESTON SYSTEM  
17 under the WASTEWATER AGREEMENT.

18 33. On or about August 16, 2022, IONE transmitted its response to ARSA's July 29,  
19 2002, letter, a copy of which is attached as Exhibit "K" hereto and incorporated herein by this  
20 reference. Among other items, IONE's August 16, 2022, correspondence repeated its purported  
21 right to refuse wastewater from ARSA under the WASTEWATER AGREEMENT as of July 31,  
22 2022.

23 34. On multiple occasions over the past several months, IONE refused to accept  
24 wastewater from ARSA, but later accepted a small amount of discharges. Since August 31, 2022,  
25 however, IONE has continued to refuse to accept wastewater from ARSA.

26 35. On or about September 8, 2022, ARSA provided timely written notice to IONE that  
27 IONE's refusal to accept wastewater from ARSA constitutes a breach of the WASTEWATER  
28 AGREEMENT and stated ARSA's intention to meet and confer with IONE in an attempt to bring

1 IONE into compliance with the WASTEWATER AGREEMENT. ARSA advised IONE that  
2 should IONE continue to refuse to accept wastewater from ARSA, ARSA would have no choice  
3 but to pursue any and all available remedies under the law against IONE in order to enforce ARSA's  
4 rights under the WASTEWATER AGREEMENT. A copy of ARSA's September 8, 2022, letter is  
5 attached as Exhibit "L" hereto and incorporated herein by this reference.

6 36. Despite ARSA's ongoing efforts to resolve the outstanding issues with IONE, IONE  
7 continues to refuse to accept wastewater from ARSA through the lower HENDERSON/PRESTON  
8 SYSTEM in accordance with IONE's obligations under the WASTEWATER AGREEMENT.  
9 ARSA is also informed and believes and thereon alleges that CDCR continues to transmit  
10 wastewater from the MCSP WWTP to the COWRP and bypass Preston Reservoir in violation of  
11 the WASTEWATER AGREEMENT, the LEASE, WDRs ORDER NO. R5-2015-0129, and WRRs  
12 ORDER NO. 93-240.

13 37. Preston Reservoir is currently near its maximum capacity. The present inability of  
14 ARSA to discharge wastewater from Preston Reservoir to the COWRP will result in Preston  
15 Reservoir being unable to withstand the higher flows that may occur during the upcoming rainy  
16 season, Preston Reservoir overflowing, and/or ARSA having to discharge effluent on other lands  
17 in violation of the WRRs ORDER NO. 93-240, thus creating significant public health and water  
18 quality contamination issues. In light of the quickly approaching rainy season, and given the  
19 limitations on how much wastewater can be treated at the COWRP on a daily basis, the need to  
20 discharge wastewater from Preston Reservoir is immediate.

21 **FIRST CAUSE OF ACTION**  
22 (Injunctive Relief Against IONE and Does 1-10)

23 38. ARSA hereby incorporates by reference paragraphs 1 through 37 of the Complaint  
24 as though set forth in full herein.

25 39. IONE breached the WASTEWATER AGREEMENT by failing to perform its  
26 obligation to annually accept from ARSA secondarily treated wastewater from Preston Reservoir,  
27 and by accepting wastewater directly from CDCR from the MCSP WWTP to the COWRP and  
28 bypassing the HENDERSON/PRESTON SYSTEM.

1           40.     ARSA performed all conditions, covenants, and promises required on its part to be  
2 performed in accordance with the terms and conditions of the WASTEWATER AGREEMENT,  
3 except for those covenants and conditions ARSA was prevented or excused from performing.

4           41.     ARSA has no other adequate remedies at law or in equity to seek redress for IONE's  
5 continuing violations of the WASTEWATER AGREEMENT and therefore seeks preliminary and  
6 permanent injunctive relief restraining IONE from refusing to accept from ARSA secondarily  
7 treated wastewater from Preston Reservoir, and restraining IONE from accepting wastewater  
8 directly from CDCR and bypassing the HENDERSON/PRESTON SYSTEM.

9                                   **SECOND CAUSE OF ACTION**  
10                                  (Injunctive Relief Against CDCR and Does 11-20)

11           42.     ARSA hereby incorporates by reference paragraphs 1 through 41 of the Complaint  
12 as though set forth in full herein.

13           43.     CDCR breached the WASTEWATER AGREEMENT by discharging wastewater  
14 directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON  
15 SYSTEM.

16           44.     CDCR also breached the LEASE by discharging wastewater directly from the  
17 MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON SYSTEM.

18           45.     ARSA performed all conditions, covenants, and promises required on its part to be  
19 performed in accordance with the terms and conditions of the WASTEWATER AGREEMENT  
20 and LEASE, except for those covenants and conditions ARSA was prevented or excused from  
21 performing.

22           46.     ARSA has no other adequate remedies at law or in equity to seek redress for  
23 CDCR's continuing violations of the WASTEWATER AGREEMENT and LEASE and therefore  
24 seeks preliminary and permanent injunctive relief restraining CDCR from discharging wastewater  
25 directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON  
26 SYSTEM.

27     ///

28     ///

**THIRD CAUSE OF ACTION**  
(Declaratory Relief Against All Defendants)

47. ARSA hereby incorporates by reference paragraphs 1 through 46 of the Complaint as though set forth in full herein.

48. An actual controversy has arisen and now exists between ARSA and DEFENDANTS concerning their respective rights and duties. ARSA contends, and ARSA is informed and believes that DEFENDANTS deny, that IONE is obligated to accept from ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER AGREEMENT, and that CDCR is not permitted to discharge, and IONE is not permitted to accept, wastewater directly from the MCSP WWTP to the COWRP and bypass the HENDERSON/PRESTON SYSTEM.

49. ARSA desires a judicial determination of the respective rights and duties of ARSA and DEFENDANTS, namely declarations that IONE is obligated to accept from ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER AGREEMENT, and that CDCR is not permitted to discharge, and IONE is not permitted to accept, wastewater directly from the MCSP WWTP to the COWRP and bypass the HENDERSON/PRESTON SYSTEM.

50. Such declarations are necessary and appropriate at this time in order that ARSA may ascertain its rights and duties with respect to the WASTEWATER AGREEMENT and/or LEASE.

**PRAYER FOR RELIEF**

WHEREAS, ARSA demands judgment against DEFENDANTS for the following:

1. For a preliminary and permanent injunction restraining IONE from refusing to accept from ARSA secondarily treated wastewater from Preston Reservoir;

2. For a preliminary and permanent injunction restraining IONE from accepting wastewater directly from CDCR and bypassing the HENDERSON/PRESTON SYSTEM;

3. For a preliminary and permanent injunction restraining CDCR from discharging wastewater directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON SYSTEM;

///

1           4.     For a judicial determination and declaration that IONE is obligated to accept from  
2 ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER  
3 AGREEMENT;

4           5.     For a judicial determination and declaration that CDCR is not permitted to discharge  
5 wastewater directly from the MCSP WWTP to the COWRP and bypass the  
6 HENDERSON/PRESTON SYSTEM;

7           6.     For a judicial determination and declaration that IONE is not permitted to accept  
8 wastewater directly from the MCSP WWTP to the COWRP and bypass the  
9 HENDERSON/PRESTON SYSTEM;

10          7.     For attorneys' fees pursuant to paragraph 18 of the LEASE and costs of suit incurred  
11 herein; and

12          8.     For such other and further relief the Court may deem proper.

13 Dated: September 16, 2022

BEST BEST & KRIEGER LLP

14  
15 By: 

16 SHAWN D. HAGERTY  
17 MATTHEW L. GREEN  
18 Attorneys for Plaintiff  
19 CITY OF SANTEE  
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# EXHIBIT A



**GROUND LEASE**

Lease No.: L-2070

Lessee: Amador Regional Sanitation Authority

**LEASE COVERING PREMISES LOCATED AT****Mule Creek Prison and Preston Youth  
Correctional Facility****Amador County****AGENCY****Department of Corrections and Rehabilitation****REAL PROPERTY NOS.: 43 and 1575**

This Lease, dated for reference purposes only, January 1, 2009, by and between the State of California, acting by and through the Director of General Services (DGS), with the consent of the California Department of Corrections and Rehabilitation (CDCR), hereinafter collectively referred to as STATE, and the Amador Regional Sanitation Authority (ARSA), a joint powers authority, hereinafter referred to as LESSEE.

**RECITALS**

WHEREAS, CDCR has under its jurisdiction certain real properties located in the County of Amador, State of California, commonly known as the Mule Creek State Prison (MCSP) and the Preston Youth Correctional Facility, formerly known as Lone Youth Authority, and hereinafter referred to as "Preston"; and

WHEREAS, pursuant to Government Code (GC) Section 14672.100, the Director of the Department of General Services, with the consent of CDCR, may lease real property appurtenant to or part of Preston, which real property is located in Amador County and further described in this Lease to ARSA (LESSEE) for a term not to exceed thirty (30) years and at a rate of one dollar (\$1.00) per year for its continued use as a wastewater delivery and disposal system; and

WHEREAS, CDCR owns a series of pipelines and reservoirs, each of which interconnect to allow the transport of water and or wastewater, which is known as Henderson/Preston System. The Henderson/Preston System, hereinafter referred to as the "Premises", is depicted in "Supplement #2 to Appendix L of Amador County Wastewater Management Plan", dated November 1977, and hereinafter referred to as the "Water Plan". Per the Water Plan, said Premises is composed of an upper element and a lower element. The upper element consists of the area from the outfall of the Sutter Creek Treatment Plant to Preston, including all pipelines, rights of way, reservoirs, and water rights. The lower element includes the components that lie below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir. Said Water Plan defines and illustrates the elements of the Henderson/Preston System, is marked Exhibit "A", consists of two (2) pages and is attached hereto and by this reference made a part hereof; and

WHEREAS, the City of Lone, LESSEE and CDCR, entered into the "Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System", hereinafter referred to as "Agreement for Wastewater", dated September 18, 2007. Said Agreement governs the wastewater disposal rights and obligations among the parties to the Agreement, is marked Exhibit "B", which consists of nine (9) pages, and is attached hereto and by this reference made a part hereof; and

WHEREAS, LESSEE currently occupies the Premises per the "Agreement for Wastewater Management" dated March 22, 1977, which agreement shall be superseded by this Lease and the Agreement for Wastewater; and

WHEREAS, STATE is willing to lease the Premises to the LESSEE, and LESSEE is willing to lease the Premises from STATE, on the conditions set forth herein.

**NOW, THEREFORE**, it is hereby mutually agreed as follows:

**WITNESSETH**

<b>DESCRIPTION</b>	<b>1.</b> STATE does hereby lease to LESSEE, and LESSEE hereby hires from STATE, the Premises, as further described and depicted in the Water Plan, Exhibit "A" to this Lease.
<b>TERM</b>	<b>2.</b> The term of this Lease shall be for a period of twenty-nine (29) years eight (8) months to commence on January 1, 2009, and shall terminate on September 18, 2037, to coincide with the termination date of the Agreement for Wastewater.
<b>USE</b>	<b>3.</b> (a) LESSEE agrees to use the leased Premises to transport water and wastewater through the Premises pursuant to the Agreement for Wastewater, attached hereto as Exhibit "B", and by this reference made a part hereof.  (b) All activities upon the Premises will be conducted hereunder only in a manner which will not interfere with the orderly operation of the MCSP and Preston.
<b>LESSEE'S OBLIGATION FOR WATER DIVERSION</b>	<b>4.</b> (a) LESSEE agrees to annually divert a minimum of 250 acre/feet of water and a maximum of 1,100 acre/feet, from the Sutter Creek point of diversion in order to maintain STATE's water rights, as is more particularly described in the Water Plan, Exhibit "A" to this Lease. STATE reserves all of its water rights including the water rights for diversion from Sutter Creek at a maximum level of 1,100 acre/feet; and  (b) LESSEE shall maintain and supply upon reasonable request documentation of water diversion rates. Said documentation shall be sent to:  Department of Corrections and Rehabilitation Facilities Management Branch 9838 Old Placerville Road, Suite B Sacramento, California 95827  (c) STATE reserves its claim to receive not less than 250 acre/feet of water annually for use at Preston.
<b>RENT</b>	<b>5.</b> The first annual rent payment shall be paid by the LESSEE in the amount of ONE DOLLAR AND 00/100s (\$1.00), due and payable on January 1, 2009. Rent shall be payable annually in advance for the duration of the Lease, or at the LESSEE's option, shall be paid in one lump sum in advance.  <b>All rent payments shall be addressed and delivered to:</b>  Department of General Services Accounts Receivable PAL (L-2070) P.O. Box 989053 West Sacramento, CA. 95798-9053
<b>FEE</b>	<b>6.</b> LESSEE will reimburse DGS for its costs related to the lease, including, but not limited to, any survey costs, title transfer fees, administrative costs, and department staff time. DGS will invoice for the fees and payment shall be made to DGS at the address shown above and shall be made by February 1, 2009.

**LESSEE'S ACCESS  
RIGHTS**

7. During the term of this Lease, STATE hereby grants to LESSEE and its contractors, agents, employees, representatives or licensees, the non exclusive temporary right to access, at any and all times and at any and all places, upon STATE lands and easements identified as the Premises. LESSEE has acquired or shall acquire all access rights for the lands not owned by STATE, at LESSEE's own expense.

**CONDITION  
OF PREMISES**

8. (a) LESSEE has visited and inspected said Premises and it is agreed that the Premises stated herein, and on the attached Exhibit "A", is not described using a legal description and that the description is approximate. It is also acknowledged by all parties to this Lease, that the Premises will be leased "as-is" and the STATE does not warrant or guarantee the condition of the system, its pipelines, ponds, dams, equipment and appurtenances included hereunder.

(b) LESSEE agrees, pursuant to the "Surrender of Premises" clause of this Lease, to surrender up to STATE the Premises with any real property improvements therein, in at least the same condition as when received, reasonable use and wear thereof and damage by act of God, or by the elements excepted.

**TERMINATION  
AND INJUNCTIVE  
RELIEF**

9. The parties to this Lease hereto recognize that the Premises leased hereunder is part of a wastewater system, regulated under the California Water Code, and that termination of this Lease is not practicable nor feasible as it would render an essential utility service inoperable, with no alternate means readily available to STATE and LESSEE to dispose of their effluent that is not in violation of their other permit obligations. Therefore, the parties to this Lease have deleted any reference herein to termination of this Lease for breach, and instead expressly agree that injunctive relief to cure any actual or threatened breach is appropriate, and agree that either party shall be entitled to seek equitable injunctive relief from a court of competent jurisdiction to enforce compliance with the obligations hereunder. Neither party shall be entitled to defend such action on the basis that injunctive relief is improper, or that monetary damages are adequate. In the event of a violation of an injunctive order issued under this provision, in a subsequent proceeding to enforce the injunction, a court may, should it deem it appropriate, issue an order terminating the lease thereafter, on such terms as may be just and which will not work undue hardship on the parties to this Lease.

**HOLD OVER**

10. Any holding over after the expiration of said term or any extension thereof, with the written consent of STATE, shall be deemed a tenancy only from month to month. Otherwise, the terms and conditions specified in lease shall remain applicable.

**UTILITIES**

11. LESSEE agrees to pay at its sole cost and expense any and all water, electric, gas and other utility charges or any other charges payable in connection with LESSEE's use of said Premises during the term of this Lease. No utilities will be provided by STATE and STATE assumes no liability for the existence or nonexistence of utilities.

**REGULATION  
BY STATE**

12. LESSEE agrees to cooperate with the MCSP and or Preston to ensure that activities conducted on the Premises, or persons brought onto the Premises to conduct such activities, do not interfere with the orderly operation of the facilities.

**AGREEMENT TO  
REGULATE**

13. LESSEE hereby agrees to continue to operate the Premises in accordance with those guidelines found within the Agreement for Wastewater as outlined in the attached Exhibit "B".

**IMPROVEMENTS**

14. (a) STATE hereby grants to LESSEE the right to, at its sole cost and expense, improve the Premises. Said improvements include but are not limited to, installing, operating, maintaining, repairing and removing and or demolishing components of the wastewater system. Additionally, LESSEE shall keep the Premises fully functional and operational, in accordance with generally accepted and recommended practices and procedures and in compliance with all applicable federal, state and local laws and regulations, any and all improvements including, but not limited to any pipelines, valves and valve boxes, ponds, dams, equipment, pipes and pipelines, valves, wells, pumps, electrical panels, meter socket and wiring or other improvements existing on the Premises or constructed upon the Premises by LESSEE.

(b) LESSEE hereby assumes, at its sole expense; without limitation, the cost of any necessary improvements as defined in paragraph (a) immediately preceding this paragraph of this Lease, as well as environmental impact reports, engineering reports, government permits, or any other applicable regulatory compliance items.

(c) Prior to making any needed improvements to the Premises, LESSEE shall submit plans, specifications, and/or drawings, as applicable, in writing to the STATE. LESSEE shall receive STATE's written consent to proceed with such improvements. Said consent will not be unreasonably withheld.

(d) LESSEE agrees that in no event shall STATE be required to perform any maintenance on or make repairs or alterations to the leased Premises of any nature whatsoever.

(e) When making any necessary excavation on the Premises, LESSEE shall make such excavation in a manner that will cause the least damage to the surface of the ground, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as existed prior to said excavation as practicable.

**LIENS**

15. (a) During continuance in force of this Lease, LESSEE shall keep the leased Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by LESSEE and shall indemnify, hold harmless and defend STATE from such liens and encumbrances arising out of any work performed or materials furnished by or at the direction of LESSEE or contractors of LESSEE. Notice is hereby given that STATE shall not be liable for any work or materials furnished to LESSEE on credit and no mechanic's or other lien for any such work or materials shall attach to or affect STATE's interest in the leased Premises based on any work or materials supplied to LESSEE or anybody claiming through LESSEE. LESSEE shall within thirty (30) days after being furnished a notice of filing of any such lien, take action, whether by bonding or otherwise, to remove or satisfy any such lien.

(b) STATE shall have the right at all times to post and keep posted on the leased Premises any notices, that STATE deems proper for its protection and the protection of the leased Premises and STATE from liens. If, nevertheless, any

such lien shall be recorded, LESSEE shall, within sixty (60) days after notice from STATE, pay, settle, or otherwise release such lien, or deposit into escrow with a reputable bank or trust company in California a sum sufficient to satisfy such lien, in full. In the event of unsuccessful termination of any litigation in connection with such lien and under the terms of which it shall be obligated to pay such lien upon the unsuccessful termination of such litigation, then, upon the failure of LESSEE to comply with said requirements, STATE may pay or otherwise dispose of said lien, or defend, settle, or compromise any lawsuit brought to foreclose the same, in its sole discretion, and all amounts so paid by it or any loss sustained by STATE on that account, including reasonable amount for its attorney's fees, shall be repaid to STATE and shall be in addition to any other payments by way of rents, or otherwise, required under the terms of this Lease. A failure to pay any such sum within thirty (30) days after mailing of bill therefore to LESSEE shall constitute a breach of this Lease.

**NOTICES**

16. (a) All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.

(b) All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00a.m. and 5:00p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

	To the LESSEE:	ARSA Attn.: Rob Duke General Manager 18 Main Street Sutter Creek, CA 95685 (209) 267-5647 (phone)
STATE:	To the DGS:	Department of General Services Real Estate Services Division-SOLD (L-2070) 707 Third Street, MS 505 Post Office Box 989052 West Sacramento, California 95798-9052 (916) 375-4025 (phone)
	To CDCR:	California Department of Corrections Attn.: Warden Mule Creek State Prison 4001 Highway 104 Sutter Creek, CA 95685 (209) 274-5225 (phone)
		California Department of Corrections Attn.: Superintendent Preston Youth Correctional Facility (PYCS) 201 Waterman Road Ione, CA 95640

**NOTICES  
(CONTINUED)**

(209) 274-8102 (phone)

(c) The address to which notices may be mailed as aforesaid to either party, may be changed by written notice given by subject party to the other, as hereinbefore provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

**SUBLETTING**

17. LESSEE shall not assign this Lease in any event and shall not sublet the leased Premises or any part thereof and will not permit the use of the leased Premises by anyone other than the LESSEE without prior written consent by the STATE.

**RECOVERY OF  
LEGAL FEES**

18. If action is brought by any parties to this Lease for any breach hereof, or to restrain the breach of any agreement contained herein, the prevailing party in such action shall be entitled to the amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

**PARTNERSHIP  
DISCLAIMER**

19. LESSEE, and any and all agents and employees of LESSEE, shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained shall be construed as constituting the parties to this Lease herein as partners.

**HOLD HARMLESS**

20. (a) This Lease is made upon the express condition that STATE is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of STATE.

(b) LESSEE agrees to defend, indemnify and hold harmless STATE from all liability, loss, cost or obligation on account of or arising out of LESSEE's use and/or occupancy of the Premises during the Lease term or any such injury or loss, however occurring.

(c) LESSEE further agrees to provide necessary Workers' Compensation Insurance for all employees of LESSEE upon said Premises at the LESSEE's own cost and expense.

**INSURANCE**

21. STATE acknowledges that LESSEE is self-insured in whole or in part as to any of the below described types and levels of coverage. LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. Said acknowledgement shall contain the STATE Lease Number, L-2070. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this "Insurance" clause pertaining to policies of insurance in regard to those types and levels of insurance as follows:

**COMMERCIAL GENERAL LIABILITY**

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising

injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services, LESSEE, and their officers, agents, employees and servants as additional insureds, but only insofar as the operations under the Lease are concerned.

#### **AUTOMOBILE LIABILITY**

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned.

#### **WORKERS' COMPENSATION**

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California.

#### **GENERAL REQUIREMENTS**

LESSEE shall ensure that the following general requirements are met:

(a) Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.

(b) LESSEE shall provide STATE with a true copy of the policy in place providing coverage for General Liability, within thirty (30) days after each insurance policy renewal.

(c) Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of the original contract.

(d) Insurance policies shall contain a provision that coverage will not be cancelled without thirty (30) days prior written notice to STATE.

(e) LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

(f) In the event LESSEE fails to keep in effect at all times the specified insurance coverage, STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

(g) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by STATE.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

**NON-DISCRIMINATION**

22. LESSEE agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, age or physical handicap. LESSEE agrees to take action to ensure that applicants for employment and employees are treated during employment without regard to their race, color, religion, ancestry, national origin, sex, age or physical handicap. (See California Government Code Sections 12920-12994 for further details.)

Remedies for willful violation:

(a) STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having the effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(b) STATE shall have the right to seek appropriate legal relief, whether monetary or injunctive, as a result of said breach, and consistent with the provisions of the "Termination and Injunctive Relief" clause of this Lease.

**AMERICANS WITH DISABILITIES ACT**

23. Where applicable, LESSEE shall comply with all federal requirements established under the 28 Code of Regulations, Part 36, Americans with Disabilities Act, to ensure the Premises is accessible to all participants and to provide equally effective communications.

**LOSSES**

24. STATE will not be responsible for losses or damage to personal property, equipment or materials of the LESSEE and all losses shall be reported to STATE immediately upon discovery.

**DEBT LIABILITY DISCLAIMER**

25. STATE will not be liable for any debts or claims that arise from the operation of this Lease.

**TAXES / ASSESSMENTS**

26. LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied upon interest in this agreement. It is understood that this lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

**PROTECTION OF PREMISES**

27. No removal of soil in excess of five (5) cubic yards, or dumping of refuse by LESSEE, except for transport of wastewater as contemplated by this Lease, is permitted in any area of the Premises, and LESSEE shall not commit or suffer to be committed any waste or nuisance upon the Premises; and LESSEE agrees not to cut or remove any trees, larger than four (4) inches in diameter and measured at three (3) feet in height, thereon except as approved in writing by STATE and LESSEE further agrees that at all times to exercise due diligence in the protection of the Premises against damage or destruction by fire or other causes.

**PROPERTY RESTRICTIONS**

28. LESSEE shall comply with the following with respect to activities on the Premises:

(a) LESSEE shall not permit hunting on the Premises but shall not be required to post "No Hunting" signs; and



(b) Compliance to any and all rules and regulations by governing agencies to include EPA, Department of Health or local water quality board must be strictly adhered to; and

(c) Should LESSEE desire to use pesticides on the area (either herbicides, rodenticides or insecticides) all applicable Environmental Protection Agency (EPA) both state and federal, standards must be met and prior approval must be received from STATE as not all EPA approved pesticides will be permitted.

#### AERIAL APPLICATIONS

29. Any aerial applications of any pesticides on the Premises shall be in compliance with the California Food and Agriculture Code (FAC), Section 12972 and Title 3, California Code of Regulations (3 CCR), Section 6614.

LESSEE shall notify the Warden and Superintendent in writing within three (3) business days in advance, of any aerial application and a completed Material Safety Data Sheet (MSDS) shall accompany the notice. LESSEE shall ensure that there will be minimal to no drift over the prison site adjacent to the subject Premises. LESSEE shall insure that any aircraft used for any aerial application will not encroach into the airspace of the MCSP and Preston.

#### WEED ABATE- MENT

30. Any weed burning operations on the leased Premises will be carried out pursuant to local ordinances and at LESSEE's own cost and expense. LESSEE will inform MCSP and Preston in advance of any weed burning operations.

#### ENVIRONMENTAL COMPLIANCE AND HAZARDOUS WASTE

31. (a) Compliance. LESSEE shall be solely responsible for determining the applicability of and for complying with all applicable federal, state and local environmental, natural resources, zoning laws and regulations, including but not limited to CERCLA (42 USC 9601.14), SARA [42 USC 11021(e)], or Resources Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94-580 (1976), 42 USC 6901 et seq. and amendments, including the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616 (1984), with respect to LESSEE's activities on the Premises. LESSEE agrees that it shall comply with all applicable laws, federal, state, and local, existing during the term of this Lease pertaining to the use, storage, generation, treatment, transportation, and disposal of LESSEE's hazardous substances (including petroleum and petroleum derivatives) as that term is defined in such applicable law.

(b) Copies of Materials. LESSEE shall maintain copies of Material Safety Data Sheets (MSDS) and hazardous waste manifests, if any, for all hazardous materials used or transported on or from the Premises. MSDS and manifests shall be provided to the CDCR Facilities Management Division upon its request. If LESSEE is required to prepare a Business Plan, as specified by Health and Safety Code Section 25500 et seq., or a Hazardous Waste Contingency Plan, as specified in 22 CCR 66264.51 et seq., then a copy of the plan shall be submitted first to the Facilities Management Division for review and written approval.

(c) Spill Reporting; Cleanup. Any spill or release of a hazardous substance or material to the air, soil, surface water, or groundwater will be immediately reported to STATE as well as to appropriate government agencies, and shall be promptly and fully cleaned up and the Premises (including soils, surface water, and groundwater) restored to its original condition or such condition as approved by the applicable government agency with jurisdiction.

(d) RCRA Facility Prohibited. LESSEE shall not apply to become a "permitted" RCRA hazardous waste storage or disposal facility on the Premises.

(e) Inspection. STATE or its representatives reserve inspection rights pursuant to the "STATE's Rights to Enter" clause of this Lease.

Termination. Any violation of federal, state, or local environmental law by LESSEE, which continues unaddressed for a period of thirty (30) days from the date LESSEE receives notice of such violation, shall be grounds for STATE to pursue specific performance and injunctive relief in accordance with the "Termination and Injunctive Relief" clause of this Lease. STATE shall not have the right to pursue remedies under said clause if LESSEE commences addressing the violation within such thirty (30) day period and, thereafter, diligently pursues remediation of the violation.

(f) Indemnification by LESSEE. In addition to any other indemnity set forth herein, LESSEE shall fully indemnify, defend, and hold harmless STATE and its agents and representatives for any violation of environmental, hazardous waste, hazardous materials (including petroleum and petroleum derivatives), and/or natural resources law caused by LESSEE or LESSEE's agents or representatives. Furthermore, LESSEE shall reimburse the STATE for any and all costs and liability related to investigation, clean up, settlement amounts, and/or fines, including attorneys' fees, incurred by the STATE for such violation.

(g) Indemnification by STATE. In the event a government order is issued naming LESSEE as a potentially responsible party, or LESSEE incurs any other loss, cost, expense (including attorney's fees) or liability during or after the term of the Lease in connection with contamination which pre-existed LESSEE's obligations and occupancy under this Lease, or which was caused by STATE, STATE will hold harmless and defend LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts, liabilities, losses, costs and expenses therefore, including attorney's fees. LESSEE shall have the burden of proof that the condition pre-existed the LESSEE's use and occupancy of the Premises or was caused by STATE.

#### **SURRENDER OF PREMISES**

32. (a) All personal property and equipment that is nonessential to the wastewater operations on the Premises shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE's tenancy.

(b) Should LESSEE fail to remove said nonessential personal property and equipment within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses associated with the removal of said property belonging to LESSEE.

(c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE's nonessential personal property and equipment, whereupon, as abandoned, title to said improvements will vest in STATE.

**RELOCATION**

33. In the event that Court should terminate this Lease for a refusal to obey an injunctive order as provided in the "Termination and Injunctive Relief" clause of this Lease, LESSEE acknowledges and agrees that it has no claim against STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq, or any regulations implementing or interpreting such sections. LESSEE further agrees that it has no claim in either law or equity against STATE for damages or other relief should the Lease be so terminated, and waives any such claims it may have.

**STATE'S RIGHT TO ENTER**

34. During the term of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises for survey, inspection, or any other lawful STATE purposes.

**EASEMENTS AND RIGHTS OF WAY**

35. This lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easement, as long as such easement does not interfere with the operations of LESSEE's established uses. If the right to grant such easement is exercised, the public utility or their contractor will be required to reimburse LESSEE for any damages caused by the construction work on the easement area.

**MINERAL RIGHTS**

36. LESSEE agrees not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold oil, gas, or other mineral interests upon or under said Premises; nor shall LESSEE, in any way, interfere with the rights of ingress and egress of said interest holders.

**BINDING**

37. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties to this Lease hereto.

**UNDERGROUND UTILITIES**

38. LESSEE shall be responsible for maintaining all underground utilities to include all pipelines connecting to the Premises.

**ESSENCE OF TIME**

39. Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

**CLAUSE HEADINGS**

40. All clause headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**WAIVER**

41. If STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE'S right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.

**SEVERABILITY**

42. If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

This Lease contains all currently enforceable agreements between STATE and LESSEE. In addition, this Lease and with Exhibit B are intended to be compatible and work together and collectively supersede all prior agreements between STATE and LESSEE. There have been no representations by STATE or understandings made between STATE and LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease hereto.

IN WITNESS WHEREOF, this agreement has been executed by the parties to this Lease hereto as of the date written below.

**STATE OF CALIFORNIA****LESSEE:**

DIRECTOR OF DEPARTMENT OF  
GENERAL SERVICES

AMADOR REGIONAL SANITATION AUTHORITY,  
a Joint Powers Authority

By: 

**TONY PSCHOPAIDAS**, Manager  
State Owned Leasing & Development  
707 Third Street, MS-505  
West Sacramento, CA 95605  
(916) 375-4025

02/23/09  
Execution Date

By: 

**ROB DUKE**, General Manager

1-28-09  
Date Signed

**Consent:****Approved as to form:**

DEPARTMENT OF CORRECTIONS

MCDONOUGH HOLLAND & ALLEN

By: 

**DEBORAH HYSEN**, Chief Deputy Secretary  
Facility Planning, Construction, and Management

By: 

**HARRIET STEINER**  
Attorneys for ARSA

**Approved as to form:****Approval Recommended:**

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,  
OFFICE OF LEGAL AFFAIRS

DEPARTMENT OF GENERAL SERVICES  
REAL ESTATE SERVICES DIVISION  
State Owned Leasing and Development

By: 

**CHRIS SWANBERG**, Senior Staff Counsel  
Attorney for CDCR

By: 

**PAMELA DYER**,  
Associate Real Estate Officer

# EXHIBIT A

SUTTER CREEK - IONE OUTFALL

WASTEWATER

RECLAMATION PROJECT

SUPPLEMENT #2

TO

APPENDIX L

OF

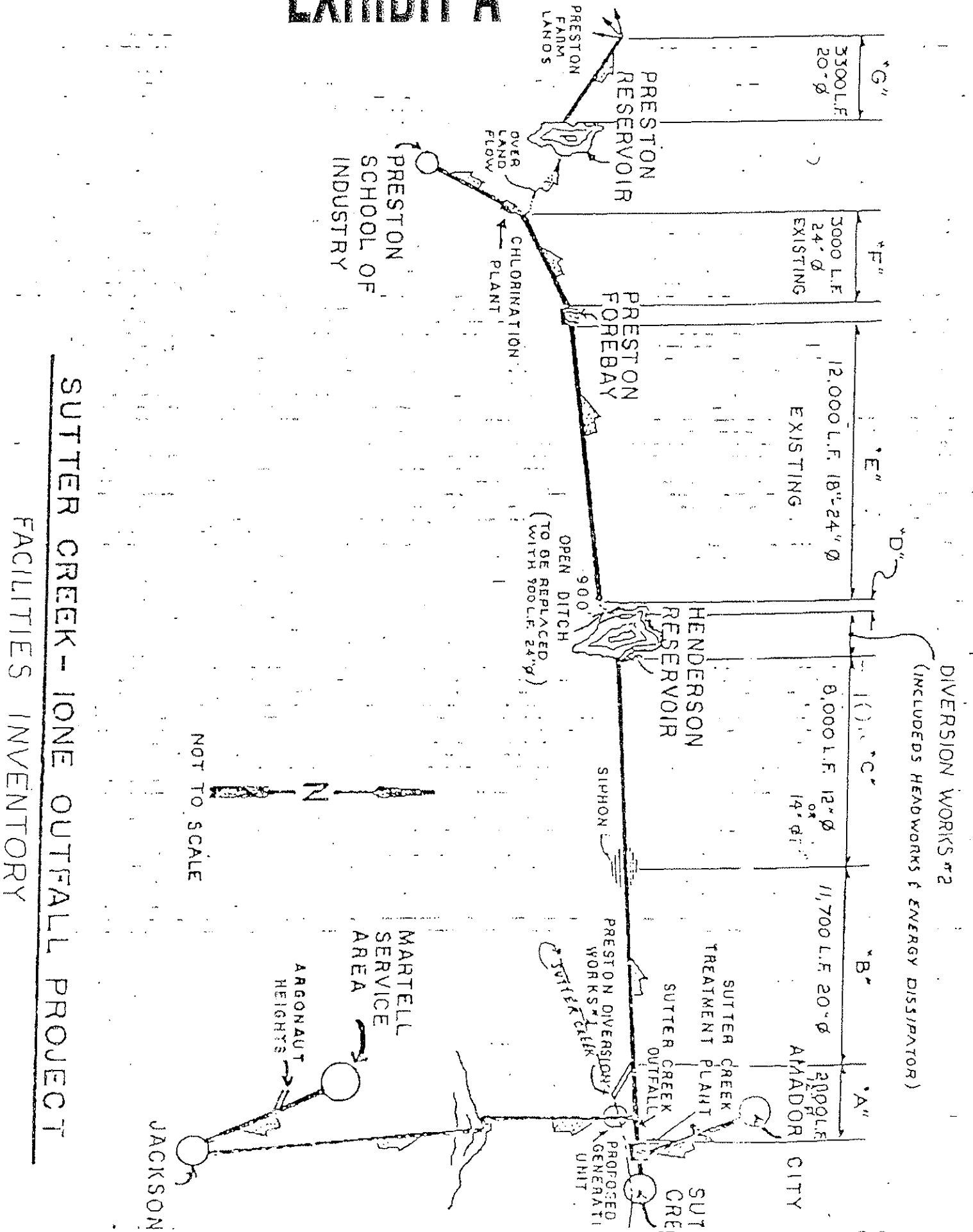
AMADOR COUNTY

WASTEWATER MANAGEMENT PLAN

NOVEMBER, 1977

PROJECT NO. 75-0995

# EXHIBIT A



# EXHIBIT B

## AGREEMENT TO REGULATE USE OF HENDERSON/PRESTON WASTEWATER DISPOSAL SYSTEM

This agreement is made this 18<sup>th</sup> day of September, 2007, by and between the California Department of Corrections and Rehabilitation, a California State Agency ("CDCR"), the City of Ione, a municipality formed pursuant to the laws of the State of California ("Ione"), and the Amador Regional Sanitation Authority, a joint powers agency formed pursuant to the laws of the State of California ("ARSA") (collectively, CDCR, Ione, and ARSA, shall be referred to as the "Parties"). The Parties hereby agree as follows:

WHEREAS, as settlement of past litigation, Ione and ARSA entered into an agreement and grant of easement entitled "Preston Farmlands Wastewater Disposal Contract and Grant of Easement" dated July 30, 1990 ("1990 Settlement Agreement"); and,

WHEREAS, the 1990 Settlement Agreement has been amended or assigned by the parties to the 1990 Settlement Agreement; and,

WHEREAS, this agreement will reallocate and govern the wastewater disposal rights and obligations among the Parties, but will not alter the 1990 Settlement Agreement, any and all amendments thereto, and any agreements implementing the 1990 Settlement Agreement, as those agreements govern the relationship and obligations between Ione or ARSA and any developer of the Preston Farmlands, as referred to in the agreements and amendments, and their successors and assigns and except as those agreements govern the relationship and obligations between Ione or ARSA and the present and future owners, operators, and lessees of the Castle Oaks Golf Course and their successors and assigns; and,

WHEREAS, pursuant to the 1990 Settlement Agreement, as amended, Ione was required to pay ARSA an annual payment (currently \$20,000.00), which payment Ione in turn imposed on Castle Oaks Golf Course. The Parties intend to eliminate such fee for Ione and for Castle Oaks Golf Course by not including it herein as part of this agreement; and,

WHEREAS, this agreement does not extend to, or otherwise affect, Portlock International, Ltd.'s obligation to pay for operation of the Ione Tertiary Plant, which obligation ends December 31, 2013 and is governed by other agreements; and,

WHEREAS, CDCR owns a series of pipelines and reservoirs, including Henderson Reservoir, Preston Forebay and Preston Reservoir, each of which is interconnected so as to allow the transport of water and or wastewater from a point of diversion along Sutter Creek to the Preston Reservoir, in Ione, California ("Henderson/Preston System") (described in Exhibit 1); and,

WHEREAS, CDCR and ARSA have in place a lease agreement whereby ARSA has the right to use the Henderson/Preston System, subject to the terms and conditions contained therein, which lease expires in July 2008 ("ARSA/CDCR Lease"); currently ARSA uses the Henderson/Preston System to transport ARSA's secondary-treated wastewater to Preston Reservoir and then to Ione for treatment, disposal and use; and,

WHEREAS, ARSA and CDCR intend to execute a new lease or extend the existing ARSA/CDCR lease governing the use of the Henderson/Preston System. The new or extended lease will be for thirty (30) years. With regard to the lower system (as hereinafter described), the lease will contain a five (5) year cancellation clause that can be invoked by either party, subject to ARSA's continuing obligations to supply secondary treated wastewater to the CDCR's Preston Youth Correctional Facility and to maintain CDCR's water right from Sutter Creek, which obligations shall remain in effect unaffected by any such cancellation as will their rights to usage to the extent necessary to carry out those obligations; and,

WHEREAS, this agreement will govern the relationship and respective rights between the Parties with regard to the Henderson/Preston System; and,

WHEREAS, the upper Henderson/Preston System as referred to in this agreement includes the parts of the Henderson/Preston System from the outfall of the Sutter Creek Treatment Plant to Preston Youth Correctional Facility, including all pipelines, rights of way, reservoirs, water rights, etc; and,

WHEREAS, the lower Henderson/Preston System as referred to in this agreement includes the components of the Henderson/Preston System from below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir; and,

WHEREAS, ARSA will continue to deliver effluent to the lone tertiary plant subject to the five-year termination clause provided herein in sections 8a and 8b; and,

WHEREAS, CDCR operates Mule Creek State Prison ("MCSP") and the Preston Youth Correctional Facility, both located within lone City limits, and which two facilities along with the California Department of Forestry utilize the wastewater treatment plant at MCSP for their wastewater disposal; and,

WHEREAS, lone operates two wastewater treatment plants, a portion of one treatment plant is located within the boundaries of lone providing secondary level treatment of wastewater, and the other located in Amador County providing tertiary treatment of wastewater; and,

WHEREAS, each of the Parties' wastewater disposal systems are interrelated and interconnected; and,

WHEREAS, all of the Parties wish to work together to achieve a solution that addresses their respective wastewater needs; and,

WHEREAS, a water balance study was conducted by Lee and Ro, Inc. and completed on April 11, 2007 to determine the amount, if any, of surplus disposal capacity that currently exists in the Henderson/Preston System; and

WHEREAS, the water balance study resulted in an estimated surplus capacity that is allocated pursuant to this agreement.



IT IS AGREED by and among the parties hereto as follows:

1. Pursuant to the water balance and on the effective date of this agreement, the surplus capacity described above is allocated and each party's total allowable discharge to Preston Reservoir is as follows:

	Total Allowable Discharge to Henderson/Preston System
ARSA	650 acre-feet (af)
CDCR	350 af (counted against ARSA's 650 af disposal amount)
Ione	150 af (this amount is essentially a negative capacity amount to the extent that it relieves Ione of the obligation to take this amount from the other Parties)

2. Ione shall be obligated annually to accept from ARSA/CDCR a combined total of 650 af of secondarily treated wastewater for disposal. The method and location of disposal shall be the concern and obligation of Ione.

3. CDCR may dispose of up to 350 af (increased from its current allowance of 130 af) of treated wastewater into Preston Reservoir annually. CDCR's 350 af allowance shall be counted against ARSA's 650 af disposal right.

4. The effluent discharged to Preston Reservoir must be in compliance with the Waste Discharge Requirements established by the Regional Water Quality Control Board for the discharging party, and shall not contain constituents that cause the Ione tertiary plant to violate its Waste Discharge Requirements. Each party agrees to share all non-privileged wastewater effluent quality data with the other parties including monthly, quarterly, and annual reports submitted to the Central Valley Regional Water Quality Control Board. This information shall be furnished in a timely fashion to permit the City of Ione tertiary plant staff to evaluate potential impacts to operation of the plant. If requested, data shall be transmitted by facsimile or email. Such requests shall include all public information and shall not be limited to monitoring data that the party is required to provide pursuant to its Waste Discharge Requirements.

5. Unless otherwise agreed upon by the parties, discharges from Preston Reservoir to Ione, on a monthly basis, shall be as follows:

- a. October 1 through March 31st: discharges shall be limited to 10 af per month;
- b. April 1 through September 31st: discharges shall be limited to 95 af per month; and

- c. The above limitations may be waived by agreement of the parties in the event of an emergency and where necessary for the prevention of environmental damage or civil liabilities attendant to wastewater violations, and in such event and prior to any deviation from these limits the parties agree to meet and confer and attempt to reach mutual agreement regarding the exceedance amounts necessary to accomplish the prevention or mitigation of the emergency.

6. Subject to five-year termination clauses in sections 8a and 8b, in any year, ARSA and CDCR will continue to provide effluent from Preston Reservoir to the Ione tertiary plant for use on the Castle Oaks Golf Course, if such effluent is available. As provided for in the 1990 Agreement, as amended, Castle Oaks Golf Course will continue to utilize wastewater treated at the Ione tertiary plant prior to using water from any other source until December 31, 2013.

7. From the effective date of this agreement, ARSA agrees to eliminate all flows to Ione's secondary treatment ponds within four years. ARSA holds existing deeded disposal rights, transmittal rights, and rights of way and easements, to dispose of 1300 acre feet of treated effluent on the former Noble Ranch (County Assessor parcel numbers: 011330001501; 011330002501; and 011330003501) comprising approximately 850 acres of arable ranch land. A golf course resort has been entitled to be constructed on the property to be known as "Gold Rush Golf, LLC." A mitigated negative declaration for this project, including effluent disposal options, was adopted February 18, 2003, under City of Sutter Creek Resolution Number 02-03-27. Portions of the project have been constructed (e.g. conduit construction under the Highway 49 Bypass) and the remainder will be completed prior to the four-year deadline described in this section. The completion of the effluent disposal options are independent of the construction of the golf course resort project.

8. This agreement will be in effect for thirty (30) years from the time of its enactment, subject to the following:

- a. With regard to the lower Henderson/Preston System, ARSA agrees to eliminate all flows to the lower Henderson/Preston System within five years of receiving a written request to this effect from Ione, CDCR, or MCSP. Such written notice may only be given after Ione and CDCR have resolved how to provide adequate reclaimed water for both Castle Oaks Golf Course and Preston Youth Correctional Facility. Such resolution may include completing any necessary environmental review pursuant to CEQA for the new source of water; a contract between the new provider of water, MCSP, Ione, the golf course operator; and any necessary permits of modifications to existing permits pursuant to the Porter-Cologne Water Quality Control Act (Cal. Water Code, §§ 13000 et. seq.).
- b. ARSA shall have a right to cancel all discharges to the lower Henderson/Preston System five (5) years after it gives written notice to Ione and CDCR of its intent. ARSA agrees to work with the Parties to

attempt to coincide its withdrawal with the other parties' ability to find an alternate water source.

9. Beginning January 1, 2015, each party whose wastewater is being treated at the Ione Tertiary Plant agrees to pay a proportionate share of the tertiary plant operation and maintenance costs based on the amount of flows the party contributes to the tertiary plant. If any of the parties has withdrawn flows prior to 2014, that party will have no such operation and maintenance obligation. Each party's "proportionate share" will be defined by the JPA proposed herein, if it is formed. If the JPA is not formed, "proportionate share" will be defined by joint agreement of the Parties. To the extent that additional treatment, beyond what the discharging party is required to perform, is necessary to allow recycled water use of water treated at the Ione Tertiary Plant, that party will not be required to pay for such additional treatment, unless required under this agreement. Where the tertiary treated water from the Ione Tertiary Plant is sold to a recycled water user, the revenue generated from the sale will be distributed to the Parties in proportion to the amount of water the each party contributed to the tertiary plant.

10. MCSP shall endeavor to reduce its wastewater disposal into Preston Reservoir as soon as possible by implementing projects, which may include some or all of the following:

- a. Installing flushometers on toilets located in cells at MCSP; and
- b. Installing shower timers, as able, at MCSP.

In addition, CDCR shall conduct a preliminary feasibility study to determine the cost and feasibility for CDCR to increase the Preston Reservoir Dam height by sixteen (16) inches, increasing the capacity of the reservoir thereby.

11. To implement the provisions of this agreement, the Parties may prepare implementation memoranda, as opposed to amendments to this agreement, unless all Parties agree an amendment is necessary. Such implementation agreements may be executed by authorized representatives of the Parties.

12. The Parties to this agreement agree to explore and work towards creating a Joint Powers Authority to develop a sub-regional wastewater master plan for the Ione Valley. This plan may involve the following elements:

- a. Developing a permanent source of reclaimed water for the Castle Oaks Golf Course, Preston Youth Correctional Facility and other potential reclaimed water users within the Ione area.
- b. Developing a master plan and joint projects to improve the treatment and disposal capabilities of the MCSP and Ione wastewater facilities.
- c. ARSA's participation in the JPA will end when ARSA's discharges to the lower Henderson/Preston System end pursuant to sections 8a and 8b of this agreement.

13. Each of the Parties shall work to obtain all necessary permits, approvals, and authorizations to carry out this agreement in compliance with all pertinent Federal, State, and local laws and regulations.

14. In the event of a breach or default of this agreement, the aggrieved party will give written notice to the other parties within ten (10) days. After receiving such written notice, the Parties will meet and confer in an attempt to bring the violating party into compliance with this agreement. If, after meeting and conferring, the Parties fail to agree upon a plan to bring the violating party into compliance, the Parties may pursue mediation or other means agreed upon by the parties, including other remedies available by law.

15. Such non-performance provisions shall not apply if the nature of the breach or default is the result of a force majeure occurrence or is otherwise of a nature such that it cannot be fully cured within thirty (30) days, the party in default shall have such additional time as is reasonably necessary to cure the default so long as the party in default is proceeding diligently to complete the necessary cure after service of written notice by a non-defaulting party.

16. Each party retains any and all remedies it may have at law or in equity against each and every party hereto for breach of any duty established by this agreement.

17. Invalidity of any of the provisions contained in this agreement, or of the application thereof to any party by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other party and said agreement shall remain in full force and effect except for the invalidated provision.

18. This agreement may be amended only by written instrument signed by all the parties.

19. Any notice to any party shall be in writing and by fax or email and given by delivering the notice to such party in person or by sending the notice by registered or certified mail, return receipt requested with postage prepaid, to the party's mailing address. The respective mailing addresses of the parties are:

City: City Manager  
City of Ione  
Post Office Box 398  
Ione, CA 95640

ARSA: Rob Duke  
General Manager  
18 Main Street  
Sutter Creek, CA 95685

CDCR: Warden  
Mule Creek State Prison  
4001 Highway 104  
Ione, CA 95640

Either party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices shall be deemed given, received, made or communicated on the delivery date or attempted delivery date shown on the return receipt.

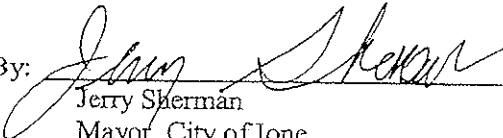
20. Nothing contained in this agreement shall act as a prohibition on the formation of additional contracts and agreements by and between the Parties to further implement the intentions of the Parties.

21. Failure of a party to insist upon the strict performance of any of the provisions of this agreement by any other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by the other party in the future. No waiver by a party of an act constituting breach or default shall be effective or binding upon such party unless the waiver is made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such breach or default under any provision of this agreement.

22. This agreement may be signed in counterparts, and shall have the same force and effect as if all signatures existed on the same document.

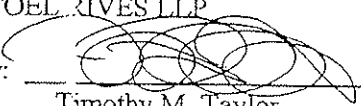
CITY OF IONE

Dated: 9-20-07

By:   
Jerry Sherman  
Mayor, City of Ione

Approved as to form:

Dated: 9-26-07

STOEL RIVES LLP  
By:   
Timothy M. Taylor  
Attorneys for the City of Ione

ARSA

Dated:

9-18-07

By:

Rob Duke  
General Manager

Approved as to form:

Dated:

9/24/07

By:

MCDONOUGH, HOLLAND & ALLEN

Harriet Steiner  
Attorneys for ARSA

Dated:

CDCR

By:

Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated:

By:

Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR

ARSA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Rob Duke  
General Manager

Approved as to form:

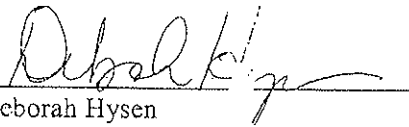
MCDONOUGH HOLLAND & ALLEN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Harriet Steiner  
Attorneys for ARSA

Dated: \_\_\_\_\_

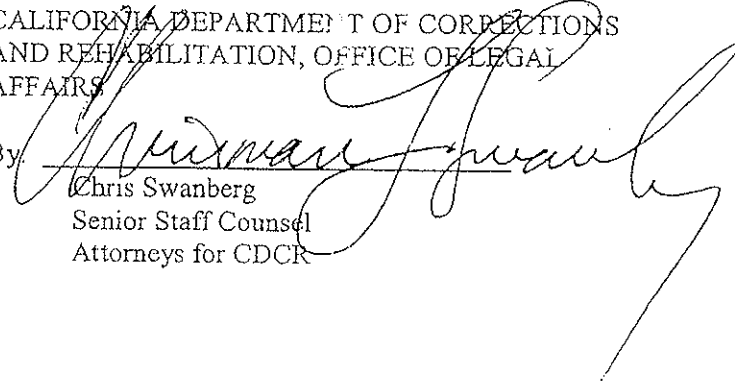
CDCR

By:   
Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated: \_\_\_\_\_

By:   
Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR

# EXHIBIT B



# City of Ione



July 19, 2017

Ms. Amy Gedney  
Amador Regional Sanitation Agency  
18 Main Street  
Sutter Creek, CA 95685

RECEIVED  
AUG - 2 2017  
CITY OF IONE



Dear Ms. Gedney;

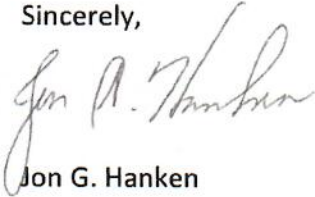
The Ione City Council has reviewed the Regional Water Recycling Feasibility Study and has had the opportunity to discuss its recommendations with citizens during a recent Council meeting. The consensus of the community was that a regional partnership on wastewater recycling was not in the best long-term interest of the City. As such, Council has asked me to provide ARSA with the five year notice to eliminate all flows to the lower Henderson/Preston system as per Section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal.

Ione is a growing community and that growth has made it possible for us and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf Course. Ione anticipates another 800 homes will be constructed in the future and we will need to find additional land to dispose of this effluent once it's treated. We anticipate that the Central Valley Regional Water Quality and Control Board (CVRWQCB) will require the City to line all of our wastewater ponds to eliminate percolation. This will increase our need for irrigable land. As for the requirement to provide treated effluent to the Preston Youth Facility, the State closed that complex in 2011. The State is in the process of disposing of the property so there is no longer a need to provide reclaimed water to it. I have requested a letter from CDCR stating that requirement is no longer necessary.

The City is proposing that ARSA eliminate all flows to the lower Henderson/Preston system by July 31, 2022. This gives your organization adequate time to complete the necessary effluent disposal projects on the former Noble Ranch. Section 7 of the agreement, states that ARSA will complete all the necessary construction to dispose effluent on the property prior to the deadline. The 2007 agreement also states that completion of the effluent disposal projects on the Noble Ranch property are independent of the construction of the golf course resort project.

The relationship between Lone and ARSA has been a long one and beneficial but we think it will soon be unnecessary as our needs diverge and will be time to go our separate ways. Your comments and letters of intent to bring on other landowners for irrigation indicate that you are also moving in the same direction as Lone. We wish you well on your construction projects. If you have any questions related to this letter, please feel free to contact me at Lone City Hall. My telephone number is (209) 274-2412 Ext. 111.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon G. Hanken".

Jon G. Hanken  
City Manager  
City of Lone

cc: Ms. Deb Hysen, CDCR  
Ms. Pamela Creedon, CVRWQCB

# EXHIBIT C

# *Amador Regional Sanitation Authority*

---

*"Servicing Amador City, Martell, & Sutter  
Creek"*

December 3, 2021

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Mr. Rock:

This letter addresses the vitally important and ongoing wastewater disposal arrangement among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR") (collectively, "the Parties"). We are sending you this letter now to confirm ARSA's right to dispose of secondarily treated wastewater through the lower Henderson/Preston System. For the reasons explained below, ARSA is legally permitted and will continue discharging secondary effluent to the lower Henderson/Preston System in accordance with its current contractual arrangement with the Parties.

Since 2007, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement") has governed the Parties' rights and obligations regarding wastewater disposal through the Henderson/Preston System. As you are aware, the 2007 Agreement provides that ARSA may discharge, and the City *must* accept, annually up to 650 acre-feet of secondary effluent for disposal. CDCR may, solely through ARSA's existing outfall system and in strict compliance with its existing wastewater permit, discharge up to 350 acre-feet of secondary effluent annually, counted against ARSA's disposal right. Because CDCR's rights are derivative of ARSA's existing rights, the City must prioritize ARSA's discharges over those of CDCR's.

The 2007 Agreement remains in effect until 2037. The 2007 Agreement does contain limited termination provisions, but there are specific terms and conditions that must be strictly followed for such early termination due to the importance of the contractual relationship. Under Section 8a, if the City requests termination of ARSA's flows to the lower Henderson/Preston System, ARSA must be provided a five-year notice that meets specific conditions. Such notice

may only be given *after* the City and CDCR have resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course. On July 19, 2017, ARSA received a letter from the City requesting that ARSA terminate flows to the lower Henderson/Preston System. The letter claimed that the City's growth has made it possible for the City and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf Course.

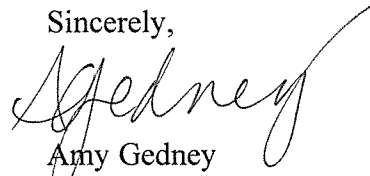
At the time of the City's 2017 letter, however, the provision of adequate reclaimed water for the Castle Oaks Golf Course had not been resolved. In fact, that issue remains unresolved today. The Central Valley Regional Water Quality Control Board ("Regional Board") has identified concerns with the quality of Mule Creek State Prison's wastewater, including the presence of volatile organic compounds ("VOCs") in the prison's discharge. The Regional Board first identified these issues in 2018, and today the legality and safety of the prison's wastewater remain unresolved. On October 21, 2021, the Regional Board ordered additional monitoring and reporting requirements for VOCs under the waste discharge permits for all the parties, including the City and ARSA's shared permit governing ARSA's flows and the City's tertiary plant, and separately, CDCR's permit governing the prison's wastewater treatment plant. Additional assessment by the Regional Board is needed to evaluate the water quality impacts of the prison's wastewater discharges. This assessment could result in a final determination that CDCR cannot discharge to the City. For these reasons, the City and CDCR have still not demonstrated that adequate reclaimed water is available for the golf course.

Moreover, CDCR is not a permitted discharger under the City and ARSA's shared permit, Water Reclamation Requirements Order No. 93-240. This permit only allows wastewater treatment and reuse based on the flows from ARSA's outfall system to Preston Reservoir. California Water Code Section 13264 and Order No. 93-240 require a Report of Waste Discharge to be filed with the Regional Board prior to any new discharge or making any material changes to any discharge. A material change includes the addition of major industrial waste discharges or discharges resulting in a change of the character of the waste. A Report of Waste Discharge must first be filed and evaluated by the Regional Board to ensure that the prison's discharges are in compliance with all water quality laws and regulations. No reports or evaluations were in place as of the City's 2017 letter, and to our knowledge, none are in place now.

The City has therefore not fulfilled the conditions under Section 8a of the 2007 Agreement required for ARSA to eliminate flows to the lower Henderson/Preston System. The City has not resolved the provision of adequate reclaimed water to the golf course, which includes obtaining all water quality permits or permit modifications required by state laws and regulations. The 2007 Agreement thus remains in full effect until 2037, and ARSA is legally permitted and will continue to discharge to the lower Henderson/Preston System.

I am certain we both agree that water quality is vital for the safety and preservation of our respective communities. We value our long-term partnership with the City and look forward to maintaining it through the life of the 2007 Agreement. While we are always willing to discuss solutions that are reasonable and fair to all Parties, we feel it is important for the City to understand that ARSA will continue to dispose of secondary effluent to the lower Henderson/Preston System, in accordance with the 2007 Agreement and state laws and regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Gedney", with a long, sweeping flourish extending from the end of the name.

Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

cc: ARSA Board

# EXHIBIT D



# *Amador Regional Sanitation Authority*

---

*"Servicing Amador City, Martell, & Sutter  
Creek"*

December 3, 2021

## *Via Email and Certified Mail*

Patrick Covello  
Warden  
California Department of Corrections and Rehabilitation  
4001 Highway 104  
P.O. Box 409099  
Ione, CA 95640

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Mr. Covello:

This letter addresses the vitally important and ongoing wastewater disposal arrangement among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR") (collectively, "the Parties"). We are writing to confirm ARSA's right to dispose of secondarily treated wastewater through the lower Henderson/Preston System. For the reasons explained below, ARSA is legally permitted and will continue discharging secondary effluent to the lower Henderson/Preston System in accordance with its current contractual arrangements with the Parties.

Since 2007, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement") has governed the Parties' rights and obligations to discharge wastewater through the Henderson/Preston System. As you are aware, the 2007 Agreement provides that ARSA may discharge, and the City *must* accept, annually up to 650 acre-feet of secondary effluent for disposal. CDCR may, solely through ARSA's existing outfall system and in strict compliance with its existing wastewater permit, discharge up to 350 acre-feet of secondary effluent annually, counted against ARSA's disposal right. CDCR's ability to discharge to the City under the 2007 Agreement is therefore derivative of and subordinate to ARSA's disposal right, not independent of it.

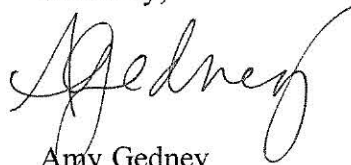
The 2007 Agreement remains in effect until 2037. Although there are limited rights to terminate the 2007 Agreement before 2037, CDCR has not taken the required steps to terminate, and the City of Ione has not effectively done so, for the reasons set forth in the attached letter from ARSA to the City, which letter is incorporated herein. Because no Party has effectively taken steps to end the 2007 Agreement early, it remains in effect until 2037, and ARSA is legally permitted and will continue to discharge to the lower Henderson/Preston System. Any actions taken by CDCR to prevent, reduce, interrupt, interfere with, or circumvent ARSA's rights to do so would be inconsistent with CDCR's contractual obligations to ARSA.



In addition, CDCR leases the Henderson/Preston System to ARSA in accordance with the 2007 Agreement under Ground Lease No. L-2070. The Lease terminates on September 18, 2037, to coincide with the termination date of the 2007 Agreement. The Lease acknowledges that CDCR leases to ARSA infrastructure that facilitates an essential utility service, and termination of ARSA's flows to the lower Henderson/Preston System would leave no alternative means for disposal. The Lease expressly recognizes that the Henderson/Preston System is part of a wastewater system, regulated under the California Water Code, and termination of the Lease is not practicable nor feasible as it would render an essential utility service inoperable. Any actions taken by CDCR to prevent, reduce, interrupt, interfere with, or circumvent ARSA's rights to discharge to the Henderson/Preston System would be inconsistent with CDCR's contractual obligations to ARSA under the Lease. In the event of any actual or threatened breach of the Lease agreement, ARSA may seek equitable injunctive relief from a court of competent jurisdiction.

We value our long-term partnership with CDCR and look forward to maintaining it through the life of the 2007 Agreement and the Lease. While we are always willing to discuss solutions that are reasonable and fair to all Parties, we feel it important for CDCR to understand that ARSA will continue to discharge secondary effluent to the lower Henderson/Preston System, prior to any discharges from CDCR, in accordance with the contractual arrangements among the Parties and state laws and regulations.

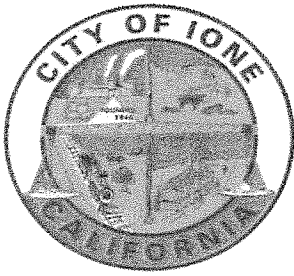
Sincerely,

A handwritten signature in black ink, appearing to read "Gedney", with a stylized flourish at the end.

Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

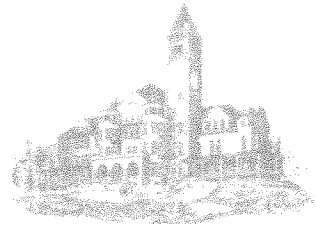
cc: ARSA Board

# EXHIBIT E



RECEIVED

City of Sutter Creek



January 19, 2022

Amador Regional Sanitation Authority  
Attn: Amy Gedney, General Manager  
18 Main Street  
Sutter Creek, CA 95685

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Ms. Gedney,

The City of Ione is in receipt of your letter of December 3, 2021, in which you address wastewater disposal arrangements among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR").

When evaluating whether or not to send the 5 year notice the Ione City Council considered the cost to the Ione taxpayers, as is our fiduciary responsibility. It was determined that the losses Ione had incurred due to this contract could not continue. We reviewed our water resources and determined that we could meet our water obligations with our existing and future resources.

The City has successfully provided adequate reclaimed water for both Castle Oaks Golf Course over the past five years under our current permits and infrastructure. During the past few years, the City did not receive adequate flows from ARSA, was suffering from extreme drought conditions, and still managed to keep Castle Oaks Golf Course open with sufficient water.

Ione recognizes that ARSA may have some difficulty meeting the five-year deadline, and over the last four years Ione has reached out to ARSA for the status of your project. The Wastewater Committee discussed ARSA at its meetings and Ione staff reached out to ARSA with no response prior to your December 3, 2021, communication. The City is open to assisting ARSA with an extension of the five years however, this would require a new agreement with a new fee structure.

After a review of your letter the City disagrees with your analysis and reaffirms that the City intends to continue with our 2017 termination letter and cease services with ARSA as of July 19, 2022.

Sincerely,

Dan Epperson

  
Mayor, City of Ione

cc: Michael Rock, Interim City Manager  
Sophia R. Meyer, City Attorney  
Councilmembers Plamondon, Wratten, Rhoades

# EXHIBIT F

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

January 28, 2022

## ***Via Email and Certified Mail***

Patrick Covello  
Warden  
California Department of Corrections and Rehabilitation  
4001 Highway 104  
P.O. Box 409099  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

Dear Mr. Covello:

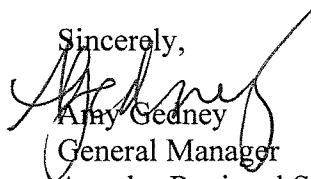
This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement, Waste Discharge Requirements Order No. 93-240, and Ground Lease No. L-2070 through at least 2037.

ARSA requires that its wastewater effluent will be accepted by the City prior to any effluent from CDCR. As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Moreover, any direct discharges from CDCR to the City are not permitted by the Central Valley Regional Water Quality Control Board ("Regional Board"), as required by California Water Code Section 13264. As such, any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement.

In addition, under Ground Lease No. L-2070, CDCR leases to ARSA infrastructure that facilitates an essential utility service, and termination of ARSA's flows through the lower Henderson/Preston System is not practicable nor feasible. In the event of any actual or threatened breach of the Lease agreement, ARSA may seek equitable injunctive relief from a court of competent jurisdiction.

We believe the above course of action is imperative for public health and safety. We look forward to working with CDCR to protect regional water quality.

Sincerely,



Amy Gedney  
General Manager

Amador Regional Sanitation Authority

cc: ARSA Board

# EXHIBIT G

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

January 28, 2022

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

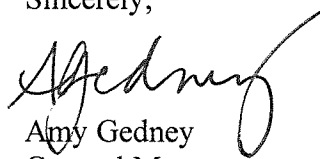
Dear Mr. Rock:

This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement and its Waste Discharge Requirements, Order No. 93-240, until at least 2037.

ARSA requires that the City will prioritize ARSA's wastewater effluent over any effluent from the California Department of Corrections and Rehabilitation ("CDCR"). As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Moreover, any direct discharges from CDCR to the City are not permitted by the Central Valley Regional Water Quality Control Board ("Regional Board"), as required by California Water Code Section 13264. As such, any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement.

We believe the above course of action is imperative for public health and safety. We look forward to working with the City to protect regional water quality.

Sincerely,



Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

cc: ARSA Board

82456.00000\34582945.2

# EXHIBIT H



# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

February 3, 2022

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

Dear Mr. Rock:

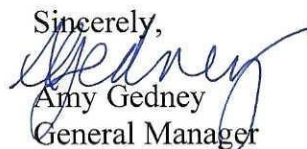
This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement and its Waste Discharge Requirements ("WDRs"), Order No. 93-240, until at least 2037.

ARSA requires that the City will prioritize ARSA's wastewater effluent over any effluent from the California Department of Corrections and Rehabilitation ("CDCR"). As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Direct discharges from CDCR to the City are not permitted by the WDRs. The only legally permissible way for the City to receive wastewater from CDCR is through ARSA, in full compliance with the WDRs and the 2007 Agreement. Any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement and a violation of the WDRs.

With respect to the City's January 19, 2022 letter, ARSA disagrees with the City's claims that it has successfully provided adequate reclaimed water to Castle Oaks Golf Course and that it did not receive adequate flows from ARSA. The City has not identified any valid factual or legal grounds for terminating the 2007 Agreement and the City would be in breach of the Agreement if it refuses to accept ARSA's deliveries as authorized under the Agreement. However, ARSA appreciates the City's offer to meet and discuss these issues. The parties should make a good faith attempt to resolve these issues through discussion and avoid unnecessary litigation.

ARSA's continued delivery of wastewater to the City is imperative for public health and safety. We look forward to working with the City to protect regional water quality.

Sincerely,



Amy Gedney  
General Manager

Amador Regional Sanitation Authority

cc: ARSA Board

# EXHIBIT I

RECEIVED

JUL 25 2022

City of Sutter Creek



## CITY OF IONE

1 E. MAIN STREET  
P.O. BOX 398  
IONE, CA 95640  
(209) 274-2412

July 20, 2022

Amy Gedney, General Manager  
Amador Regional Sanitation Authority  
18 Main Street  
Sutter Creek, CA 95685

Dear Amy:

Per your request on July 11, 2022, and our ongoing discussions about a long-term agreement between the City of Ione and ARSA I submit this letter with key points that are a basis for beginning formal negotiations on a long-term agreement with ARSA to accept wastewater effluent from Preston Reservoir to the City of Ione Tertiary Plant.

1. The new term will be 5 years with an option for both parties to extend for two additional 5-year terms for a total of 15 years
2. ARSA must have retention ponds to deal with years where water must be stored. Heavy rainfall years should not result in releasing too much water but rather controlling the balance through storage ponds.
3. Strongly recommend ARSA divert water from the creek. This will give ARSA more options and flexibility in balancing the water throughout the year for all parties.
4. Strongly recommended ARSA dredge the bottom of Preston Reservoir as soon as practically possible and no longer than two years from the approval date of this new agreement
5. The City of Ione will take the following range of acre feet per year from ARSA: 100-400
6. If the City rejects water from ARSA because of discharge violations that liability and cost is on ARSA to cure the problem
7. If ARSA cannot send the minimum 100 ac/ft per/year the financial penalty will be \_\_\_\_\_ for every acre foot not delivered

8. If the City of Lone does not take the minimum 100-acre ft/year the City is fined \_\_\_\_ foot every acre foot not taken if and only if the City can release the water to COGC without causing a violation of the City's WDR permit.
9. A flow meter must be installed at Preston Reservoir so that ARSA knows how much water it is discharging. This is required in ARSAs current WDR Permit
10. City strongly recommends ARSA cure the CDO currently on their WDR Permit

If the City and ARSA immediately embark on negotiating a new agreement then the five-year notice to eliminate all flows to the lower Henderson/Preston system as per Section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal will be suspended until such time the new agreement is approved by the City and ARSA. If no agreement is achieved within eighteen months of August 1, 2022, then the five-year notice to eliminate flows will take full force and effect on February 1, 2024.

This letter is meant to be a strong starting point to negotiate a very detailed and long-term agreement that is intended to be beneficial to all parties affected by the outcome of this hopefully very successful partnership with ARSA. All the items listed above are negotiable and nothing is set in concrete.

I look forward to beginning the process of negotiating a new agreement that will benefit the City of Lone, City of Sutter Creek, ARSA, COGC, CDCR and other affected parties.

Sincerely,



Michael Rock  
Interim City Manager  
City of Lone, CA

# EXHIBIT J

# *Amador Regional Sanitation Authority*



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*"Servicing Amador City, Martell, & Sutter Creek"*

---

July 29, 2022

Mr. Michael Rock  
1 East Main Street  
P.O. Box  
Ione, CA 95640

SENT VIA EMAIL and CERTIFIED MAIL

Dear Michael:

Amador Regional Sanitation Authority ("ARSA") is in receipt of your July 20, 2022 letter.

As you know, ARSA has repeatedly objected to the City of Ione's ("City") attempted 5-year notice ("2017 Notice") under section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement"). As recently as December 3, 2021, ARSA reiterated its position that, in no uncertain terms, City's supposed termination notice was void and invalid because it did not satisfy the conditions precedent for such a notice. The notice can only be given *after* the City and CDCR have resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course. For reasons further explained in that letter, no such resolution was made prior to the Notice.

Let me be clear, ARSA has always been, and continues to remain, even now, willing to embark on negotiating the terms of a potential new agreement consistent with the parties' existing rights under sections 18 and 20 of the 2007 Agreement. ARSA's position continues to be that the 2017 Notice is null, void, invalid, and of no legal force and effect and therefore, any purported "suspension" or extension of that illegal notice until Feb. 1, 2024 is also void. ARSA's desire and willingness to cooperate and explore a new long-term agreement with the City does not, in any way, mean or imply that ARSA accepts and agrees to unilaterally-invoked termination date of February 1, 2024. ARSA continues to reserve all rights with respect to its objections to City's 2017 Notice and lack of compliance with Section 8a; and furthermore, pursuant to section 21 of the 2007 Agreement, ARSA has made no express, explicit, or waiver of its rights under the existing 2007 Agreement and maintains that any termination notice to date has not complied with Section 8a and that any future notice must comply with Section 8a.

With those points being made, ARSA is, willing to, "immediately embark on negotiating a new agreement" consistent with section 18 and 20 of the existing 2007 Agreement and consistent with our recent discussions over the last four months.

Please be advised that should the City refuse wastewater from ARSA via Preston Reservoir, or otherwise prevents ARSA from conveying flow through the lower system, ARSA is prepared to seek all remedies available to it under law, as provided in Section 14 and 16 of the 2007 Agreement.



# *Amador Regional Sanitation Authority*



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*"Servicing Amador City, Martell, & Sutter Creek"*

We trust that we have made our position very clear. ARSA will continue to meet and confer and explore improvements, but maintains its position that 2017 Notice is invalid and void and does not agree to any "suspended" notice until February 1, 2024.

Sincerely,

Amy Gedney  
General Manager

Cc: ARSA Board  
George Lee

**EXHIBIT K**





## **CITY OF IONE**

1 E. MAIN STREET  
P.O. BOX 398  
IONE, CA 95640  
(209) 274-2412

August 16, 2022

Amy Gedney, General Manager  
Amador Regional Sanitation Authority  
18 Main Street  
Sutter Creek, CA 95685

### **SUBJ: Response to ARSA Letter dated July 29, 2022**

Dear Amy:

The City of Ione is in receipt of your letter dated July 29, 2022.

Your letter purportedly responds to the letter from the City of Ione dated July 20, 2022.

However, your letter did not respond to any of the ten talking points the City of Ione offered as a starting point to negotiating a long-term Agreement with ARSA. Instead, your letter focused on ARSA's objection to the 5-Year Notice the City of Ione sent to ARSA in 2017.

It is ARSA's assertion that the 5-Year Notice is "void and invalid because it did not satisfy the conditions precedent for such a notice". However, if ARSA's assertion is correct (which the City of Ione does not believe) then ARSA could have enacted Section 14 of the September 18, 2007, Agreement which allows for one party to give written notice to the other party that a breach of the Agreement has occurred. However, this did not occur, and ARSA did not send a written notice to the City asserting a breach within ten days of the five-year notice which states that ARSA will eliminate flows to the lower Henderson/Preston System.

Thus, it is the City of Ione's position that the five-year notice is legal and valid and as of July 31, 2022, the City of Ione is not obligated to receive any wastewater from ARSA's system. However, the City wishes to cooperate with ARSA and CDCR in balancing the regional wastewater and will participate in crafting a long-term agreement that can satisfy all parties.

ARSA's desire to have a meeting to discuss water balances (emails from August 9-15, 2022) is puzzling. The City and ARSA have worked together for decades and suddenly there is an urgency to discuss water balances? The City sent its five-year notice five years ago last month and ARSA only started meeting with the City of Lone and COGC a few months ago. Negotiating in good faith also includes negotiating in a timely and professional manner. This simply has not occurred with ARSA. ARSA continues to threaten litigation against the City of Lone but now demands an urgent meeting to discuss the water balances.

The City of Lone's position has been consistent. The City is willing to cooperate with ARSA in order to assist ARSA with its need to balance wastewater throughout the region. However, ARSA is not in a position to demand anything. The City of Lone is not obligated (as of August 1, 2022) to accept any wastewater from ARSA. Thus, the City's cooperation is voluntary, and ARSA should act accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MR', with a long horizontal flourish extending to the right.

Michael Rock  
Interim City Manager  
City of Lone, CA

# EXHIBIT L

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

September 8, 2022

Michael Rock  
Interim City Manager  
City of Ione  
1 E. Main Street  
P.O. Box 398  
Ione, CA 95640

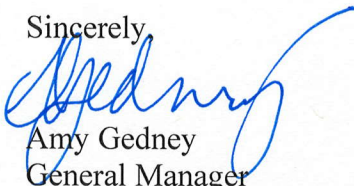
RE: Notice of Breach of Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System

Dear Michael:

Pursuant to the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September 18, 2007 ("Agreement"), the City of Ione ("City") is obligated annually to accept a specified amount of wastewater from the Amador Regional Sanitation Authority ("ARSA") to the lower Henderson/Preston System until 2037. Although the City may terminate this obligation upon five years' notice, such right is expressly conditioned on the City (and the California Department of Corrections and Rehabilitation) having resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course, which includes, but is not limited to, obtaining any necessary water quality permits or permit modifications required by state law. As detailed in my December 3, 2021, correspondence, a copy of which is enclosed for your reference, due to the City's ongoing failure to provide adequate reclaimed water for the golf course, any notice issued to date purporting to terminate the City's obligation to accept wastewater from ARSA is void and of no force and effect.

Over the past several months, the City has on more than one occasion refused to accept wastewater from ARSA, but later accepted those discharges. Since August 31, 2022, however, the City has refused to accept any wastewater from ARSA. Pursuant to paragraph 14 of the Agreement, ARSA provides this written notice that the City's refusal to accept wastewater from ARSA constitutes a breach of the Agreement, and ARSA is hereby meeting and conferring with the City in an attempt to bring the City into compliance with the Agreement. If the City continues to refuse to accept wastewater from ARSA in accordance with the Agreement, ARSA will have no choice but to pursue any and all available remedies under the law against the City in order to enforce ARSA's rights under the Agreement.

Sincerely,



Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

# **ATTACHMENT 2**

SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
MATTHEW L. GREEN, Bar No. 227904  
matthew.green@bbklaw.com  
BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
San Diego, California 92101  
Telephone: (619) 525-1300  
Facsimile: (619) 233-6118

FRANK A. SPLENDORIO, Bar No. 272601  
frank.splendorio@bbklaw.com  
BEST BEST & KRIEGER LLP  
500 Capitol Mall, Suite 1700  
Sacramento, California 95814  
Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By [Signature]

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

EX PARTE APPLICATION FOR ORDER  
TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022



1 Plaintiff Amador Regional Sanitation Authority ("ARSA") applies for a temporary  
2 restraining order and for an order requiring Defendant City of Lone ("Lone") to show cause why a  
3 preliminary injunction should not issue pending trial in this action, immediately compelling Lone  
4 and its employees, agents, and persons acting with it or on its behalf, to accept from ARSA 500,000  
5 gallons of secondarily treated wastewater per day from Preston Reservoir for 30 days, for a total of  
6 15 million gallons of secondarily treated wastewater over the 30-day period.

7 This application is made pursuant to the provisions of Code of Civil Procedure section 527  
8 on the grounds that there is a strong likelihood ARSA will prevail on the merits of its case at trial,  
9 and that the interim harm that ARSA is likely to sustain if an injunction is denied outweighs the  
10 harm Lone is likely to suffer if the court grants a preliminary injunction. Specifically, this  
11 application is made on the grounds that ARSA operates a wastewater delivery and disposal system  
12 that transports secondarily treated wastewater from the City of Sutter Creek's treatment plant to  
13 Preston Reservoir for discharge to Lone for tertiary treatment at its Castle Oaks Water Reclamation  
14 Plant; that ARSA's Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System  
15 with Lone obligates Lone to accept 650 acre feet of secondarily treated wastewater from Preston  
16 Reservoir annually, namely up to 95 acre feet of wastewater per month from April through  
17 September and up to 10 acre feet of wastewater per month from October through March; that Lone  
18 is refusing to accept any discharges from Preston Reservoir; and that Lone's immediate acceptance  
19 of at least 500,000 gallons per day for the next 30 days is imperative in order to prevent Preston  
20 Reservoir from spilling over during the upcoming rainy season in the event of a 100-year storm,  
21 and avoid the public health and water quality contamination crises that would ensue from the  
22 surrounding areas (including residential properties) being flooded with wastewater containing  
23 harmful pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites.

24 This application is based upon the Memorandum in Support of Ex Parte Application for  
25 Order to Show Cause and Temporary Restraining Order, and the Declarations of Amy Gedney,  
26 Gary Ghio, Steven Corey Stone, Donald Brown, and Matthew Green.

27 Pursuant to the California Rules of Court, rule 3.1202, subdivision (a), the California  
28 Secretary of State's most recent edition of the California Roster identifies David Prentice of

1 Prentice|Long, PC as the City Attorney for Ione. According to the State Bar of California's website,  
2 his contact information is 114 W. Shaw Avenue, Suite 102, Fresno, California 93704,  
3 david@prenticelongpc.com, (559) 500-1600. In the event of the California Roster is no longer  
4 accurate, Michael Rock is the Interim City Manager of Ione, and his contact information is P.O.  
5 Box 398, 1 East Main Street, Ione, California 95640, mrock@ione-ca.com, (209) 274-2412, ext.  
6 116. Pursuant to the California Rules of Court, rule 3.1202, subdivision (b), there have been no  
7 previous applications for similar relief.

8 Dated: September 28, 2022

BEST BEST & KRIEGER LLP

9  
10 By: 

11 SHAWN D. HAGERTY  
12 MATTHEW L. GREEN  
13 FRANK A. SPLENDORIO  
14 Attorneys for Plaintiff  
15 AMADOR REGIONAL SANITATION  
16 AUTHORITY  
17  
18  
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21  
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27  
28



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew L Green, SBN 227904; Frank A. Splendorio, SBN 272601 Best Best & Krieger LLP 655 W. Broadway, 15 <sup>th</sup> Floor, San Diego, CA 92101 TELEPHONE (619) 525-1370 FAX NO. (Optional): ATTORNEY FOR (Name): Plaintiff Amador Regional Sanitation Authority	FOR COURT USE ONLY  <div style="text-align: center;"> <b>FILED</b>  <b>AMADOR SUPERIOR COURT</b>   <b>SEP 29 2022</b>           CLERK OF THE SUPERIOR COURT          BY <u>M Sherman</u> </div>
<b>AMADOR SUPERIOR COURT</b> <b>500 ARGONAUT LANE</b> <b>JACKSON, CA 95642</b>	
PETITIONER/PLAINTIFF: AMADOR REGIONAL SANITATION AUTHORITY  RESPONDENT/DEFENDANT: CITY OF IONE, et al.  OTHER:	
<input checked="" type="checkbox"/> <b>DECLARATION RE: NOTICE OF EX PARTE APPLICATION FOR ORDERS</b> <input type="checkbox"/> <b>ORDER SHORTENING TIME</b>	CASE NUMBER: 22-CV-12824

I, Matthew L. Green, do declare:

1. That I am ☒ Counsel for ☒ Plaintiff/Petitioner ☐ Defendant/Respondent in the within action.
2. I have given notice of the present application for an ex parte order and/or order shortening time to: ☒ Counsel for ☐ Plaintiff/Petitioner ☒ Defendant/Respondent in the following manner:

a. ☒ By telephone call: at 3:18 p. m., on September 28, 2022.

The person to whom I spoke was Margaret E. Long, City Attorney for Defendant City of Ione.

The message left was:

Ms. Long called me after receiving notice of the ex parte application via electronic mail to discuss the application and the relief sought by Plaintiff Amador Regional Sanitation Authority.

b. ☐ By letter: ☐ mailed ☐ personally delivered at \_\_\_\_\_ m., on \_\_\_\_\_, 20\_\_

3. I received the following response to said notice:

Ms. Long indicated the City of Ione would appear at the ex parte hearing to oppose the application.

4. I did not give notice of the present application for the following reason(s) indicated:

a. ☐ Notice of this ex parte application would frustrate the purpose of the orders sought herein.

b. ☐ The applicant would suffer immediate and irreparable harm before the adverse party could be heard in opposition.

*By Fax*

c. ☐ No significant direct burden or inconvenience to the adverse party will be likely to result from the order sought herein.

d. ☐ Prior attempts to give notice have failed and would probably be futile or unduly burdensome.

**NOTE: CALIFORNIA RULE OF COURT 3.1200-3.1207 GOVERNS NOTICE REQUIREMENT**

I Declare under Penalty of Perjury under the Laws of the State of California That the Foregoing Is True and Correct.

Place: San Diego, CA

Date: September 29, 2022

Matthew L. Green  
(Type or Print Name)

  
(Signature of Party or Party's Attorney)

**ORDER SHORTENING TIME**

Time for: ☐ service is shortened. Service shall be on / or before \_\_\_\_\_, 20\_\_\_\_  
(Date)

☐ hearing is shortened. Hearing is set \_\_\_\_\_, 20\_\_\_\_  
(Date)

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Judge/Commissioner of the Superior Court)

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FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By [Signature]

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

MEMORANDUM IN SUPPORT OF EX  
PARTE APPLICATION FOR ORDER TO  
SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

1 Plaintiff Amador Regional Sanitation Authority ("ARSA") respectfully submits the  
2 following memorandum in support of its ex parte application for an order to show cause and  
3 temporary restraining order ("TRO") against Defendant City of Ione ("Ione").

4 I.

5 INTRODUCTION

6 ARSA comes before the Court ex parte in order to prevent the public health and water  
7 quality contamination crises that will ensue in the event Preston Reservoir spills over and exposes  
8 the surrounding areas, including residential properties, to wastewater containing harmful pathogens  
9 (protozoa, bacteria, and viruses), inorganic compounds, and parasites. Ione is contractually required  
10 to accept 650 acre feet of wastewater from Preston Reservoir annually at its Castle Oaks Water  
11 Reclamation Plant ("Castle Oaks WRP") for tertiary treatment for irrigation use at the Castle Oaks  
12 Golf Course ("Golf Course").<sup>1</sup> Under its contract with ARSA, Ione is specifically required to accept  
13 505 acre feet of wastewater by the end of September in each calendar year. In 2022, however, Ione  
14 has accepted a mere 28.7 acre feet of wastewater from Preston Reservoir to date.

15 As the irrigation season is nearing its end, and the rainy season is quickly approaching (a  
16 La Niña season no less), it is imperative that wastewater be discharged from Preston Reservoir  
17 immediately. Given the water treated at the Castle Oaks WRP is only provided to the Golf Course  
18 for irrigation, Ione's ability to discharge the water from the Preston Reservoir will become very  
19 limited once the rainy season commences. It is therefore crucial that ARSA be permitted to resume  
20 discharging wastewater from Preston Reservoir before the rainy season begins and Ione has  
21 nowhere to send the water. Otherwise, in the event of a 100-year storm during the upcoming rainy  
22 season, which ARSA is required to account for, Preston Reservoir is projected to reach its permitted  
23 level by early March 2023, and spill over by April 2023. In order to avoid this untenable situation,  
24 and the public health and water quality contamination crises that will follow, it is urgent that Ione  
25 immediately begin accepting at least 500,000 gallons of wastewater from Preston Reservoir per day  
26 for at least the next 30 days.

27 \_\_\_\_\_  
28 <sup>1</sup> "Acre feet" is a term commonly used in water supply planning to describe water volume. An acre foot is approximately 325,851 gallons, which is enough water to cover an acre of land roughly 1-foot deep.



II.

**BACKGROUND FACTS**

**A. THE HENDERSON/PRESTON SYSTEM**

ARSA is a joint powers agency formed by the Cities of Amador City and Sutter Creek and the County of Amador to provide wastewater conveyance and disposal services in those areas. (Ghio Decl., ¶ 2; Gedney Decl., ¶ 2; Stone Decl., ¶ 2.) Wastewater from those areas is treated at the Sutter Creek Wastewater Treatment Plant ("Sutter Creek WTP") and then conveyed through a series of pipelines and reservoirs, and ultimately to Preston Reservoir, through what is known as the "Henderson/Preston System." (Ghio Decl., ¶ 3; Gedney Decl., ¶ 3; Stone Decl., ¶ 3.) ARSA discharges the wastewater from Preston Reservoir to Ione for tertiary treatment at its Castle Oaks WRP, which is then used for irrigation at the Golf Course. (Ghio Decl., ¶ 3; Gedney Decl., ¶ 3; Stone Decl., ¶ 3.)

**B. IONE'S CONTRACTUAL OBLIGATION TO ACCEPT WASTEWATER FROM THE HENDERSON/PRESTON SYSTEM**

The rights and obligations regarding wastewater discharges from Preston Reservoir are set forth in a 2007 contract between ARSA and Ione, as well as the California Department of Corrections and Rehabilitation ("CDCR"), identified as the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("Wastewater Agreement"). (Ghio Decl., ¶ 6, Ex. B to Ex. A [Wastewater Agreement]; Gedney Decl., ¶ 4.) Under the Wastewater Agreement, Ione is obligated to accept 650 acre feet (or 211,803,427 gallons) of wastewater from Preston Reservoir annually. (Wastewater Agreement, ¶¶ 1, 2.) The Wastewater Agreement specifically requires Ione to accept up to 95 acre feet (or 30,955,886 gallons) of wastewater per month from April through September and up to 10 acre feet (or 3,258,514 gallons) of wastewater per month from October through March. (Wastewater Agreement, ¶¶ 5.a.) By the end of September in each calendar year, Ione is therefore obligated to accept 505 acre feet (or 164,554,755 gallons) of wastewater from Preston Reservoir.

///

///

**C. THE REGIONAL BOARD'S REGULATION OF THE  
HENDERSON/PRESTON SYSTEM**

The parties' wastewater discharges are regulated by the Central Valley Regional Water Quality Control Board ("Regional Board"). The Regional Board's Water Reclamation Requirements ("WRRs") Order No. 93-240 regulates the Castle Oaks WRP and flows thereto from the Henderson/Preston System. (Ghio Decl., ¶ 8, Ex. B.) WRRs Order No. 93-240 only permits wastewater treatment and reuse based on the flows to Preston Reservoir through the Henderson/Preston System. (Ghio Decl., ¶ 8, Ex. B.) WRRs Order No. 93-240 also names only ARSA, Ione, and Portlock International, Ltd. (the Golf Course) as the dischargers. (Ghio Decl., ¶ 8, Ex. B.) Ione has received no other water quality permits or permit modifications from the Regional Board that allow Ione to provide reclaimed water to the Golf Course in any manner other than through the Henderson/Preston System from Preston Reservoir. (Ghio Decl., ¶ 8, Ex. B.)

**D. IONE'S CONTINUING REFUSAL TO ACCEPT WASTEWATER FROM  
THE HENDERSON/PRESTON SYSTEM**

Since March 2022, Ione has only intermittently accepted wastewater from ARSA from Preston Reservoir and has refused to accept the contractual amounts it is required to accept under the Wastewater Agreement. (Gedney Decl., ¶¶ 6-13.) On August 31, 2022, Ione entirely ceased accepting any wastewater from Preston Reservoir. (Gedney Decl., ¶ 11.) ARSA accordingly provided Ione written notice on September 8, 2022, that its refusal to accept wastewater from ARSA constitutes a breach of the Wastewater Agreement. (Gedney Decl., ¶ 11, Ex. A.) Although Ione ignored ARSA's default notice, Ione began accepting limited amounts of wastewater from Preston Reservoir on September 19, 2022. (Gedney Decl., ¶ 12.) Ione, however, again ceased accepting wastewater from ARSA from Preston Reservoir on September 21, 2022.<sup>2</sup> (Gedney Decl., ¶ 12.)

On September 23, 2022, ARSA sent another letter imploring Ione to accept wastewater from Preston Reservoir before the irrigation season ends in order to reduce the risk of Preston

<sup>2</sup> Given Ione was served with the summons and complaint in this matter on September 21, 2022, its latest failure to accept wastewater from Preston Reservoir was an apparent act of spite. (See Gedney Decl., ¶ 12.)

1 Reservoir spilling over during the upcoming rainy season. (Gedney Decl., ¶ 13, Ex. B.) Given the  
2 grave consequences that would ensue in the event Preston Reservoir spills over, ARSA warned  
3 Ione that the failure to accept wastewater would leave ARSA no choice but to seek relief from this  
4 Court. (Gedney Decl., Ex. B.) Unfortunately, Ione ignored ARSA's plea, forcing ARSA to appear  
5 ex parte to request a TRO. (Gedney Decl., ¶ 13.)

6 **III.**

7 **LEGAL STANDARD**

8 In determining whether to issue a temporary restraining order, courts consider two factors:  
9 "(1) the likelihood that the plaintiff will prevail on the merits at trial[,] and (2) the interim harm that  
10 the plaintiff would be likely to sustain if the injunction were denied as compared to the harm the  
11 defendant would be likely to suffer if the preliminary injunction were issued." (*Smith v. Adventist*  
12 *Health System/West* (2010) 182 Cal.App4th 729, 749.) While weighing these factors lies within the  
13 broad discretion of the court, it is an abuse of discretion to deny a preliminary injunction where the  
14 denial would result in great harm to the plaintiff, and the defendant would suffer little harm if it  
15 were granted. (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205.) Additionally, where a  
16 plaintiff makes a strong showing on one of the factors, less of a showing is necessary on the other  
17 factor. (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678; *King v. Meese* (1987) 43 Cal.3d 1217, 1227-  
18 1228.) Regarding the likelihood of success on the merits prong, the plaintiff need only demonstrate  
19 "some possibility" that it will ultimately prevail on the merits of the claim. (*Jamison v. Dept. of*  
20 *Transp.* (2016) 4 Cal.App.5th 356, 362.)

21 **IV.**

22 **ARGUMENT**

23 **A. ARSA IS LIKELY TO PREVAIL ON THE MERITS OF THE CASE AT**  
24 **TRIAL**

25 ARSA's complaint seeks injunctive relief arising from Ione's breach of the Wastewater  
26 Agreement, as well as declaratory relief regarding ARSA's and Ione's respective rights and  
27  
28



obligations thereunder.<sup>3</sup> (Gedney Decl., Ex. D [Compl.], ¶¶ 39-41, 47-50.) “[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Regarding a cause of action for declaratory relief on a contract, the two essential elements are (1) a legally binding contract that is a proper subject for declaratory relief; and (2) an actual controversy involving justiciable questions relating to the contacting parties’ rights and obligations. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.) ARSA is likely to prevail on both causes of action against Ione.

ARSA’s first cause of action alleges “[Ione] breached the [Wastewater Agreement] by failing to perform its obligation to annually accept from ARSA secondarily treated wastewater from Preston Reservoir[.]” (Compl., ¶ 39.) As noted above, the Wastewater Agreement requires Ione to accept 650 acre feet of wastewater from Preston Reservoir, and specifically a total of 505 acre feet through September of each calendar year. (Wastewater Agreement, ¶¶ 1, 2, 5.a.) In 2022, however, Ione has accepted only 28.7 acre feet of wastewater from Preston Reservoir, a shortfall of more than 476 acre feet to date. (Stone Decl., ¶ 5.)

In addition to the existence of a contract, i.e., the Wastewater Agreement, ARSA’s second cause of action avers there is an actual controversy as to whether “[Ione] is obligated to accept from ARSA secondarily treated wastewater from Preston Reservoir pursuant to the [Wastewater Agreement][.]” (Compl., ¶ 48.) The evidence presented to the Court clearly establishes an actual controversy regarding ARSA’s right to discharge, and Ione’s obligation to accept, wastewater from Preston Reservoir. ARSA has accordingly demonstrated more than “some possibility” that it will ultimately prevail on the merits of its claims against Ione. (*Jamison, supra*, 4 Cal.App.5th at p. 362.)

///

///

<sup>3</sup> ARSA’s complaint also seeks injunctive and declaratory relief against CDCR, but those claims are not at issue in this ex parte application.



1           **B.       THE BALANCING OF HARDSHIPS TIPS SHARPLY IN ARSA'S FAVOR**

2           The interim harm that ARSA would be likely to sustain if an injunction is denied far  
3 outweighs any alleged harm that Ione would be likely to suffer if an injunction is issued. Regarding  
4 the former, in the event of a 100-year storm during the upcoming rainy season, which ARSA is  
5 required to account for to ensure sufficient capacity in the Henderson/Preston System, Preston  
6 Reservoir will reach its permitted capacity in early March 2023, and will spill over in April 2023.  
7 (Ghio Decl., ¶ 11.) If Preston Reservoir spills over, the wastewater will flood a nearby Cal Fire  
8 Academy property and then run through a nearby creek, Mule Creek, and into the residential  
9 subdivision surrounding the Golf Course. (Ghio Decl., ¶ 10, Ex. C.) The flooding and discharge of  
10 disinfected secondary effluent into Mule Creek and onto residential property poses significant  
11 public health and water quality contamination issues, as disinfected secondary effluent contains  
12 harmful pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites. (Ghio  
13 Decl., ¶ 10.)

14           The only purported harm to Ione resulting from the discharge of wastewater from Preston  
15 Reservoir is that the water is allegedly high in hydrogen sulfide, which could cause odor issues at  
16 the Castle Oaks WRP and the Golf Course, and that the water purportedly has high turbidity (i.e.,  
17 cloudiness), which may cause treatment difficulties. On September 9, 2022, however, the Regional  
18 Board issued correspondence to ARSA, Ione, and the Golf Course addressing the balancing of  
19 harms. (Ghio Decl., ¶ 14, Ex. D.) The Regional Board's September 9, 2022, letter confirmed that  
20 "the capacity issues at Preston [Reservoir] are presenting an even greater risk to water quality and  
21 public health than potential nuisance concerns related to the treatment of wastewater from Preston  
22 [Reservoir] at Ione's [Castle Oaks WRP]." (Ghio Decl., ¶ 14, Ex. D.)

23           ARSA's engineer has opined that Ione's acceptance of at least 500,000 gallons (or 0.15 acre  
24 feet) of wastewater from ARSA from Preston Reservoir for at least the next 30 days should be  
25 sufficient to avoid Preston Reservoir spilling over before the end of the upcoming rainy season.  
26 (Ghio Decl., ¶ 12.) It is therefore imperative that Ione be ordered to immediately begin accepting  
27 at least 500,000 gallons of wastewater from ARSA from Preston Reservoir for a period of at least  
28 30 days. (Ghio Decl., ¶ 12.)

1           **C.     ARSA IS NOT REQUIRED TO POST SECURITY FOR A TRO TO ISSUE**

2           Code of Civil Procedure section 995.220 provides in relevant part:

3                     ... [I]f a statute provides for a bond in an action or proceeding,  
4                     including but not limited to a bond for issuance of a restraining order  
5                     or injunction, ... the following public entities ... are not required to  
6                     give the bond and shall have the same rights, remedies, and benefits  
                      as if the bond were given: ... (b) A county, city, or district, or public  
                      authority, public agency, or other political subdivision in the state ....

7           Code of Civil Procedure section 995.220 therefore exempts ARSA from posting security in order  
8           for a restraining order to issue.

9                                     **V.**

10                                    **CONCLUSION**

11           For the reasons set forth above, the Court should issue a TRO and an order requiring lone  
12           to show cause why a preliminary injunction should not issue pending trial in this action,  
13           immediately compelling lone to accept from ARSA 500,000 gallons of secondarily treated  
14           wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons of  
15           secondarily treated wastewater over the 30-day period.

16           Dated: September 28, 2022

BEST BEST & KRIEGER LLP

17                                    By: 

18                                    SHAWN D. HAGERTY  
19                                    MATTHEW L. GREEN  
20                                    FRANK A. SPLENDORIO  
21                                    Attorneys for Plaintiff  
22                                    AMADOR REGIONAL SANITATION  
23                                    AUTHORITY

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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive;

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson


DECLARATION OF AMY GEDNEY IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By 





1 I, Amy Gedney, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. Since June 2017, I have been the General Manager of the Amador Regional  
5 Sanitation Authority ("ARSA"), a joint powers agency responsible for providing wastewater  
6 conveyance and disposal services to the Cities of Amador City and Sutter Creek and the County of  
7 Amador.

8 3. Wastewater from the City of Sutter Creek, Amador City, and the Martell community  
9 is treated by the Sutter Creek Wastewater Treatment Plant ("Sutter Creek WTP"), which is owned  
10 and operated by the City of Sutter Creek. Disinfected secondary effluent from the Sutter Creek  
11 WTP is conveyed through a series of pipelines and reservoirs, known as the "Henderson/Preston  
12 System," and ultimately to Preston Reservoir for discharge to the City of Ione ("Ione") for tertiary  
13 treatment at its Castle Oaks Water Reclamation Plant ("Castle Oaks WRP") for irrigation use at the  
14 Castle Oaks Golf Course ("Gold Course").

15 4. ARSA operates the Henderson/Preston System pursuant to a ground lease with the  
16 California Department of Corrections and Rehabilitation, the owner of the System, and the  
17 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September  
18 18, 2007 ("Wastewater Agreement"). The Wastewater Agreement obligates Ione to accept 650 acre  
19 feet (or 211,803,427 gallons) of secondarily treated wastewater from Preston Reservoir annually,  
20 specifically up to 95 acre feet (or 30,955,886 gallons) of wastewater per month from April through  
21 September and up to 10 acre feet (or 3,258,514 gallons) of wastewater per month from October  
22 through March.

23 5. In March 2022, I began discussions with Ione's Interim City Manager, Michael  
24 Rock, and the Golf Course Manager, George Lee, regarding how water discharges from Preston  
25 Reservoir would proceed for the year and the need to negotiate a new agreement. During those  
26 discussions, I assured Ione and the Golf Course that ARSA would have water available for use at  
27 the golf course.

28 ///

1           6.       Beginning in March 2022, Ione also refused to accept wastewater from ARSA from  
2       Preston Reservoir on multiple occasions. While Ione later accepted wastewater from ARSA from  
3       Preston Reservoir, Ione refused to accept the full amount of wastewater that ARSA sought to  
4       discharge to the Caste Oaks WRP for tertiary treatment.

5           7.       Ione claimed that the water from Preston Reservoir smelled. ARSA accordingly  
6       worked with its engineer to add a solvent that would eliminate the odor. The pipe that takes water  
7       out of Preston Reservoir is located at the bottom of the Reservoir, where sediment that causes the  
8       odor is located. Once enough water is pulled from Preston Reservoir, however, the odor disappears.

9           8.       In May 2022, ARSA requested that Ione receive discharges from Preston Reservoir  
10       again. Ione, however, claimed that that the water smelled and refused to take the full amount. While  
11       ARSA devised a new setup to treat the water in Preston Reservoir, Ione refused to let the water run  
12       long enough to allow the new setup to work properly. Ione gave no notice and stopped the discharge  
13       again.

14          9.       In June 2022, as the days became hotter, Ione asked for water from ARSA from  
15       Preston Reservoir. ARSA accordingly expedited payment for a new chemical in order to eliminate  
16       any odors from the water. After delivering five acre feet (or 1,629,255 gallons) of water, Ione again  
17       shut off the water. In the previous year, ARSA discharged 20 acre feet (or 6,517,020 gallons) to  
18       Ione in April, and Ione made no complaints about the smell after 10 acre feet (or 3,258,510 gallons)  
19       was delivered.

20          10.       On multiple occasions from March through August 2022, I requested that Ione  
21       receive water from ARSA so that Preston Reservoir is emptied before the end of the irrigation  
22       season, and the beginning the rainy season, in order to ensure that Preston Reservoir does not spill  
23       over during the coming rainy season.

24          11.       On August 31, 2022, Ione refused to accept any wastewater from ARSA. On  
25       September 8, 2022, on behalf of ARSA, I accordingly provided written notice to Michael Rock,  
26       Ione's Interim City Manager, that Ione's refusal to accept wastewater from ARSA constitutes a  
27       breach of the Wastewater Agreement. A true and correct copy of my September 8, 2022, letter to  
28       Mr. Rock is attached as Exhibit "A" hereto.

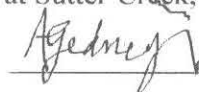
12. After ignoring my September 8, 2022, correspondence, Ione again began accepting wastewater from ARSA from Preston Reservoir on September 19, 2022, but only accepted 400,000 gallons (or 1.22 acre feet) on that day, which was reduced to only 200,000 gallons (or 0.61 acre feet) on September 20, 2022 due to purported water quality issues concerning the wastewater. Ione once again ceased accepting wastewater from ARSA from Preston Reservoir on September 21, 2022, the same day Ione was served with the summons and complaint in this lawsuit.

13. On September 23, 2022, I sent another letter to Mr. Rock imploring Ione to cease refusing to accept wastewater from ARSA from Preston Reservoir before the irrigation season ends in order to reduce the risk of Preston Reservoir spilling over during the upcoming rainy season. A true and correct copy of my September 23, 2022, correspondence is attached as Exhibit "B" hereto. Ione ignored my letter and continues to refuse to accept any wastewater from ARSA from Preston Reservoir.

14. A true and correct copy of ARSA's Complaint for Injunctive and Declaratory Relief is attached as Exhibit "C" hereto. True and correct copies of communications between ARSA and Ione are attached to the Complaint as Exhibits C, E, G through L.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28<sup>th</sup> day of September 2022, at Sutter Creek, California.



AMY GEDNEY

# EXHIBIT A



# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

September 8, 2022

Michael Rock  
Interim City Manager  
City of Ione  
1 E. Main Street  
P.O. Box 398  
Ione, CA 95640

RE: Notice of Breach of Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System

Dear Michael:

Pursuant to the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September 18, 2007 ("Agreement"), the City of Ione ("City") is obligated annually to accept a specified amount of wastewater from the Amador Regional Sanitation Authority ("ARSA") to the lower Henderson/Preston System until 2037. Although the City may terminate this obligation upon five years' notice, such right is expressly conditioned on the City (and the California Department of Corrections and Rehabilitation) having resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course, which includes, but is not limited to, obtaining any necessary water quality permits or permit modifications required by state law. As detailed in my December 3, 2021, correspondence, a copy of which is enclosed for your reference, due to the City's ongoing failure to provide adequate reclaimed water for the golf course, any notice issued to date purporting to terminate the City's obligation to accept wastewater from ARSA is void and of no force and effect.

Over the past several months, the City has on more than one occasion refused to accept wastewater from ARSA, but later accepted those discharges. Since August 31, 2022, however, the City has refused to accept any wastewater from ARSA. Pursuant to paragraph 14 of the Agreement, ARSA provides this written notice that the City's refusal to accept wastewater from ARSA constitutes a breach of the Agreement, and ARSA is hereby meeting and conferring with the City in an attempt to bring the City into compliance with the Agreement. If the City continues to refuse to accept wastewater from ARSA in accordance with the Agreement, ARSA will have no choice but to pursue any and all available remedies under the law against the City in order to enforce ARSA's rights under the Agreement.

Sincerely,  
  
Amy Gedney  
General Manager  
Amador Regional Sanitation Authority



## EXHIBIT B

# *Amador Regional Sanitation Authority*



*"Servicing Amador City, Martell, & Sutter Creek"*

---

September 23, 2022

VIA EMAIL

Michael,

We have received your consultant's letter regarding the treatability of ARSA's secondary effluent. We are preparing a response that will show ARSA's effluent is treatable and within the limits of secondarily-treated effluent standards.

In the meantime, I am writing to you now to implore and appeal to you to request that you no longer refuse ARSA's water during this very critical time (before the irrigation period limits Ione's ability to do so.

Even if you take 500,000 gallons per day between October 3<sup>rd</sup> and October 31<sup>st</sup>, for example, if there is a 100-year storm event again like we had in 2016/2017, we can avoid overflowing Preston Reservoir with secondary effluent in April, and hopefully make it through the rainy season altogether well into late spring/early summer. If you continue to refuse to accept ARSA's effluent, I fear a grave and irreparable overflow will occur in the March/April timeframe.

For the betterment of the region, I ask you to take this water immediately or we will be forced to seek further emergency relief from the Court. Please let me know by close of business on Tuesday, 9/27/22 if you can agree to taking 500,000 gallons/day starting immediately, through October 31, 2022.

Thank you,

  
Amy Gedney  
General Manager

# EXHIBIT C

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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

22-CV- 12824

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No.  
Judge:

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

CASE ASSIGNED FOR ALL PURPOSES TO  
HON. J.S. HERMANSON  
CCP 170.6

By Fax

FILED  
AMADOR SUPERIOR COURT

SEP 20 2022

CLERK OF THE SUPERIOR COURT  
By B. MORRIS

1 Plaintiff AMADOR REGIONAL SANITATION AUTHORITY ("ARSA") alleges as  
2 follows:

3 **PARTIES**

4 1. ARSA is now, and at all times mentioned in this Complaint was, a California joint  
5 powers agency established pursuant to the Joint Exercise of Powers Act, Government Code sections  
6 6500, et seq., responsible for providing wastewater conveyance and disposal services to its member  
7 agencies: the County of Amador and the Cities of Amador City and Sutter Creek, and located in  
8 the County of Amador, California.

9 2. ARSA is informed and believes and thereon alleges that Defendant CITY OF IONE  
10 ("IONE") is now, and at all times mentioned in this Complaint was, a municipal corporation  
11 organized and existing under the laws of the State of California and located in the County of  
12 Amador, California.

13 3. ARSA is informed and believes and thereon alleges that Defendant CALIFORNIA  
14 DEPARTMENT OF CORRECTIONS AND REHABILITATION ("CDCR") is now, and at all  
15 times mentioned in this Complaint was, a state agency organized and existing under the laws of the  
16 State of California and the owner of a series pipelines and reservoirs located in the County of  
17 Amador, California.

18 4. ARSA is unaware of the true names and capacities of those defendants sued herein  
19 as Does 1 through 20. ARSA is informed and believes and on such basis alleges that these  
20 fictitiously named defendants are in some way responsible for the harm sustained by ARSA as  
21 alleged in the Complaint. ARSA will amend this Complaint to allege the true names and capacities  
22 of the fictitiously named defendants when ascertained.

23 5. Defendants IONE, CDCR, and Does 1 through 20 (collectively, "DEFENDANTS"),  
24 and each of them, are and were at all times mentioned herein agents, employees, or partners of each  
25 other, and, in doing the acts alleged herein, each defendant was acting within the scope of his, her,  
26 or its authority as such agent, employee, or partner, with the information and consent of each  
27 defendant, and each ratified or approved the conduct of the defendants alleged herein.

28 ///



**GENERAL ALLEGATIONS**

6. Wastewater from the City of Sutter Creek, Amador City, and the Martell community is treated by the Sutter Creek Wastewater Treatment Plant ("SUTTER CREEK WWTP"), which is owned and operated by the City of Sutter Creek. Secondary effluent from the SUTTER CREEK WWTP is conveyed through a series of pipelines and reservoirs, which make up a wastewater delivery and disposal system known as the "HENDERSON/PRESTON SYSTEM."

7. The HENDERSON/PRESTON SYSTEM is comprised of an upper element and a lower element. The upper HENDERSON/PRESTON SYSTEM generally consists of the area from the outfall of the SUTTER CREEK WWTP to the Preston Youth Correctional Facility. The lower HENDERSON/PRESTON SYSTEM generally includes the components that lie below Preston Forebay to the outfall of the pipeline that conveys the secondarily treated wastewater from Preston Reservoir to IONE. IONE receives wastewater from the lower HENDERSON/PRESTON SYSTEM for tertiary treatment at its Castle Oaks Water Reclamation Plant ("COWRP") for irrigation use at the Castle Oaks Golf Course.

8. The HENDERSON/PRESTON SYSTEM is owned by CDCR. Since in or about 1977, CDCR has leased the pipelines and reservoirs that make up the HENDERSON/PRESTON SYSTEM to ARSA. A copy of the current lease between ARSA and CDCR, Ground lease No. L-2070 ("LEASE"), executed on February 23, 2009, is attached hereto as Exhibit "A" and incorporated herein by this reference.

9. Under the LEASE, which does not expire until September 18, 2037, ARSA uses the HENDERSON/PRESTON SYSTEM (referred to in the LEASE as the "Premises") to transport water and wastewater pursuant to a separate agreement between ARSA, CDCR, and IONE, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September 18, 2007 ("WASTEWATER AGREEMENT"), a copy of which is attached as Exhibit B to the LEASE.

10. The LEASE provides in relevant part the following regarding termination and injunctive relief: "The parties to this Lease hereto recognize that the Premises leased hereunder is part of a wastewater system, regulated under the California Water Code, and that termination of

1 this Lease is not practicable nor feasible as it would render an essential utility service inoperable,  
2 with no alternate means readily available to [CDCR] and [ARSA] to dispose of their effluent that  
3 is not in violation of their other permit obligations. Therefore, the parties to this Lease have deleted  
4 any reference herein to termination of this Lease for breach, and instead expressly agree that  
5 injunctive relief to cure any actual or threatened breach is appropriate, and agree that either party  
6 shall be entitled to seek equitable injunctive relief from a court of competent jurisdiction to enforce  
7 compliance with the obligations hereunder. Neither party shall be entitled to defend such action on  
8 the basis that injunctive relief is improper, or that monetary damages are adequate.”

9 11. The LEASE further provides that time is of the essence for each and all of the  
10 provisions, covenants, and conditions therein, and that the LEASE may not be modified except by  
11 a written instrument duly executed by the parties thereto.

12 12. Under its express terms, the WASTEWATER AGREEMENT governs the  
13 wastewater rights and obligations among ARSA, CDCR, and IONE, as well as the relationship and  
14 respective rights between ARSA, CDCR, and IONE with regard to the HENDERSON/PRESTON  
15 SYSTEM.

16 13. The WASTEWATER AGREEMENT allows ARSA to annually discharge 650 acre  
17 feet of treated wastewater to Preston Reservoir for disposal. The WASTEWATER AGREEMENT,  
18 however, provides that CDCR may annually discharge up to 350 acre feet of treated wastewater to  
19 Preston Reservoir, which amount is counted against ARSA’s 650 acre-foot disposal right. CDCR  
20 operates the Mule Creek State Prison (“MCSP”), wastewater from which is treated by CDCR at its  
21 MCSP Wastewater Treatment Plant (“MCSP WWTP”).

22 14. Pursuant to the WASTEWATER AGREEMENT, IONE is obligated annually to  
23 accept from ARSA/CDCR a combined total of 650 acre feet of secondarily treated wastewater from  
24 Preston Reservoir. Specifically, IONE must accept up to 95 acre feet of wastewater per month from  
25 April through September, and up to 10 acre feet of wastewater per month from October through  
26 March, but such limits may be waived by agreement of the parties in the event of an emergency  
27 and where necessary for the prevention of environmental damage or civil liabilities attendant to  
28 wastewater violations. The WASTEWATER AGREEMENT further provides that ARSA and



1 CDCR will continue to provide effluent from Preston Reservoir to the COWRP for use on the  
2 Castle Oaks Golf Course, if such effluent is available.

3 15. The term of the WASTEWATER AGREEMENT is 30 years and will not expire  
4 until September 18, 2037, the same date that the LEASE ends. While the WASTEWATER  
5 AGREEMENT allows IONE to terminate flows to the lower HENDERSON/PRESTON SYSTEM  
6 upon five-years' written notice, such right cannot be exercised unless IONE and CDCR have  
7 resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course, which includes,  
8 but is not limited to, obtaining any necessary water quality permits or permit modifications required  
9 by state law.

10 16. The WASTEWATER AGREEMENT also provides that it may be amended only by  
11 written instrument signed by all the parties thereto.

12 17. The WASTEWATER AGREEMENT further requires CDCR, IONE, and ARSA to  
13 work to obtain all necessary permits, approvals, and authorizations to carry out the WASTEWATER  
14 AGREEMENT in compliance with all pertinent Federal, State, and local laws and regulations.

15 18. The parties' wastewater discharges are regulated by the Central Valley Regional  
16 Water Quality Control Board ("REGIONAL BOARD"). The REGIONAL BOARD's Water  
17 Reclamation Requirements ("WRRs") Order No. 93-240 ("WRRs ORDER NO. 93-240") regulates  
18 the COWRP and flows thereto from the HENDERSON/PRESTON SYSTEM, while the  
19 REGIONAL BOARD's Waste Discharge Requirements ("WDRs") Order No. R5-2015-0129  
20 ("WDRs ORDER NO. R5-2015-0129") regulates the MCSP WWTP.

21 19. WRRs ORDER NO. 93-240 only permits wastewater treatment and reuse based on  
22 the flows to Preston Reservoir through the HENDERSON/PRESTON SYSTEM; it does not permit  
23 an alternative direct connection from CDCR to the COWRP. WRRs ORDER NO. 93-240 also does  
24 not recognize CDCR as a named discharger to the COWRP; WRRs ORDER NO. 93-240 names  
25 only ARSA, IONE, and Portlock International, Ltd. (Castle Oaks Golf Course) as the dischargers.

26 20. Aside from spray irrigation on land application areas, WDRs ORDER NO. R5-  
27 2015-0129 only permits disposal of wastewater to Preston Reservoir up to the maximum 350 acre-  
28 feet allowed under the WASTEWATER AGREEMENT. WDRs ORDER NO. R5-2015-0129



1 recognizes that "Preston Reservoir serves as a means of conveyance of effluent flows from the  
2 [ARSA] system and the [MCSP] WWTP to the City of Ione wastewater disposal system or to the  
3 [COWRP] for further treatment and reuse at the Castle Oaks Golf Course (under [WRRs ORDER  
4 NO. 93-240])."

5 21. On or about July 19, 2017, IONE issued a letter purporting to provide five years'  
6 notice to ARSA to eliminate all flows to the lower HENDERSON/PRESTON SYSTEM under the  
7 WASTEWATER AGREEMENT. Said letter asserted growth in the community had made it  
8 possible for IONE and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf  
9 Course. The letter requested ARSA to eliminate all flows to the lower HENDERSON/PRESTON  
10 SYSTEM by July 31, 2022. A copy of said letter is attached as Exhibit "B" hereto and incorporated  
11 herein by this reference.

12 22. ARSA is informed and believes and thereon alleges that CDCR constructed, and has  
13 been utilizing, a direct connection from the MCSP WWTP to the COWRP, bypassing Preston  
14 Reservoir.

15 23. Since construction of a direct delivery system, the MCSP WWTP has been under  
16 investigation by the REGIONAL BOARD for problematic waste discharges. The REGIONAL  
17 BOARD has found that discharges from the MCSP WWTP are not authorized under WDRs ORDER  
18 NO. R5-2015-0129. The REGIONAL BOARD also found volatile organic compounds ("VOCs")  
19 and semi-VOCs present in the MCSP WWTP's effluent and ordered CDCR to submit a Report of  
20 Waste Discharge in order for the REGIONAL BOARD to amend existing WDRs or issue new  
21 WDRs.

22 24. Following CDCR's submission of a Report of Waste Discharge, the REGIONAL  
23 BOARD issued a Revised Monitoring and Reporting Program to CDCR on October 21, 2021,  
24 imposing additional monitoring and reporting requirements for VOCs. The additional requirements  
25 are necessary to determine the effects of MCSP's discharges on water quality, verify the effectiveness  
26 of existing WDRs to comply with applicable water quality objectives, evaluate MCSP's compliance  
27 with the terms and conditions of its WDRs, and determine the need for revised requirements.

28 ///

1           25.     On the same day, the REGIONAL BOARD also issued a Revised Monitoring and  
2     Reporting Program under WRRs ORDER NO. 93-240, imposing requirements to monitor and report  
3     the COWRP's influent and effluent for VOCs.

4           26.     Due to IONE's ongoing failure to provide adequate reclaimed water for the Castle  
5     Oaks Golf Course, namely its failure to obtain the water quality permits or permit modifications  
6     required by state law necessary to allow for the provision of adequate reclaimed water to the Castle  
7     Oaks Golf Course without use of the HENDERSON/PRESTON SYSTEM, any notice issued to  
8     date by IONE purporting to terminate its obligation to accept wastewater from ARSA, including  
9     its July 19, 2017, letter, is void and of no force and effect.

10          27.     On or about December 3, 2021, ARSA sent separate correspondence to both IONE  
11     and CDCR to confirm ARSA's right to dispose secondarily treated wastewater through the lower  
12     HENDERSON/PRESTON SYSTEM pursuant to the WASTEWATER AGREEMENT, copies of  
13     which are respectively attached as Exhibits "C" and "D" hereto and incorporated herein by this  
14     reference.

15          28.     On or about January 19, 2022, IONE provided a response to ARSA's December 3,  
16     2021, correspondence, a copy of which is attached as Exhibit "E" hereto and incorporated herein  
17     by this reference. IONE's January 19, 2022, correspondence reaffirmed its intention to cease  
18     services with ARSA as of July 19, 2022, but indicated a willingness to extend the date upon entry  
19     into a new agreement with a new fee structure.

20          29.     On or about January 28, 2022, ARSA sent further, separate correspondence to both  
21     IONE and CDCR setting forth ARSA's right to deliver secondary effluent through the lower  
22     HENDERSON/PRESTON SYSTEM pursuant to the WASTEWATER AGREEMENT and the  
23     WRRs ORDER NO. 93-240, copies of which are respectively attached as Exhibits "F" and "G"  
24     hereto and incorporated herein by this reference.

25          30.     On or about February 3, 2022, ARSA responded directly to IONE's January 19,  
26     2022, correspondence, informing IONE that any action taken to prevent, reduce, interrupt, interfere  
27     with, or circumvent ARSA from delivering its effluent to IONE would be a breach of the  
28     WASTEWATER AGREEMENT and a violation of the WRRs ORDER NO. 93-240, but accepted

1 IONE's offer to meet and confer regarding the matter. A copy of ARSA's February 3, 2022, letter  
2 is attached as Exhibit "H" hereto and incorporated herein by this reference.

3 31. In or about March 2022, ARSA and IONE began engaging in substantive  
4 discussions regarding the outstanding issues concerning ARSA's discharge of wastewater from  
5 Preston Reservoir to the COWRP. In furtherance of these discussions, IONE transmitted  
6 correspondence to ARSA outlining several deal points for negotiation of a new agreement on or  
7 about July 20, 2022, a copy of which is attached as Exhibit "I" hereto and incorporated herein by  
8 this reference. IONE's July 20, 2022, correspondence stated that negotiation of a new agreement  
9 would extend its willingness to accept wastewater under the WASTEWATER AGREEMENT until  
10 either approval of the new agreement by IONE and ARSA, or February 1, 2024, if no new  
11 agreement was reached.

12 32. On or about July 29, 2022, ARSA provided its response to IONE's July 20, 2022,  
13 correspondence, a copy of which is attached as Exhibit "J" hereto and incorporated herein by this  
14 reference. While ARSA expressed its willingness to attempt to negotiate a new agreement, ARSA  
15 advised IONE that ARSA was prepared to seek all available remedies under the law should IONE  
16 refuse to accept wastewater from ARSA through the lower HENDERSON/PRESTON SYSTEM  
17 under the WASTEWATER AGREEMENT.

18 33. On or about August 16, 2022, IONE transmitted its response to ARSA's July 29,  
19 2002, letter, a copy of which is attached as Exhibit "K" hereto and incorporated herein by this  
20 reference. Among other items, IONE's August 16, 2022, correspondence repeated its purported  
21 right to refuse wastewater from ARSA under the WASTEWATER AGREEMENT as of July 31,  
22 2022.

23 34. On multiple occasions over the past several months, IONE refused to accept  
24 wastewater from ARSA, but later accepted a small amount of discharges. Since August 31, 2022,  
25 however, IONE has continued to refuse to accept wastewater from ARSA.

26 35. On or about September 8, 2022, ARSA provided timely written notice to IONE that  
27 IONE's refusal to accept wastewater from ARSA constitutes a breach of the WASTEWATER  
28 AGREEMENT and stated ARSA's intention to meet and confer with IONE in an attempt to bring



1 IONE into compliance with the WASTEWATER AGREEMENT. ARSA advised IONE that  
2 should IONE continue to refuse to accept wastewater from ARSA, ARSA would have no choice  
3 but to pursue any and all available remedies under the law against IONE in order to enforce ARSA's  
4 rights under the WASTEWATER AGREEMENT. A copy of ARSA's September 8, 2022, letter is  
5 attached as Exhibit "L" hereto and incorporated herein by this reference.

6 36. Despite ARSA's ongoing efforts to resolve the outstanding issues with IONE, IONE  
7 continues to refuse to accept wastewater from ARSA through the lower HENDERSON/PRESTON  
8 SYSTEM in accordance with IONE's obligations under the WASTEWATER AGREEMENT.  
9 ARSA is also informed and believes and thereon alleges that CDCR continues to transmit  
10 wastewater from the MCSP WWTP to the COWRP and bypass Preston Reservoir in violation of  
11 the WASTEWATER AGREEMENT, the LEASE, WDRs ORDER NO. R5-2015-0129, and WRRs  
12 ORDER NO. 93-240.

13 37. Preston Reservoir is currently near its maximum capacity. The present inability of  
14 ARSA to discharge wastewater from Preston Reservoir to the COWRP will result in Preston  
15 Reservoir being unable to withstand the higher flows that may occur during the upcoming rainy  
16 season, Preston Reservoir overflowing, and/or ARSA having to discharge effluent on other lands  
17 in violation of the WRRs ORDER NO. 93-240, thus creating significant public health and water  
18 quality contamination issues. In light of the quickly approaching rainy season, and given the  
19 limitations on how much wastewater can be treated at the COWRP on a daily basis, the need to  
20 discharge wastewater from Preston Reservoir is immediate.

21 **FIRST CAUSE OF ACTION**  
22 (Injunctive Relief Against IONE and Does 1-10)

23 38. ARSA hereby incorporates by reference paragraphs 1 through 37 of the Complaint  
24 as though set forth in full herein.

25 39. IONE breached the WASTEWATER AGREEMENT by failing to perform its  
26 obligation to annually accept from ARSA secondarily treated wastewater from Preston Reservoir,  
27 and by accepting wastewater directly from CDCR from the MCSP WWTP to the COWRP and  
28 bypassing the HENDERSON/PRESTON SYSTEM.

1           40.     ARSA performed all conditions, covenants, and promises required on its part to be  
2 performed in accordance with the terms and conditions of the WASTEWATER AGREEMENT,  
3 except for those covenants and conditions ARSA was prevented or excused from performing.

4           41.     ARSA has no other adequate remedies at law or in equity to seek redress for IONE's  
5 continuing violations of the WASTEWATER AGREEMENT and therefore seeks preliminary and  
6 permanent injunctive relief restraining IONE from refusing to accept from ARSA secondarily  
7 treated wastewater from Preston Reservoir, and restraining IONE from accepting wastewater  
8 directly from CDCR and bypassing the HENDERSON/PRESTON SYSTEM.

9                               **SECOND CAUSE OF ACTION**  
10                              (Injunctive Relief Against CDCR and Does 11-20)

11           42.     ARSA hereby incorporates by reference paragraphs 1 through 41 of the Complaint  
12 as though set forth in full herein.

13           43.     CDCR breached the WASTEWATER AGREEMENT by discharging wastewater  
14 directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON  
15 SYSTEM.

16           44.     CDCR also breached the LEASE by discharging wastewater directly from the  
17 MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON SYSTEM.

18           45.     ARSA performed all conditions, covenants, and promises required on its part to be  
19 performed in accordance with the terms and conditions of the WASTEWATER AGREEMENT  
20 and LEASE, except for those covenants and conditions ARSA was prevented or excused from  
21 performing.

22           46.     ARSA has no other adequate remedies at law or in equity to seek redress for  
23 CDCR's continuing violations of the WASTEWATER AGREEMENT and LEASE and therefore  
24 seeks preliminary and permanent injunctive relief restraining CDCR from discharging wastewater  
25 directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON  
26 SYSTEM.

27     ///

28     ///

**THIRD CAUSE OF ACTION**  
(Declaratory Relief Against All Defendants)

47. ARSA hereby incorporates by reference paragraphs 1 through 46 of the Complaint as though set forth in full herein.

48. An actual controversy has arisen and now exists between ARSA and DEFENDANTS concerning their respective rights and duties. ARSA contends, and ARSA is informed and believes that DEFENDANTS deny, that IONE is obligated to accept from ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER AGREEMENT, and that CDCR is not permitted to discharge, and IONE is not permitted to accept, wastewater directly from the MCSP WWTP to the COWRP and bypass the HENDERSON/PRESTON SYSTEM.

49. ARSA desires a judicial determination of the respective rights and duties of ARSA and DEFENDANTS, namely declarations that IONE is obligated to accept from ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER AGREEMENT, and that CDCR is not permitted to discharge, and IONE is not permitted to accept, wastewater directly from the MCSP WWTP to the COWRP and bypass the HENDERSON/PRESTON SYSTEM.

50. Such declarations are necessary and appropriate at this time in order that ARSA may ascertain its rights and duties with respect to the WASTEWATER AGREEMENT and/or LEASE.

**PRAYER FOR RELIEF**

WHEREAS, ARSA demands judgment against DEFENDANTS for the following:

1. For a preliminary and permanent injunction restraining IONE from refusing to accept from ARSA secondarily treated wastewater from Preston Reservoir;

2. For a preliminary and permanent injunction restraining IONE from accepting wastewater directly from CDCR and bypassing the HENDERSON/PRESTON SYSTEM;

3. For a preliminary and permanent injunction restraining CDCR from discharging wastewater directly from the MCSP WWTP to the COWRP and bypassing the HENDERSON/PRESTON SYSTEM;

///



1 4. For a judicial determination and declaration that IONE is obligated to accept from  
2 ARSA secondarily treated wastewater from Preston Reservoir pursuant to the WASTEWATER  
3 AGREEMENT;

4 5. For a judicial determination and declaration that CDCR is not permitted to discharge  
5 wastewater directly from the MCSP WWTP to the COWRP and bypass the  
6 HENDERSON/PRESTON SYSTEM;

7 6. For a judicial determination and declaration that IONE is not permitted to accept  
8 wastewater directly from the MCSP WWTP to the COWRP and bypass the  
9 HENDERSON/PRESTON SYSTEM;

10 7. For attorneys' fees pursuant to paragraph 18 of the LEASE and costs of suit incurred  
11 herein; and

12 8. For such other and further relief the Court may deem proper.

13 Dated: September 16, 2022

BEST BEST & KRIEGER LLP

14  
15 By: 

16 SHAWN D. HAGERTY  
17 MATTHEW L. GREEN  
18 Attorneys for Plaintiff  
19 CITY OF SANTEE  
20  
21  
22  
23  
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# EXHIBIT A



**GROUND LEASE**

Lease No.: L-2070

Lessee: Amador Regional Sanitation Authority

**LEASE COVERING PREMISES LOCATED AT****Mule Creek Prison and Preston Youth  
Correctional Facility****Amador County****AGENCY****Department of Corrections and Rehabilitation****REAL PROPERTY NOS.: 43 and 1575**

This Lease, dated for reference purposes only, January 1, 2009, by and between the State of California, acting by and through the Director of General Services (DGS), with the consent of the California Department of Corrections and Rehabilitation (CDCR), hereinafter collectively referred to as STATE, and the Amador Regional Sanitation Authority (ARSA), a joint powers authority, hereinafter referred to as LESSEE.

**RECITALS**

WHEREAS, CDCR has under its jurisdiction certain real properties located in the County of Amador, State of California, commonly known as the Mule Creek State Prison (MCSP) and the Preston Youth Correctional Facility, formerly known as Lone Youth Authority, and hereinafter referred to as "Preston"; and

WHEREAS, pursuant to Government Code (GC) Section 14672.100, the Director of the Department of General Services, with the consent of CDCR, may lease real property appurtenant to or part of Preston, which real property is located in Amador County and further described in this Lease to ARSA (LESSEE) for a term not to exceed thirty (30) years and at a rate of one dollar (\$1.00) per year for its continued use as a wastewater delivery and disposal system; and

WHEREAS, CDCR owns a series of pipelines and reservoirs, each of which interconnect to allow the transport of water and or wastewater, which is known as Henderson/Preston System. The Henderson/Preston System, hereinafter referred to as the "Premises", is depicted in "Supplement #2 to Appendix L of Amador County Wastewater Management Plan", dated November 1977, and hereinafter referred to as the "Water Plan". Per the Water Plan, said Premises is composed of an upper element and a lower element. The upper element consists of the area from the outfall of the Sutter Creek Treatment Plant to Preston, including all pipelines, rights of way, reservoirs, and water rights. The lower element includes the components that lie below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir. Said Water Plan defines and illustrates the elements of the Henderson/Preston System, is marked Exhibit "A", consists of two (2) pages and is attached hereto and by this reference made a part hereof; and

WHEREAS, the City of Lone, LESSEE and CDCR, entered into the "Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System", hereinafter referred to as "Agreement for Wastewater", dated September 18, 2007. Said Agreement governs the wastewater disposal rights and obligations among the parties to the Agreement, is marked Exhibit "B", which consists of nine (9) pages, and is attached hereto and by this reference made a part hereof; and

WHEREAS, LESSEE currently occupies the Premises per the "Agreement for Wastewater Management" dated March 22, 1977, which agreement shall be superseded by this Lease and the Agreement for Wastewater; and

WHEREAS, STATE is willing to lease the Premises to the LESSEE, and LESSEE is willing to lease the Premises from STATE, on the conditions set forth herein.

**NOW, THEREFORE**, it is hereby mutually agreed as follows:

**WITNESSETH****DESCRIPTION**

1. STATE does hereby lease to LESSEE, and LESSEE hereby hires from STATE, the Premises, as further described and depicted in the Water Plan, Exhibit "A" to this Lease.

**TERM**

2. The term of this Lease shall be for a period of twenty-nine (29) years eight (8) months to commence on January 1, 2009, and shall terminate on September 18, 2037, to coincide with the termination date of the Agreement for Wastewater.

**USE**

3. (a) LESSEE agrees to use the leased Premises to transport water and wastewater through the Premises pursuant to the Agreement for Wastewater, attached hereto as Exhibit "B", and by this reference made a part hereof.

(b) All activities upon the Premises will be conducted hereunder only in a manner which will not interfere with the orderly operation of the MCSP and Preston.

**LESSEE'S  
OBLIGATION FOR  
WATER  
DIVERSION**

4. (a) LESSEE agrees to annually divert a minimum of 250 acre/feet of water and a maximum of 1,100 acre/feet, from the Sutter Creek point of diversion in order to maintain STATE's water rights, as is more particularly described in the Water Plan, Exhibit "A" to this Lease. STATE reserves all of its water rights including the water rights for diversion from Sutter Creek at a maximum level of 1,100 acre/feet; and

(b) LESSEE shall maintain and supply upon reasonable request documentation of water diversion rates. Said documentation shall be sent to:

Department of Corrections and Rehabilitation  
Facilities Management Branch  
9838 Old Placerville Road, Suite B  
Sacramento, California 95827

(c) STATE reserves its claim to receive not less than 250 acre/feet of water annually for use at Preston.

**RENT**

5. The first annual rent payment shall be paid by the LESSEE in the amount of ONE DOLLAR AND 00/100s (\$1.00), due and payable on January 1, 2009. Rent shall be payable annually in advance for the duration of the Lease, or at the LESSEE's option, shall be paid in one lump sum in advance.

**All rent payments shall be addressed and delivered to:**

Department of General Services  
Accounts Receivable PAL (L-2070)  
P.O. Box 989053  
West Sacramento, CA. 95798-9053

**FEE**

6. LESSEE will reimburse DGS for its costs related to the lease, including, but not limited to, any survey costs, title transfer fees, administrative costs, and department staff time. DGS will invoice for the fees and payment shall be made to DGS at the address shown above and shall be made by February 1, 2009.



**LESSEE'S ACCESS  
RIGHTS**

7. During the term of this Lease, STATE hereby grants to LESSEE and its contractors, agents, employees, representatives or licensees, the non exclusive temporary right to access, at any and all times and at any and all places, upon STATE lands and easements identified as the Premises. LESSEE has acquired or shall acquire all access rights for the lands not owned by STATE, at LESSEE's own expense.

**CONDITION  
OF PREMISES**

8. (a) LESSEE has visited and inspected said Premises and it is agreed that the Premises stated herein, and on the attached Exhibit "A", is not described using a legal description and that the description is approximate. It is also acknowledged by all parties to this Lease, that the Premises will be leased "as-is" and the STATE does not warrant or guarantee the condition of the system, its pipelines, ponds, dams, equipment and appurtenances included hereunder.

(b) LESSEE agrees, pursuant to the "Surrender of Premises" clause of this Lease, to surrender up to STATE the Premises with any real property improvements therein, in at least the same condition as when received, reasonable use and wear thereof and damage by act of God, or by the elements excepted.

**TERMINATION  
AND INJUNCTIVE  
RELIEF**

9. The parties to this Lease hereto recognize that the Premises leased hereunder is part of a wastewater system, regulated under the California Water Code, and that termination of this Lease is not practicable nor feasible as it would render an essential utility service inoperable, with no alternate means readily available to STATE and LESSEE to dispose of their effluent that is not in violation of their other permit obligations. Therefore, the parties to this Lease have deleted any reference herein to termination of this Lease for breach, and instead expressly agree that injunctive relief to cure any actual or threatened breach is appropriate, and agree that either party shall be entitled to seek equitable injunctive relief from a court of competent jurisdiction to enforce compliance with the obligations hereunder. Neither party shall be entitled to defend such action on the basis that injunctive relief is improper, or that monetary damages are adequate. In the event of a violation of an injunctive order issued under this provision, in a subsequent proceeding to enforce the injunction, a court may, should it deem it appropriate, issue an order terminating the lease thereafter, on such terms as may be just and which will not work undue hardship on the parties to this Lease.

**HOLD OVER**

10. Any holding over after the expiration of said term or any extension thereof, with the written consent of STATE, shall be deemed a tenancy only from month to month. Otherwise, the terms and conditions specified in lease shall remain applicable.

**UTILITIES**

11. LESSEE agrees to pay at its sole cost and expense any and all water, electric, gas and other utility charges or any other charges payable in connection with LESSEE's use of said Premises during the term of this Lease. No utilities will be provided by STATE and STATE assumes no liability for the existence or nonexistence of utilities.

**REGULATION  
BY STATE**

12. LESSEE agrees to cooperate with the MCSP and or Preston to ensure that activities conducted on the Premises, or persons brought onto the Premises to conduct such activities, do not interfere with the orderly operation of the facilities.

**AGREEMENT TO  
REGULATE**

13. LESSEE hereby agrees to continue to operate the Premises in accordance with those guidelines found within the Agreement for Wastewater as outlined in the attached Exhibit "B".

**IMPROVEMENTS**

14. (a) STATE hereby grants to LESSEE the right to, at its sole cost and expense, improve the Premises. Said improvements include but are not limited to, installing, operating, maintaining, repairing and removing and or demolishing components of the wastewater system. Additionally, LESSEE shall keep the Premises fully functional and operational, in accordance with generally accepted and recommended practices and procedures and in compliance with all applicable federal, state and local laws and regulations, any and all improvements including, but not limited to any pipelines, valves and valve boxes, ponds, dams, equipment, pipes and pipelines, valves, wells, pumps, electrical panels, meter socket and wiring or other improvements existing on the Premises or constructed upon the Premises by LESSEE.

(b) LESSEE hereby assumes, at its sole expense; without limitation, the cost of any necessary improvements as defined in paragraph (a) immediately preceding this paragraph of this Lease, as well as environmental impact reports, engineering reports, government permits, or any other applicable regulatory compliance items.

(c) Prior to making any needed improvements to the Premises, LESSEE shall submit plans, specifications, and/or drawings, as applicable, in writing to the STATE. LESSEE shall receive STATE's written consent to proceed with such improvements. Said consent will not be unreasonably withheld.

(d) LESSEE agrees that in no event shall STATE be required to perform any maintenance on or make repairs or alterations to the leased Premises of any nature whatsoever.

(e) When making any necessary excavation on the Premises, LESSEE shall make such excavation in a manner that will cause the least damage to the surface of the ground, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as existed prior to said excavation as practicable.

**LIENS**

15. (a) During continuance in force of this Lease, LESSEE shall keep the leased Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by LESSEE and shall indemnify, hold harmless and defend STATE from such liens and encumbrances arising out of any work performed or materials furnished by or at the direction of LESSEE or contractors of LESSEE. Notice is hereby given that STATE shall not be liable for any work or materials furnished to LESSEE on credit and no mechanic's or other lien for any such work or materials shall attach to or affect STATE's interest in the leased Premises based on any work or materials supplied to LESSEE or anybody claiming through LESSEE. LESSEE shall within thirty (30) days after being furnished a notice of filing of any such lien, take action, whether by bonding or otherwise, to remove or satisfy any such lien.

(b) STATE shall have the right at all times to post and keep posted on the leased Premises any notices, that STATE deems proper for its protection and the protection of the leased Premises and STATE from liens. If, nevertheless, any



such lien shall be recorded, LESSEE shall, within sixty (60) days after notice from STATE, pay, settle, or otherwise release such lien, or deposit into escrow with a reputable bank or trust company in California a sum sufficient to satisfy such lien, in full. In the event of unsuccessful termination of any litigation in connection with such lien and under the terms of which it shall be obligated to pay such lien upon the unsuccessful termination of such litigation, then, upon the failure of LESSEE to comply with said requirements, STATE may pay or otherwise dispose of said lien, or defend, settle, or compromise any lawsuit brought to foreclose the same, in its sole discretion, and all amounts so paid by it or any loss sustained by STATE on that account, including reasonable amount for its attorney's fees, shall be repaid to STATE and shall be in addition to any other payments by way of rents, or otherwise, required under the terms of this Lease. A failure to pay any such sum within thirty (30) days after mailing of bill therefore to LESSEE shall constitute a breach of this Lease.

**NOTICES**

16. (a) All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.

(b) All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00a.m. and 5:00p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

	To the LESSEE:	ARSA Attn.: Rob Duke General Manager 18 Main Street Sutter Creek, CA 95685 (209) 267-5647 (phone)
STATE:	To the DGS:	Department of General Services Real Estate Services Division-SOLD (L-2070) 707 Third Street, MS 505 Post Office Box 989052 West Sacramento, California 95798-9052 (916) 375-4025 (phone)
	To CDCR:	California Department of Corrections Attn.: Warden Mule Creek State Prison 4001 Highway 104 Sutter Creek, CA 95685 (209) 274-5225 (phone)
		California Department of Corrections Attn.: Superintendent Preston Youth Correctional Facility (PYCS) 201 Waterman Road Ione, CA 95640

**NOTICES  
(CONTINUED)**

(209) 274-8102 (phone)

(c) The address to which notices may be mailed as aforesaid to either party, may be changed by written notice given by subject party to the other, as hereinbefore provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

**SUBLETTING**

17. LESSEE shall not assign this Lease in any event and shall not sublet the leased Premises or any part thereof and will not permit the use of the leased Premises by anyone other than the LESSEE without prior written consent by the STATE.

**RECOVERY OF  
LEGAL FEES**

18. If action is brought by any parties to this Lease for any breach hereof, or to restrain the breach of any agreement contained herein, the prevailing party in such action shall be entitled to the amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

**PARTNERSHIP  
DISCLAIMER**

19. LESSEE, and any and all agents and employees of LESSEE, shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained shall be construed as constituting the parties to this Lease herein as partners.

**HOLD HARMLESS**

20. (a) This Lease is made upon the express condition that STATE is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of STATE.

(b) LESSEE agrees to defend, indemnify and hold harmless STATE from all liability, loss, cost or obligation on account of or arising out of LESSEE's use and/or occupancy of the Premises during the Lease term or any such injury or loss, however occurring.

(c) LESSEE further agrees to provide necessary Workers' Compensation Insurance for all employees of LESSEE upon said Premises at the LESSEE's own cost and expense.

**INSURANCE**

21. STATE acknowledges that LESSEE is self-insured in whole or in part as to any of the below described types and levels of coverage. LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. Said acknowledgment shall contain the STATE Lease Number, L-2070. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this "Insurance" clause pertaining to policies of insurance in regard to those types and levels of insurance as follows:

**COMMERCIAL GENERAL LIABILITY**

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising



injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services, LESSEE, and their officers, agents, employees and servants as additional insureds, but only insofar as the operations under the Lease are concerned.

#### **AUTOMOBILE LIABILITY**

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned.

#### **WORKERS' COMPENSATION**

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California.

#### **GENERAL REQUIREMENTS**

LESSEE shall ensure that the following general requirements are met:

(a) Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.

(b) LESSEE shall provide STATE with a true copy of the policy in place providing coverage for General Liability, within thirty (30) days after each insurance policy renewal.

(c) Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of the original contract.

(d) Insurance policies shall contain a provision that coverage will not be cancelled without thirty (30) days prior written notice to STATE.

(e) LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

(f) In the event LESSEE fails to keep in effect at all times the specified insurance coverage, STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

(g) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by STATE.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

**NON-DISCRIMINATION**

22. LESSEE agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, age or physical handicap. LESSEE agrees to take action to ensure that applicants for employment and employees are treated during employment without regard to their race, color, religion, ancestry, national origin, sex, age or physical handicap. (See California Government Code Sections 12920-12994 for further details.)

Remedies for willful violation:

(a) STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having the effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(b) STATE shall have the right to seek appropriate legal relief, whether monetary or injunctive, as a result of said breach, and consistent with the provisions of the "Termination and Injunctive Relief" clause of this Lease.

**AMERICANS WITH DISABILITIES ACT**

23. Where applicable, LESSEE shall comply with all federal requirements established under the 28 Code of Regulations, Part 36, Americans with Disabilities Act, to ensure the Premises is accessible to all participants and to provide equally effective communications.

**LOSSES**

24. STATE will not be responsible for losses or damage to personal property, equipment or materials of the LESSEE and all losses shall be reported to STATE immediately upon discovery.

**DEBT LIABILITY DISCLAIMER**

25. STATE will not be liable for any debts or claims that arise from the operation of this Lease.

**TAXES / ASSESSMENTS**

26. LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied upon interest in this agreement. It is understood that this lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

**PROTECTION OF PREMISES**

27. No removal of soil in excess of five (5) cubic yards, or dumping of refuse by LESSEE, except for transport of wastewater as contemplated by this Lease, is permitted in any area of the Premises, and LESSEE shall not commit or suffer to be committed any waste or nuisance upon the Premises; and LESSEE agrees not to cut or remove any trees, larger than four (4) inches in diameter and measured at three (3) feet in height, thereon except as approved in writing by STATE and LESSEE further agrees that at all times to exercise due diligence in the protection of the Premises against damage or destruction by fire or other causes.

**PROPERTY RESTRICTIONS**

28. LESSEE shall comply with the following with respect to activities on the Premises:

(a) LESSEE shall not permit hunting on the Premises but shall not be required to post "No Hunting" signs; and



(b) Compliance to any and all rules and regulations by governing agencies to include EPA, Department of Health or local water quality board must be strictly adhered to; and

(c) Should LESSEE desire to use pesticides on the area (either herbicides, rodenticides or insecticides) all applicable Environmental Protection Agency (EPA) both state and federal, standards must be met and prior approval must be received from STATE as not all EPA approved pesticides will be permitted.

#### AERIAL APPLICATIONS

29. Any aerial applications of any pesticides on the Premises shall be in compliance with the California Food and Agriculture Code (FAC), Section 12972 and Title 3, California Code of Regulations (3 CCR), Section 6614.

LESSEE shall notify the Warden and Superintendent in writing within three (3) business days in advance, of any aerial application and a completed Material Safety Data Sheet (MSDS) shall accompany the notice. LESSEE shall ensure that there will be minimal to no drift over the prison site adjacent to the subject Premises. LESSEE shall insure that any aircraft used for any aerial application will not encroach into the airspace of the MCSP and Preston.

#### WEED ABATE- MENT

30. Any weed burning operations on the leased Premises will be carried out pursuant to local ordinances and at LESSEE's own cost and expense. LESSEE will inform MCSP and Preston in advance of any weed burning operations.

#### ENVIRONMENTAL COMPLIANCE AND HAZARDOUS WASTE

31. (a) Compliance. LESSEE shall be solely responsible for determining the applicability of and for complying with all applicable federal, state and local environmental, natural resources, zoning laws and regulations, including but not limited to CERCLA (42 USC 9601.14), SARA [42 USC 11021(e)], or Resources Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94-580 (1976), 42 USC 6901 et seq. and amendments, including the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616 (1984), with respect to LESSEE's activities on the Premises. LESSEE agrees that it shall comply with all applicable laws, federal, state, and local, existing during the term of this Lease pertaining to the use, storage, generation, treatment, transportation, and disposal of LESSEE's hazardous substances (including petroleum and petroleum derivatives) as that term is defined in such applicable law.

(b) Copies of Materials. LESSEE shall maintain copies of Material Safety Data Sheets (MSDS) and hazardous waste manifests, if any, for all hazardous materials used or transported on or from the Premises. MSDS and manifests shall be provided to the CDCR Facilities Management Division upon its request. If LESSEE is required to prepare a Business Plan, as specified by Health and Safety Code Section 25500 et seq., or a Hazardous Waste Contingency Plan, as specified in 22 CCR 66264.51 et seq., then a copy of the plan shall be submitted first to the Facilities Management Division for review and written approval.

(c) Spill Reporting; Cleanup. Any spill or release of a hazardous substance or material to the air, soil, surface water, or groundwater will be immediately reported to STATE as well as to appropriate government agencies, and shall be promptly and fully cleaned up and the Premises (including soils, surface water, and groundwater) restored to its original condition or such condition as approved by the applicable government agency with jurisdiction.

(d) RCRA Facility Prohibited. LESSEE shall not apply to become a "permitted" RCRA hazardous waste storage or disposal facility on the Premises.

(e) Inspection. STATE or its representatives reserve inspection rights pursuant to the "STATE's Rights to Enter" clause of this Lease.

Termination. Any violation of federal, state, or local environmental law by LESSEE, which continues unaddressed for a period of thirty (30) days from the date LESSEE receives notice of such violation, shall be grounds for STATE to pursue specific performance and injunctive relief in accordance with the "Termination and Injunctive Relief" clause of this Lease. STATE shall not have the right to pursue remedies under said clause if LESSEE commences addressing the violation within such thirty (30) day period and, thereafter, diligently pursues remediation of the violation.

(f) Indemnification by LESSEE. In addition to any other indemnity set forth herein, LESSEE shall fully indemnify, defend, and hold harmless STATE and its agents and representatives for any violation of environmental, hazardous waste, hazardous materials (including petroleum and petroleum derivatives), and/or natural resources law caused by LESSEE or LESSEE's agents or representatives. Furthermore, LESSEE shall reimburse the STATE for any and all costs and liability related to investigation, clean up, settlement amounts, and/or fines, including attorneys' fees, incurred by the STATE for such violation.

(g) Indemnification by STATE. In the event a government order is issued naming LESSEE as a potentially responsible party, or LESSEE incurs any other loss, cost, expense (including attorney's fees) or liability during or after the term of the Lease in connection with contamination which pre-existed LESSEE's obligations and occupancy under this Lease, or which was caused by STATE, STATE will hold harmless and defend LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts, liabilities, losses, costs and expenses therefore, including attorney's fees. LESSEE shall have the burden of proof that the condition pre-existed the LESSEE's use and occupancy of the Premises or was caused by STATE.

#### **SURRENDER OF PREMISES**

32. (a) All personal property and equipment that is nonessential to the wastewater operations on the Premises shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE's tenancy.

(b) Should LESSEE fail to remove said nonessential personal property and equipment within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses associated with the removal of said property belonging to LESSEE.

(c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE's nonessential personal property and equipment, whereupon, as abandoned, title to said improvements will vest in STATE.



**RELOCATION**

33. In the event that Court should terminate this Lease for a refusal to obey an injunctive order as provided in the "Termination and Injunctive Relief" clause of this Lease, LESSEE acknowledges and agrees that it has no claim against STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq, or any regulations implementing or interpreting such sections. LESSEE further agrees that it has no claim in either law or equity against STATE for damages or other relief should the Lease be so terminated, and waives any such claims it may have.

**STATE'S RIGHT TO ENTER**

34. During the term of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises for survey, inspection, or any other lawful STATE purposes.

**EASEMENTS AND RIGHTS OF WAY**

35. This lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easement, as long as such easement does not interfere with the operations of LESSEE's established uses. If the right to grant such easement is exercised, the public utility or their contractor will be required to reimburse LESSEE for any damages caused by the construction work on the easement area.

**MINERAL RIGHTS**

36. LESSEE agrees not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold oil, gas, or other mineral interests upon or under said Premises; nor shall LESSEE, in any way, interfere with the rights of ingress and egress of said interest holders.

**BINDING**

37. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties to this Lease hereto.

**UNDERGROUND UTILITIES**

38. LESSEE shall be responsible for maintaining all underground utilities to include all pipelines connecting to the Premises.

**ESSENCE OF TIME**

39. Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

**CLAUSE HEADINGS**

40. All clause headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**WAIVER**

41. If STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE'S right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.

**SEVERABILITY**

42. If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

This Lease contains all currently enforceable agreements between STATE and LESSEE. In addition, this Lease and with Exhibit B are intended to be compatible and work together and collectively supersede all prior agreements between STATE and LESSEE. There have been no representations by STATE or understandings made between STATE and LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease hereto.

IN WITNESS WHEREOF, this agreement has been executed by the parties to this Lease hereto as of the date written below.

**STATE OF CALIFORNIA**

DIRECTOR OF DEPARTMENT OF  
GENERAL SERVICES

By:

  
**TONY PSCHOPAIDAS**, Manager  
State Owned Leasing & Development  
707 Third Street, MS-505  
West Sacramento, CA 95605  
(916) 375-4025

02/23/09  
Execution Date

**LESSEE:**

AMADOR REGIONAL SANITATION AUTHORITY,  
a Joint Powers Authority

By:

  
**ROB DUKE**, General Manager

1-28-09  
Date Signed

**Consent:**

DEPARTMENT OF CORRECTIONS

By:

  
**DEBORAH HYSEN**, Chief Deputy Secretary  
Facility Planning, Construction, and Management

**Approved as to form:**

MCDONOUGH HOLLAND & ALLEN

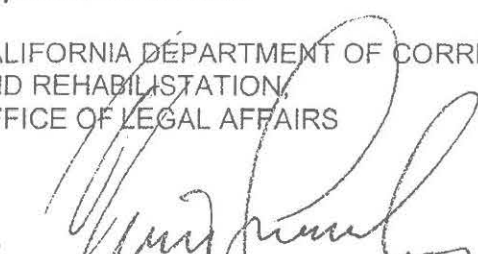
By:

  
**HARRIET STEINER**  
Attorney for ARSA

**Approved as to form:**

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,  
OFFICE OF LEGAL AFFAIRS

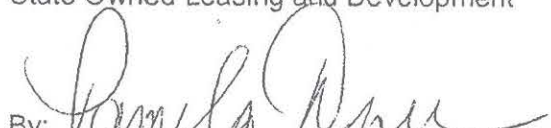
By:

  
**CHRIS SWANBERG**, Senior Staff Counsel  
Attorney for CDCR

**Approval Recommended:**

DEPARTMENT OF GENERAL SERVICES  
REAL ESTATE SERVICES DIVISION  
State Owned Leasing and Development

By:

  
**PAMELA DYER**,  
Associate Real Estate Officer

# EXHIBIT A

SUTTER CREEK - IONE OUTFALL

WASTEWATER

RECLAMATION PROJECT

SUPPLEMENT #2

TO

APPENDIX L

OF

AMADOR COUNTY

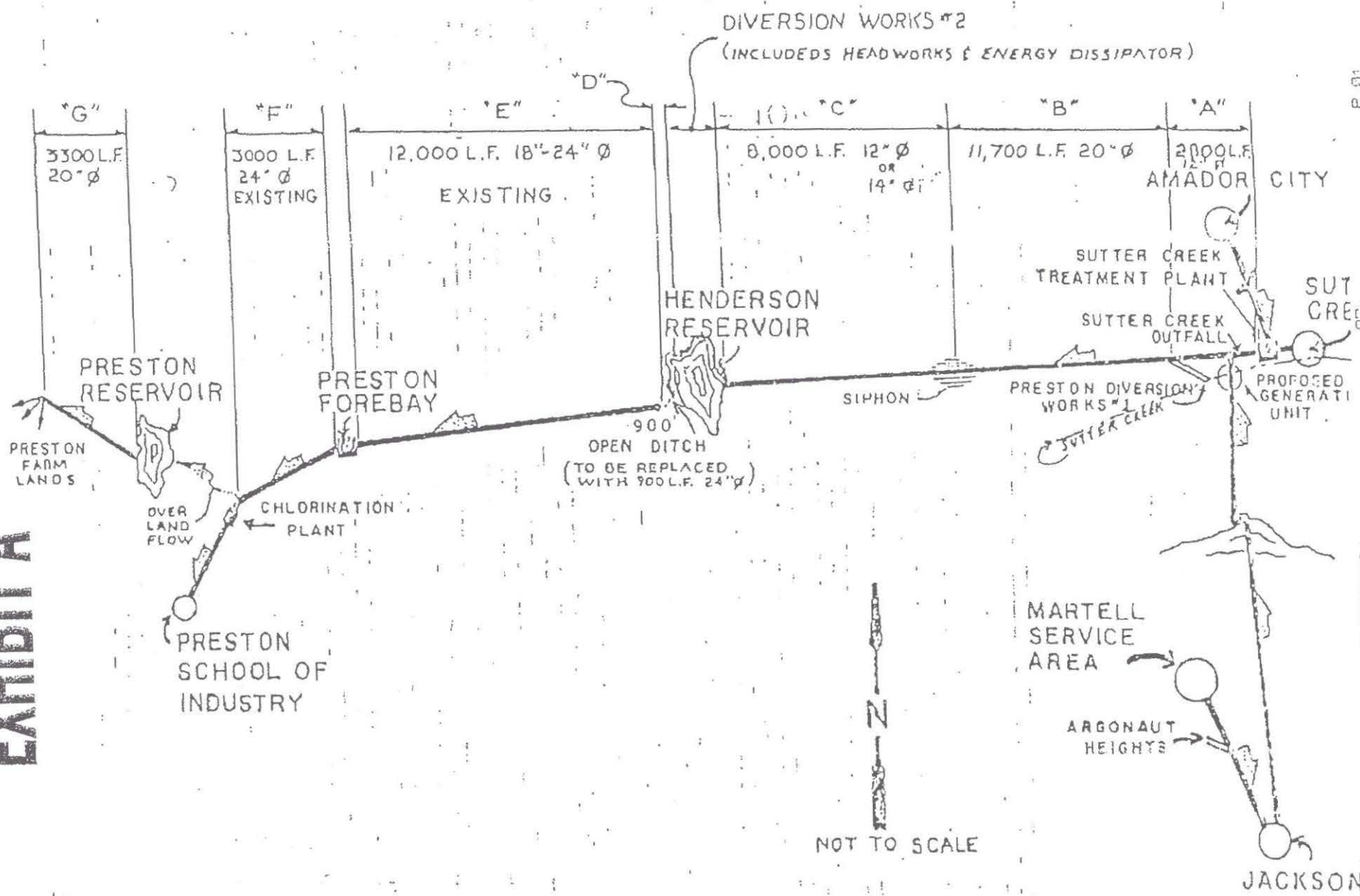
WASTEWATER MANAGEMENT PLAN

NOVEMBER, 1977

PROJECT NO. 75-0995



# EXHIBIT A



SUTTER CREEK- IONE OUTFALL PROJECT  
FACILITIES INVENTORY

# EXHIBIT B

## AGREEMENT TO REGULATE USE OF HENDERSON/PRESTON WASTEWATER DISPOSAL SYSTEM

This agreement is made this 18<sup>th</sup> day of September, 2007, by and between the California Department of Corrections and Rehabilitation, a California State Agency ("CDCR"), the City of Ione, a municipality formed pursuant to the laws of the State of California ("Ione"), and the Amador Regional Sanitation Authority, a joint powers agency formed pursuant to the laws of the State of California ("ARSA") (collectively, CDCR, Ione, and ARSA, shall be referred to as the "Parties"). The Parties hereby agree as follows:

WHEREAS, as settlement of past litigation, Ione and ARSA entered into an agreement and grant of easement entitled "Preston Farmlands Wastewater Disposal Contract and Grant of Easement" dated July 30, 1990 ("1990 Settlement Agreement"); and,

WHEREAS, the 1990 Settlement Agreement has been amended or assigned by the parties to the 1990 Settlement Agreement; and,

WHEREAS, this agreement will reallocate and govern the wastewater disposal rights and obligations among the Parties, but will not alter the 1990 Settlement Agreement, any and all amendments thereto, and any agreements implementing the 1990 Settlement Agreement, as those agreements govern the relationship and obligations between Ione or ARSA and any developer of the Preston Farmlands, as referred to in the agreements and amendments, and their successors and assigns and except as those agreements govern the relationship and obligations between Ione or ARSA and the present and future owners, operators, and lessees of the Castle Oaks Golf Course and their successors and assigns; and,

WHEREAS, pursuant to the 1990 Settlement Agreement, as amended, Ione was required to pay ARSA an annual payment (currently \$20,000.00), which payment Ione in turn imposed on Castle Oaks Golf Course. The Parties intend to eliminate such fee for Ione and for Castle Oaks Golf Course by not including it herein as part of this agreement; and,

WHEREAS, this agreement does not extend to, or otherwise affect, Portlock International, Ltd.'s obligation to pay for operation of the Ione Tertiary Plant, which obligation ends December 31, 2013 and is governed by other agreements; and,

WHEREAS, CDCR owns a series of pipelines and reservoirs, including Henderson Reservoir, Preston Forebay and Preston Reservoir, each of which is interconnected so as to allow the transport of water and or wastewater from a point of diversion along Sutter Creek to the Preston Reservoir, in Ione, California ("Henderson/Preston System") (described in Exhibit 1); and,

WHEREAS, CDCR and ARSA have in place a lease agreement whereby ARSA has the right to use the Henderson/Preston System, subject to the terms and conditions contained therein, which lease expires in July 2008 ("ARSA/CDCR Lease"); currently ARSA uses the Henderson/Preston System to transport ARSA's secondary-treated wastewater to Preston Reservoir and then to Ione for treatment, disposal and use; and,

WHEREAS, ARSA and CDCR intend to execute a new lease or extend the existing ARSA/CDCR lease governing the use of the Henderson/Preston System. The new or extended lease will be for thirty (30) years. With regard to the lower system (as hereinafter described), the lease will contain a five (5) year cancellation clause that can be invoked by either party, subject to ARSA's continuing obligations to supply secondary treated wastewater to the CDCR's Preston Youth Correctional Facility and to maintain CDCR's water right from Sutter Creek, which obligations shall remain in effect unaffected by any such cancellation as will their rights to usage to the extent necessary to carry out those obligations; and,

WHEREAS, this agreement will govern the relationship and respective rights between the Parties with regard to the Henderson/Preston System; and,

WHEREAS, the upper Henderson/Preston System as referred to in this agreement includes the parts of the Henderson/Preston System from the outfall of the Sutter Creek Treatment Plant to Preston Youth Correctional Facility, including all pipelines, rights of way, reservoirs, water rights, etc; and,

WHEREAS, the lower Henderson/Preston System as referred to in this agreement includes the components of the Henderson/Preston System from below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir; and,

WHEREAS, ARSA will continue to deliver effluent to the lone tertiary plant subject to the five-year termination clause provided herein in sections 8a and 8b; and,

WHEREAS, CDCR operates Mule Creek State Prison ("MCSP") and the Preston Youth Correctional Facility, both located within Ione City limits, and which two facilities along with the California Department of Forestry utilize the wastewater treatment plant at MCSP for their wastewater disposal; and,

WHEREAS, Ione operates two wastewater treatment plants, a portion of one treatment plant is located within the boundaries of Ione providing secondary level treatment of wastewater, and the other located in Amador County providing tertiary treatment of wastewater; and,

WHEREAS, each of the Parties' wastewater disposal systems are interrelated and interconnected; and,

WHEREAS, all of the Parties wish to work together to achieve a solution that addresses their respective wastewater needs; and,

WHEREAS, a water balance study was conducted by Lee and Ro, Inc. and completed on April 11, 2007 to determine the amount, if any, of surplus disposal capacity that currently exists in the Henderson/Preston System; and

WHEREAS, the water balance study resulted in an estimated surplus capacity that is allocated pursuant to this agreement.



IT IS AGREED by and among the parties hereto as follows:

1. Pursuant to the water balance and on the effective date of this agreement, the surplus capacity described above is allocated and each party's total allowable discharge to Preston Reservoir is as follows:

	Total Allowable Discharge to Henderson/Preston System
ARSA	650 acre-feet (af)
CDCR	350 af (counted against ARSA's 650 af disposal amount)
Ione	150 af (this amount is essentially a negative capacity amount to the extent that it relieves Ione of the obligation to take this amount from the other Parties)

2. Ione shall be obligated annually to accept from ARSA/CDCR a combined total of 650 af of secondarily treated wastewater for disposal. The method and location of disposal shall be the concern and obligation of Ione.

3. CDCR may dispose of up to 350 af (increased from its current allowance of 130 af) of treated wastewater into Preston Reservoir annually. CDCR's 350 af allowance shall be counted against ARSA's 650 af disposal right.

4. The effluent discharged to Preston Reservoir must be in compliance with the Waste Discharge Requirements established by the Regional Water Quality Control Board for the discharging party, and shall not contain constituents that cause the Ione tertiary plant to violate its Waste Discharge Requirements. Each party agrees to share all non-privileged wastewater effluent quality data with the other parties including monthly, quarterly, and annual reports submitted to the Central Valley Regional Water Quality Control Board. This information shall be furnished in a timely fashion to permit the City of Ione tertiary plant staff to evaluate potential impacts to operation of the plant. If requested, data shall be transmitted by facsimile or email. Such requests shall include all public information and shall not be limited to monitoring data that the party is required to provide pursuant to its Waste Discharge Requirements.

5. Unless otherwise agreed upon by the parties, discharges from Preston Reservoir to Ione, on a monthly basis, shall be as follows:

- a. October 1 through March 31st: discharges shall be limited to 10 af per month;
- b. April 1 through September 31st: discharges shall be limited to 95 af per month; and

- c. The above limitations may be waived by agreement of the parties in the event of an emergency and where necessary for the prevention of environmental damage or civil liabilities attendant to wastewater violations, and in such event and prior to any deviation from these limits the parties agree to meet and confer and attempt to reach mutual agreement regarding the exceedance amounts necessary to accomplish the prevention or mitigation of the emergency.

6. Subject to five-year termination clauses in sections 8a and 8b, in any year, ARSA and CDCR will continue to provide effluent from Preston Reservoir to the Ione tertiary plant for use on the Castle Oaks Golf Course, if such effluent is available. As provided for in the 1990 Agreement, as amended, Castle Oaks Golf Course will continue to utilize wastewater treated at the Ione tertiary plant prior to using water from any other source until December 31, 2013.

7. From the effective date of this agreement, ARSA agrees to eliminate all flows to Ione's secondary treatment ponds within four years. ARSA holds existing deeded disposal rights, transmittal rights, and rights of way and easements, to dispose of 1300 acre feet of treated effluent on the former Noble Ranch (County Assessor parcel numbers: 011330001501; 011330002501; and 011330003501) comprising approximately 850 acres of arable ranch land. A golf course resort has been entitled to be constructed on the property to be known as "Gold Rush Golf, LLC." A mitigated negative declaration for this project, including effluent disposal options, was adopted February 18, 2003, under City of Sutter Creek Resolution Number 02-03-27. Portions of the project have been constructed (e.g. conduit construction under the Highway 49 Bypass) and the remainder will be completed prior to the four-year deadline described in this section. The completion of the effluent disposal options are independent of the construction of the golf course resort project.

8. This agreement will be in effect for thirty (30) years from the time of its enactment, subject to the following:

- a. With regard to the lower Henderson/Preston System, ARSA agrees to eliminate all flows to the lower Henderson/Preston System within five years of receiving a written request to this effect from Ione, CDCR, or MCSP. Such written notice may only be given after Ione and CDCR have resolved how to provide adequate reclaimed water for both Castle Oaks Golf Course and Preston Youth Correctional Facility. Such resolution may include completing any necessary environmental review pursuant to CEQA for the new source of water; a contract between the new provider of water, MCSP, Ione, the golf course operator; and any necessary permits of modifications to existing permits pursuant to the Porter-Cologne Water Quality Control Act (Cal. Water Code, §§ 13000 et. seq.).
- b. ARSA shall have a right to cancel all discharges to the lower Henderson/Preston System five (5) years after it gives written notice to Ione and CDCR of its intent. ARSA agrees to work with the Parties to

attempt to coincide its withdrawal with the other parties' ability to find an alternate water source.

9. Beginning January 1, 2015, each party whose wastewater is being treated at the Ione Tertiary Plant agrees to pay a proportionate share of the tertiary plant operation and maintenance costs based on the amount of flows the party contributes to the tertiary plant. If any of the parties has withdrawn flows prior to 2014, that party will have no such operation and maintenance obligation. Each party's "proportionate share" will be defined by the JPA proposed herein, if it is formed. If the JPA is not formed, "proportionate share" will be defined by joint agreement of the Parties. To the extent that additional treatment, beyond what the discharging party is required to perform, is necessary to allow recycled water use of water treated at the Ione Tertiary Plant, that party will not be required to pay for such additional treatment, unless required under this agreement. Where the tertiary treated water from the Ione Tertiary Plant is sold to a recycled water user, the revenue generated from the sale will be distributed to the Parties in proportion to the amount of water the each party contributed to the tertiary plant.

10. MCSP shall endeavor to reduce its wastewater disposal into Preston Reservoir as soon as possible by implementing projects, which may include some or all of the following:

- a. Installing flushometers on toilets located in cells at MCSP; and
- b. Installing shower timers, as able, at MCSP.

In addition, CDCR shall conduct a preliminary feasibility study to determine the cost and feasibility for CDCR to increase the Preston Reservoir Dam height by sixteen (16) inches, increasing the capacity of the reservoir thereby.

11. To implement the provisions of this agreement, the Parties may prepare implementation memoranda, as opposed to amendments to this agreement, unless all Parties agree an amendment is necessary. Such implementation agreements may be executed by authorized representatives of the Parties.

12. The Parties to this agreement agree to explore and work towards creating a Joint Powers Authority to develop a sub-regional wastewater master plan for the Ione Valley. This plan may involve the following elements:

- a. Developing a permanent source of reclaimed water for the Castle Oaks Golf Course, Preston Youth Correctional Facility and other potential reclaimed water users within the Ione area.
- b. Developing a master plan and joint projects to improve the treatment and disposal capabilities of the MCSP and Ione wastewater facilities.
- c. ARSA's participation in the JPA will end when ARSA's discharges to the lower Henderson/Preston System end pursuant to sections 8a and 8b of this agreement.



13. Each of the Parties shall work to obtain all necessary permits, approvals, and authorizations to carry out this agreement in compliance with all pertinent Federal, State, and local laws and regulations.

14. In the event of a breach or default of this agreement, the aggrieved party will give written notice to the other parties within ten (10) days. After receiving such written notice, the Parties will meet and confer in an attempt to bring the violating party into compliance with this agreement. If, after meeting and conferring, the Parties fail to agree upon a plan to bring the violating party into compliance, the Parties may pursue mediation or other means agreed upon by the parties, including other remedies available by law.

15. Such non-performance provisions shall not apply if the nature of the breach or default is the result of a force majeure occurrence or is otherwise of a nature such that it cannot be fully cured within thirty (30) days, the party in default shall have such additional time as is reasonably necessary to cure the default so long as the party in default is proceeding diligently to complete the necessary cure after service of written notice by a non-defaulting party.

16. Each party retains any and all remedies it may have at law or in equity against each and every party hereto for breach of any duty established by this agreement.

17. Invalidity of any of the provisions contained in this agreement, or of the application thereof to any party by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other party and said agreement shall remain in full force and effect except for the invalidated provision.

18. This agreement may be amended only by written instrument signed by all the parties.

19. Any notice to any party shall be in writing and by fax or email and given by delivering the notice to such party in person or by sending the notice by registered or certified mail, return receipt requested with postage prepaid, to the party's mailing address. The respective mailing addresses of the parties are:

City:	City Manager City of Ione Post Office Box 398 Ione, CA 95640
ARSA:	Rob Duke General Manager 18 Main Street Sutter Creek, CA 95685

CDCR:

Warden  
Mule Creek State Prison  
4001 Highway 104  
Ione, CA 95640

Either party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices shall be deemed given, received, made or communicated on the delivery date or attempted delivery date shown on the return receipt.

20. Nothing contained in this agreement shall act as a prohibition on the formation of additional contracts and agreements by and between the Parties to further implement the intentions of the Parties.

21. Failure of a party to insist upon the strict performance of any of the provisions of this agreement by any other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by the other party in the future. No waiver by a party of an act constituting breach or default shall be effective or binding upon such party unless the waiver is made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such breach or default under any provision of this agreement.

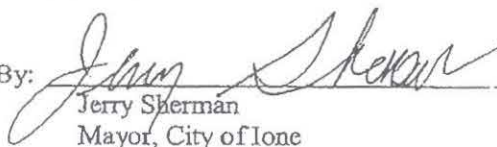
22. This agreement may be signed in counterparts, and shall have the same force and effect as if all signatures existed on the same document.

CITY OF IONE

Dated:

9-20-07

By:

  
Jerry Sherman  
Mayor, City of Ione

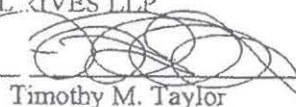
Approved as to form:

STOEL RIVES LLP

Dated:

9-26-07

By:

  
Timothy M. Taylor  
Attorneys for the City of Ione

ARSA

Dated:

9-18-07

By:

Rob Duke  
General Manager

Approved as to form:

MCDONOUGH, HOLLAND & ALLEN

Dated:

9/24/07

By:

Harriet Steiner  
Attorneys for ARSA

Dated:

CDCR

By:

Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated:

By:

Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR

ARSA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Rob Duke  
General Manager

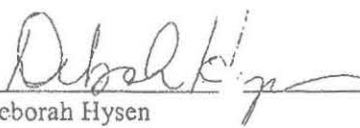
Approved as to form:

MCDONOUGH HOLLAND & ALLEN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Harriet Steiner  
Attorneys for ARSA

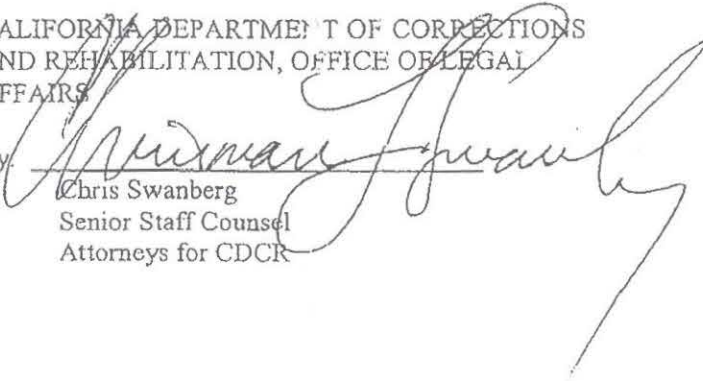
Dated: \_\_\_\_\_

CDCR  
By:   
Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated: \_\_\_\_\_

By:   
Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR

# EXHIBIT B



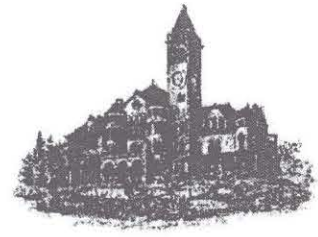
# City of Ione

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July 19, 2017

ATTN: 2017



Ms. Amy Gedney  
Amador Regional Sanitation Agency  
18 Main Street  
Sutter Creek, CA 95685

Dear Ms. Gedney;

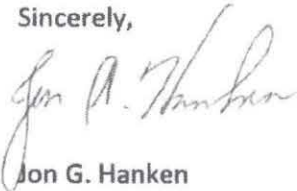
The Ione City Council has reviewed the Regional Water Recycling Feasibility Study and has had the opportunity to discuss its recommendations with citizens during a recent Council meeting. The consensus of the community was that a regional partnership on wastewater recycling was not in the best long-term interest of the City. As such, Council has asked me to provide ARSA with the five year notice to eliminate all flows to the lower Henderson/Preston system as per Section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal.

Ione is a growing community and that growth has made it possible for us and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf Course. Ione anticipates another 800 homes will be constructed in the future and we will need to find additional land to dispose of this effluent once it's treated. We anticipate that the Central Valley Regional Water Quality and Control Board (CVRWQCB) will require the City to line all of our wastewater ponds to eliminate percolation. This will increase our need for irrigable land. As for the requirement to provide treated effluent to the Preston Youth Facility, the State closed that complex in 2011. The State is in the process of disposing of the property so there is no longer a need to provide reclaimed water to it. I have requested a letter from CDCR stating that requirement is no longer necessary.

The City is proposing that ARSA eliminate all flows to the lower Henderson/Preston system by July 31, 2022. This gives your organization adequate time to complete the necessary effluent disposal projects on the former Noble Ranch. Section 7 of the agreement, states that ARSA will complete all the necessary construction to dispose effluent on the property prior to the deadline. The 2007 agreement also states that completion of the effluent disposal projects on the Noble Ranch property are independent of the construction of the golf course resort project.

The relationship between lone and ARSA has been a long one and beneficial but we think it will soon be unnecessary as our needs diverge and will be time to go our separate ways. Your comments and letters of intent to bring on other landowners for irrigation indicate that you are also moving in the same direction as lone. We wish you well on your construction projects. If you have any questions related to this letter, please feel free to contact me at lone City Hall. My telephone number is (209) 274-2412 Ext. 111.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon G. Hanken".

Jon G. Hanken  
City Manager  
City of lone

cc: Ms. Deb Hysen, CDCR  
Ms. Pamela Creedon, CVRWQCB

# EXHIBIT C

# *Amador Regional Sanitation Authority*

---

*"Servicing Amador City, Martell, & Sutter  
Creek"*

December 3, 2021

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Mr. Rock:

This letter addresses the vitally important and ongoing wastewater disposal arrangement among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR") (collectively, "the Parties"). We are sending you this letter now to confirm ARSA's right to dispose of secondarily treated wastewater through the lower Henderson/Preston System. For the reasons explained below, ARSA is legally permitted and will continue discharging secondary effluent to the lower Henderson/Preston System in accordance with its current contractual arrangement with the Parties.

Since 2007, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement") has governed the Parties' rights and obligations regarding wastewater disposal through the Henderson/Preston System. As you are aware, the 2007 Agreement provides that ARSA may discharge, and the City *must* accept, annually up to 650 acre-feet of secondary effluent for disposal. CDCR may, solely through ARSA's existing outfall system and in strict compliance with its existing wastewater permit, discharge up to 350 acre-feet of secondary effluent annually, counted against ARSA's disposal right. Because CDCR's rights are derivative of ARSA's existing rights, the City must prioritize ARSA's discharges over those of CDCR's.

The 2007 Agreement remains in effect until 2037. The 2007 Agreement does contain limited termination provisions, but there are specific terms and conditions that must be strictly followed for such early termination due to the importance of the contractual relationship. Under Section 8a, if the City requests termination of ARSA's flows to the lower Henderson/Preston System, ARSA must be provided a five-year notice that meets specific conditions. Such notice



may only be given *after* the City and CDCR have resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course. On July 19, 2017, ARSA received a letter from the City requesting that ARSA terminate flows to the lower Henderson/Preston System. The letter claimed that the City's growth has made it possible for the City and CDCR to supply all the reclaimed water needed by the Castle Oaks Golf Course.

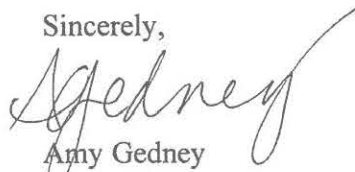
At the time of the City's 2017 letter, however, the provision of adequate reclaimed water for the Castle Oaks Golf Course had not been resolved. In fact, that issue remains unresolved today. The Central Valley Regional Water Quality Control Board ("Regional Board") has identified concerns with the quality of Mule Creek State Prison's wastewater, including the presence of volatile organic compounds ("VOCs") in the prison's discharge. The Regional Board first identified these issues in 2018, and today the legality and safety of the prison's wastewater remain unresolved. On October 21, 2021, the Regional Board ordered additional monitoring and reporting requirements for VOCs under the waste discharge permits for all the parties, including the City and ARSA's shared permit governing ARSA's flows and the City's tertiary plant, and separately, CDCR's permit governing the prison's wastewater treatment plant. Additional assessment by the Regional Board is needed to evaluate the water quality impacts of the prison's wastewater discharges. This assessment could result in a final determination that CDCR cannot discharge to the City. For these reasons, the City and CDCR have still not demonstrated that adequate reclaimed water is available for the golf course.

Moreover, CDCR is not a permitted discharger under the City and ARSA's shared permit, Water Reclamation Requirements Order No. 93-240. This permit only allows wastewater treatment and reuse based on the flows from ARSA's outfall system to Preston Reservoir. California Water Code Section 13264 and Order No. 93-240 require a Report of Waste Discharge to be filed with the Regional Board prior to any new discharge or making any material changes to any discharge. A material change includes the addition of major industrial waste discharges or discharges resulting in a change of the character of the waste. A Report of Waste Discharge must first be filed and evaluated by the Regional Board to ensure that the prison's discharges are in compliance with all water quality laws and regulations. No reports or evaluations were in place as of the City's 2017 letter, and to our knowledge, none are in place now.

The City has therefore not fulfilled the conditions under Section 8a of the 2007 Agreement required for ARSA to eliminate flows to the lower Henderson/Preston System. The City has not resolved the provision of adequate reclaimed water to the golf course, which includes obtaining all water quality permits or permit modifications required by state laws and regulations. The 2007 Agreement thus remains in full effect until 2037, and ARSA is legally permitted and will continue to discharge to the lower Henderson/Preston System.

I am certain we both agree that water quality is vital for the safety and preservation of our respective communities. We value our long-term partnership with the City and look forward to maintaining it through the life of the 2007 Agreement. While we are always willing to discuss solutions that are reasonable and fair to all Parties, we feel it is important for the City to understand that ARSA will continue to dispose of secondary effluent to the lower Henderson/Preston System, in accordance with the 2007 Agreement and state laws and regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Agedney", written in black ink.

Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

cc: ARSA Board



## EXHIBIT D

# *Amador Regional Sanitation Authority*

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*"Servicing Amador City, Martell, & Sutter  
Creek"*

December 3, 2021

## *Via Email and Certified Mail*

Patrick Covello  
Warden  
California Department of Corrections and Rehabilitation  
4001 Highway 104  
P.O. Box 409099  
Ione, CA 95640

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Mr. Covello:

This letter addresses the vitally important and ongoing wastewater disposal arrangement among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR") (collectively, "the Parties"). We are writing to confirm ARSA's right to dispose of secondarily treated wastewater through the lower Henderson/Preston System. For the reasons explained below, ARSA is legally permitted and will continue discharging secondary effluent to the lower Henderson/Preston System in accordance with its current contractual arrangements with the Parties.

Since 2007, the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement") has governed the Parties' rights and obligations to discharge wastewater through the Henderson/Preston System. As you are aware, the 2007 Agreement provides that ARSA may discharge, and the City *must* accept, annually up to 650 acre-feet of secondary effluent for disposal. CDCR may, solely through ARSA's existing outfall system and in strict compliance with its existing wastewater permit, discharge up to 350 acre-feet of secondary effluent annually, counted against ARSA's disposal right. CDCR's ability to discharge to the City under the 2007 Agreement is therefore derivative of and subordinate to ARSA's disposal right, not independent of it.

The 2007 Agreement remains in effect until 2037. Although there are limited rights to terminate the 2007 Agreement before 2037, CDCR has not taken the required steps to terminate, and the City of Ione has not effectively done so, for the reasons set forth in the attached letter from ARSA to the City, which letter is incorporated herein. Because no Party has effectively taken steps to end the 2007 Agreement early, it remains in effect until 2037, and ARSA is legally permitted and will continue to discharge to the lower Henderson/Preston System. Any actions taken by CDCR to prevent, reduce, interrupt, interfere with, or circumvent ARSA's rights to do so would be inconsistent with CDCR's contractual obligations to ARSA.

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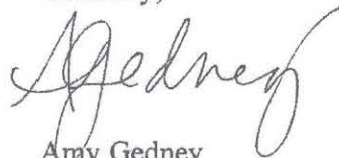
18 Main St., Sutter Creek, CA 95685 • Telephone: (209)267-5647 • Fax: (209)267-1655 • TTY: 711

*The City of Sutter Creek is an equal opportunity service provider and employer*

In addition, CDCR leases the Henderson/Preston System to ARSA in accordance with the 2007 Agreement under Ground Lease No. L-2070. The Lease terminates on September 18, 2037, to coincide with the termination date of the 2007 Agreement. The Lease acknowledges that CDCR leases to ARSA infrastructure that facilitates an essential utility service, and termination of ARSA's flows to the lower Henderson/Preston System would leave no alternative means for disposal. The Lease expressly recognizes that the Henderson/Preston System is part of a wastewater system, regulated under the California Water Code, and termination of the Lease is not practicable nor feasible as it would render an essential utility service inoperable. Any actions taken by CDCR to prevent, reduce, interrupt, interfere with, or circumvent ARSA's rights to discharge to the Henderson/Preston System would be inconsistent with CDCR's contractual obligations to ARSA under the Lease. In the event of any actual or threatened breach of the Lease agreement, ARSA may seek equitable injunctive relief from a court of competent jurisdiction.

We value our long-term partnership with CDCR and look forward to maintaining it through the life of the 2007 Agreement and the Lease. While we are always willing to discuss solutions that are reasonable and fair to all Parties, we feel it important for CDCR to understand that ARSA will continue to discharge secondary effluent to the lower Henderson/Preston System, prior to any discharges from CDCR, in accordance with the contractual arrangements among the Parties and state laws and regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Gedney", with a stylized flourish at the end.

Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

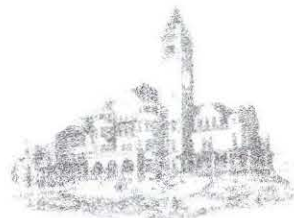
cc: ARSA Board

# EXHIBIT E



RECEIVED

City of Sutter Creek



January 19, 2022

Amador Regional Sanitation Authority  
Attn: Amy Gedney, General Manager  
18 Main Street  
Sutter Creek, CA 95685

Re: Lower Henderson/Preston Wastewater Disposal System

Dear Ms. Gedney,

The City of Ione is in receipt of your letter of December 3, 2021, in which you address wastewater disposal arrangements among the Amador Regional Sanitation Authority ("ARSA"), the City of Ione ("City"), and the California Department of Corrections and Rehabilitation ("CDCR").

When evaluating whether or not to send the 5 year notice the Ione City Council considered the cost to the Ione taxpayers, as is our fiduciary responsibility. It was determined that the losses Ione had incurred due to this contract could not continue. We reviewed our water resources and determined that we could meet our water obligations with our existing and future resources.

The City has successfully provided adequate reclaimed water for both Castle Oaks Golf Course over the past five years under our current permits and infrastructure. During the past few years, the City did not receive adequate flows from ARSA, was suffering from extreme drought conditions, and still managed to keep Castle Oaks Golf Course open with sufficient water.

Ione recognizes that ARSA may have some difficulty meeting the five-year deadline, and over the last four years Ione has reached out to ARSA for the status of your project. The Wastewater Committee discussed ARSA at its meetings and Ione staff reached out to ARSA with no response prior to your December 3, 2021, communication. The City is open to assisting ARSA with an extension of the five years however, this would require a new agreement with a new fee structure.

After a review of your letter the City disagrees with your analysis and reaffirms that the City intends to continue with our 2017 termination letter and cease services with ARSA as of July 19, 2022.

Sincerely,

Dan Epperson

Mayor, City of Ione

cc: Michael Rock, Interim City Manager  
Sophia R. Meyer, City Attorney  
Councilmembers Plamondon, Wratten, Rhoades

# EXHIBIT F



# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

January 28, 2022

## *Via Email and Certified Mail*

Patrick Covello  
Warden  
California Department of Corrections and Rehabilitation  
4001 Highway 104  
P.O. Box 409099  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

Dear Mr. Covello:

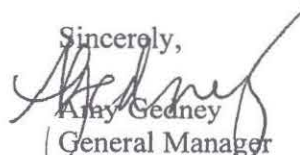
This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement, Waste Discharge Requirements Order No. 93-240, and Ground Lease No. L-2070 through at least 2037.

ARSA requires that its wastewater effluent will be accepted by the City prior to any effluent from CDCR. As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Moreover, any direct discharges from CDCR to the City are not permitted by the Central Valley Regional Water Quality Control Board ("Regional Board"), as required by California Water Code Section 13264. As such, any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement.

In addition, under Ground Lease No. L-2070, CDCR leases to ARSA infrastructure that facilitates an essential utility service, and termination of ARSA's flows through the lower Henderson/Preston System is not practicable nor feasible. In the event of any actual or threatened breach of the Lease agreement, ARSA may seek equitable injunctive relief from a court of competent jurisdiction.

We believe the above course of action is imperative for public health and safety. We look forward to working with CDCR to protect regional water quality.

Sincerely,

  
Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

cc: ARSA Board

# EXHIBIT G

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

January 28, 2022

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

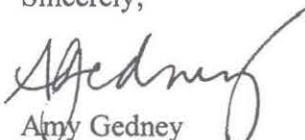
Dear Mr. Rock:

This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement and its Waste Discharge Requirements, Order No. 93-240, until at least 2037.

ARSA requires that the City will prioritize ARSA's wastewater effluent over any effluent from the California Department of Corrections and Rehabilitation ("CDCR"). As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Moreover, any direct discharges from CDCR to the City are not permitted by the Central Valley Regional Water Quality Control Board ("Regional Board"), as required by California Water Code Section 13264. As such, any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement.

We believe the above course of action is imperative for public health and safety. We look forward to working with the City to protect regional water quality.

Sincerely,



Amy Gedney  
General Manager  
Amador Regional Sanitation Authority

cc: ARSA Board

82456.00000\34582945.2

# EXHIBIT H

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

February 3, 2022

## *Via Email and Certified Mail*

Michael Rock  
Interim City Manager  
City of Ione  
1 East Main St.  
P.O. Box 398  
Ione, CA 95640

Re: ARSA Annual Wastewater Disposal

Dear Mr. Rock:

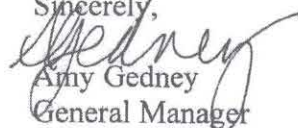
This letter concerns the Amador Regional Sanitation Authority's ("ARSA") annual wastewater flows to Preston Reservoir and the City of Ione ("City"). ARSA will deliver secondary effluent through the lower Henderson/Preston System in accordance with the water balance and ARSA's rights under the 2007 Agreement and its Waste Discharge Requirements ("WDRs"), Order No. 93-240, until at least 2037.

ARSA requires that the City will prioritize ARSA's wastewater effluent over any effluent from the California Department of Corrections and Rehabilitation ("CDCR"). As explained in our letter dated December 3, 2021, the 2007 Agreement provides that CDCR's rights to disposal are derivative of ARSA's existing rights. Direct discharges from CDCR to the City are not permitted by the WDRs. The only legally permissible way for the City to receive wastewater from CDCR is through ARSA, in full compliance with the WDRs and the 2007 Agreement. Any action taken to prevent, reduce, interrupt, interfere with, or circumvent ARSA from delivering its effluent to the City is a breach of the 2007 Agreement and a violation of the WDRs.

With respect to the City's January 19, 2022 letter, ARSA disagrees with the City's claims that it has successfully provided adequate reclaimed water to Castle Oaks Golf Course and that it did not receive adequate flows from ARSA. The City has not identified any valid factual or legal grounds for terminating the 2007 Agreement and the City would be in breach of the Agreement if it refuses to accept ARSA's deliveries as authorized under the Agreement. However, ARSA appreciates the City's offer to meet and discuss these issues. The parties should make a good faith attempt to resolve these issues through discussion and avoid unnecessary litigation.

ARSA's continued delivery of wastewater to the City is imperative for public health and safety. We look forward to working with the City to protect regional water quality.

Sincerely,



Amy Gedney  
General Manager

Amador Regional Sanitation Authority

cc: ARSA Board

# EXHIBIT I



RECEIVED

JUL 25 2022

City of Sutter Creek



## CITY OF IONE

1 E. MAIN STREET  
P.O. BOX 398  
IONE, CA 95640  
(209) 274-2412

July 20, 2022

Amy Gedney, General Manager  
Amador Regional Sanitation Authority  
18 Main Street  
Sutter Creek, CA 95685

Dear Amy:

Per your request on July 11, 2022, and our ongoing discussions about a long-term agreement between the City of Ione and ARSA I submit this letter with key points that are a basis for beginning formal negotiations on a long-term agreement with ARSA to accept wastewater effluent from Preston Reservoir to the City of Ione Tertiary Plant.

1. The new term will be 5 years with an option for both parties to extend for two additional 5-year terms for a total of 15 years
2. ARSA must have retention ponds to deal with years where water must be stored. Heavy rainfall years should not result in releasing too much water but rather controlling the balance through storage ponds.
3. Strongly recommend ARSA divert water from the creek. This will give ARSA more options and flexibility in balancing the water throughout the year for all parties.
4. Strongly recommended ARSA dredge the bottom of Preston Reservoir as soon as practically possible and no longer than two years from the approval date of this new agreement
5. The City of Ione will take the following range of acre feet per year from ARSA: 100-400
6. If the City rejects water from ARSA because of discharge violations that liability and cost is on ARSA to cure the problem
7. If ARSA cannot send the minimum 100 ac/ft per/year the financial penalty will be \_\_\_\_\_ for every acre foot not delivered

8. If the City of Lone does not take the minimum 100-acre ft/year the City is fined \_\_\_\_ foot every acre foot not taken if and only if the City can release the water to COGC without causing a violation of the City's WDR permit.
9. A flow meter must be installed at Preston Reservoir so that ARSA knows how much water it is discharging. This is required in ARSAs current WDR Permit
10. City strongly recommends ARSA cure the CDO currently on their WDR Permit

If the City and ARSA immediately embark on negotiating a new agreement then the five-year notice to eliminate all flows to the lower Henderson/Preston system as per Section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal will be suspended until such time the new agreement is approved by the City and ARSA. If no agreement is achieved within eighteen months of August 1, 2022, then the five-year notice to eliminate flows will take full force and effect on February 1, 2024.

This letter is meant to be a strong starting point to negotiate a very detailed and long-term agreement that is intended to be beneficial to all parties affected by the outcome of this hopefully very successful partnership with ARSA. All the items listed above are negotiable and nothing is set in concrete.

I look forward to beginning the process of negotiating a new agreement that will benefit the City of Lone, City of Sutter Creek, ARSA, COGC, CDCR and other affected parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Rock", with a long horizontal line extending to the right.

Michael Rock  
Interim City Manager  
City of Lone, CA

## EXHIBIT J

# *Amador Regional Sanitation Authority*



*"Servicing Amador City, Martell, & Sutter Creek"*

---

July 29, 2022

Mr. Michael Rock  
1 East Main Street  
P.O. Box  
Ione, CA 95640

SENT VIA EMAIL and CERTIFIED MAIL

Dear Michael:

Amador Regional Sanitation Authority ("ARSA") is in receipt of your July 20, 2022 letter.

As you know, ARSA has repeatedly objected to the City of Ione's ("City") attempted 5-year notice ("2017 Notice") under section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System ("2007 Agreement"). As recently as December 3, 2021, ARSA reiterated its position that, in no uncertain terms, City's supposed termination notice was void and invalid because it did not satisfy the conditions precedent for such a notice. The notice can only be given *after* the City and CDCR have resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course. For reasons further explained in that letter, no such resolution was made prior to the Notice.

Let me be clear, ARSA has always been, and continues to remain, even now, willing to embark on negotiating the terms of a potential new agreement consistent with the parties' existing rights under sections 18 and 20 of the 2007 Agreement. ARSA's position continues to be that the 2017 Notice is null, void, invalid, and of no legal force and effect and therefore, any purported "suspension" or extension of that illegal notice until Feb. 1, 2024 is also void. ARSA's desire and willingness to cooperate and explore a new long-term agreement with the City does not, in any way, mean or imply that ARSA accepts and agrees to unilaterally-invoked termination date of February 1, 2024. ARSA continues to reserve all rights with respect to its objections to City's 2017 Notice and lack of compliance with Section 8a; and furthermore, pursuant to section 21 of the 2007 Agreement, ARSA has made no express, explicit, or waiver of its rights under the existing 2007 Agreement and maintains that any termination notice to date has not complied with Section 8a and that any future notice must comply with Section 8a.

With those points being made, ARSA is, willing to, "immediately embark on negotiating a new agreement" consistent with section 18 and 20 of the existing 2007 Agreement and consistent with our recent discussions over the last four months.

Please be advised that should the City refuse wastewater from ARSA via Preston Reservoir, or otherwise prevents ARSA from conveying flow through the lower system, ARSA is prepared to seek all remedies available to it under law, as provided in Section 14 and 16 of the 2007 Agreement.

# *Amador Regional Sanitation Authority*



---

*"Servicing Amador City, Martell, & Sutter Creek"*

---

We trust that we have made our position very clear. ARSA will continue to meet and confer and explore improvements, but maintains its position that 2017 Notice is invalid and void and does not agree to any "suspended" notice until February 1, 2024.

Sincerely,

Amy Gedney  
General Manager

Cc: ARSA Board  
George Lee

# EXHIBIT K





## CITY OF IONE

1 E. MAIN STREET  
P.O. BOX 398  
IONE, CA 95640  
(209) 274-2412

August 16, 2022

Amy Gedney, General Manager  
Amador Regional Sanitation Authority  
18 Main Street  
Sutter Creek, CA 95685

**SUBJ: Response to ARSA Letter dated July 29, 2022**

Dear Amy:

The City of Ione is in receipt of your letter dated July 29, 2022.

Your letter purportedly responds to the letter from the City of Ione dated July 20, 2022.

However, your letter did not respond to any of the ten talking points the City of Ione offered as a starting point to negotiating a long-term Agreement with ARSA. Instead, your letter focused on ARSA's objection to the 5-Year Notice the City of Ione sent to ARSA in 2017.

It is ARSA's assertion that the 5-Year Notice is "void and invalid because it did not satisfy the conditions precedent for such a notice". However, if ARSA's assertion is correct (which the City of Ione does not believe) then ARSA could have enacted Section 14 of the September 18, 2007, Agreement which allows for one party to give written notice to the other party that a breach of the Agreement has occurred. However, this did not occur, and ARSA did not send a written notice to the City asserting a breach within ten days of the five-year notice which states that ARSA will eliminate flows to the lower Henderson/Preston System.

Thus, it is the City of Ione's position that the five-year notice is legal and valid and as of July 31, 2022, the City of Ione is not obligated to receive any wastewater from ARSA's system. However, the City wishes to cooperate with ARSA and CDCR in balancing the regional wastewater and will participate in crafting a long-term agreement that can satisfy all parties.

ARSA's desire to have a meeting to discuss water balances (emails from August 9-15, 2022) is puzzling. The City and ARSA have worked together for decades and suddenly there is an urgency to discuss water balances? The City sent its five-year notice five years ago last month and ARSA only started meeting with the City of Lone and COGC a few months ago. Negotiating in good faith also includes negotiating in a timely and professional manner. This simply has not occurred with ARSA. ARSA continues to threaten litigation against the City of Lone but now demands an urgent meeting to discuss the water balances.

The City of Lone's position has been consistent. The City is willing to cooperate with ARSA in order to assist ARSA with its need to balance wastewater throughout the region. However, ARSA is not in a position to demand anything. The City of Lone is not obligated (as of August 1, 2022) to accept any wastewater from ARSA. Thus, the City's cooperation is voluntary, and ARSA should act accordingly.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Rock', with a long horizontal line extending to the right.

Michael Rock  
Interim City Manager  
City of Lone, CA

EXHIBIT L

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

September 8, 2022

Michael Rock  
Interim City Manager  
City of Ione  
1 E. Main Street  
P.O. Box 398  
Ione, CA 95640

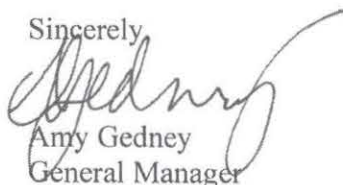
RE: Notice of Breach of Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System

Dear Michael:

Pursuant to the Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September 18, 2007 ("Agreement"), the City of Ione ("City") is obligated annually to accept a specified amount of wastewater from the Amador Regional Sanitation Authority ("ARSA") to the lower Henderson/Preston System until 2037. Although the City may terminate this obligation upon five years' notice, such right is expressly conditioned on the City (and the California Department of Corrections and Rehabilitation) having resolved how to provide adequate reclaimed water for the Castle Oaks Golf Course, which includes, but is not limited to, obtaining any necessary water quality permits or permit modifications required by state law. As detailed in my December 3, 2021, correspondence, a copy of which is enclosed for your reference, due to the City's ongoing failure to provide adequate reclaimed water for the golf course, any notice issued to date purporting to terminate the City's obligation to accept wastewater from ARSA is void and of no force and effect.

Over the past several months, the City has on more than one occasion refused to accept wastewater from ARSA, but later accepted those discharges. Since August 31, 2022, however, the City has refused to accept any wastewater from ARSA. Pursuant to paragraph 14 of the Agreement, ARSA provides this written notice that the City's refusal to accept wastewater from ARSA constitutes a breach of the Agreement, and ARSA is hereby meeting and conferring with the City in an attempt to bring the City into compliance with the Agreement. If the City continues to refuse to accept wastewater from ARSA in accordance with the Agreement, ARSA will have no choice but to pursue any and all available remedies under the law against the City in order to enforce ARSA's rights under the Agreement.

Sincerely,



Amy Gedney  
General Manager

Amador Regional Sanitation Authority

1 SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
2 MATTHEW L. GREEN, Bar No. 227904  
matthew.green@bbklaw.com  
3 BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
4 San Diego, California 92101  
Telephone: (619) 525-1300  
5 Facsimile: (619) 233-6118

6 FRANK A. SPLENDORIO, Bar No. 272601  
frank.splendorio@bbklaw.com  
7 BEST BEST & KRIEGER LLP  
500 Capitol Mall, Suite 1700  
8 Sacramento, California 95814  
Telephone: (916) 325-4000  
9 Facsimile: (916) 325-4010

10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF AMADOR  
15

16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By 

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF DONALD BROWN IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022



1 I, Donald Brown, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

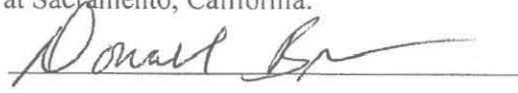
4 2. I am the President of Aquality Water Management ("Aquality") and have more than  
5 35 years of experience in the operations of wastewater treatment plants in California. Throughout  
6 my career, my positions have ranged from wastewater treatment plant operator to wastewater  
7 treatment facilities manager to operations consultant. I have been responsible for planning,  
8 organizing, and directing the operation and maintenance of wastewater treatment plants up to 30  
9 million gallons per day. Through Aquality, I have provided operational assistance and consulting  
10 services to the Amador Regional Sanitation Authority ("ARSA") for several years.

11 3. Among other services, I have assisted ARSA with various issues regarding the  
12 discharge of wastewater from Preston Reservoir into the City of Lodi's ("Lodi") Castle Oaks Water  
13 Reclamation Plant for tertiary treatment. Since March 2022, Lodi has periodically complained about  
14 odor issues with the water from Preston Reservoir allegedly caused by high levels of hydrogen  
15 sulfide. Since that time, ARSA has been treating the water to address any odor issues.

16 4. I have reviewed correspondence from West Yost dated September 22, 2022,  
17 addressed to the Central Valley Regional Water Quality Control Board ("Regional Board") on  
18 behalf of Lodi regarding the odor issues, among other related topics. On September 27, 2022, I  
19 submitted a response on behalf of ARSA to the Regional Board reflecting my opinions regarding  
20 the matter, a true and correct copy of which is attached as Exhibit "A" hereto.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing  
22 is true and correct.

23 Executed this 28<sup>th</sup> day of September 2022, at Sacramento, California.

24   
25 DONALD BROWN  
26  
27  
28



# EXHIBIT A

September 24, 2022

Mr. John Baum

Assistant Executive Officer

Central Valley Regional Water Quality Control Board

11020 Sun Center Drive, No. 200

Via email: [John.Baum@waterboards.ca.gov](mailto:John.Baum@waterboards.ca.gov)

RE: West Yost letter dated 9/20/2022

**SUBJECT: City of Lone Acceptance of Secondary Effluent from Preston Reservoir into the City of Lone Tertiary Plant.**

Dear Mr. Baum:

Aquality Water Management (Aquality) has been retained to respond to the West Yost letter regarding concerns over acceptance of the treated wastewater from the Preston Reservoir into the City of Lone Tertiary Treatment Plant. Aquality is familiar with the Amador Regional Sanitation Authority (ARSA) and the City of Sutter Creek Wastewater Treatment Plant having provided operational assistance and consulting services over the past several years.

While we understand the concerns over the nuisance odor situation, we feel that the cause and nature of the odors have not been thoroughly investigated and may have been exacerbated by the actions taken by the Operations staff at Lone in an attempt to mitigate their operational concerns. The secondary effluent from the Sutter Creek Wastewater Treatment Plant discharged into the reservoir was fully compliant with the wastewater discharge permit as the board can see from the reports submitted. Therefore, the secondary effluent would be highly treatable with a tertiary treatment process and thus, ARSA would not be directly responsible for the issues.

The concerns that ARSA and Sutter Creek have are of a more serious nature. Should the City of Lone continue to refuse to treat the water the reservoir will continue to rise and could potentially cause encroachment of the freeboard level cited in the permit and could, if a seasonally high rainfall event occurs, cause the reservoir to overflow. The West Yost letter documents the flow data and chemical usage and effort to measure the odors, but there is no mention of any investigation into the condition of the tertiary filters. The filter media in the system diminishes over time due to the abrasion that occurs during the backwash cycle. As the media gets smaller it compacts tighter and the smaller particles that are not flushed out of the

filter settle onto the media surface which further restricts the flow through the filter and increases the backwash frequency further reducing the treatment volume. Overuse of polymers also is known to cause clumping of the media which also reduces the flow.

In AQUALITY's experience any increase in frequency of backwashing in the filter would require verification of the condition of the media, investigation of the effectiveness of the polymer being used, and/or investigating any significant change in the effluent quality from all sources. Should the City of Lone refuse to accept the water from the reservoir as agreed in the ARSA documents without verifying the condition of their process equipment, their actions would be contributing to a potentially more serious event.

We will be seeking additional information regarding the operation and maintenance of the City of Lone Tertiary Treatment Plant and the basis of design to further evaluate our concerns.

The Preston Reservoir served the City of Sutter Creek, CDCR Mule Creek, ARSA for many years as well as the City of Lone to meet the irrigation supply for the Castle Oaks Golf Course. The reservoir also collects storm water runoff. When the wet season arrives each year, the irrigation needs of the golf course are reduced and water production ceases. Historically, intermittently taking flows from Preston Reservoir has created issues caused by sedimentation when flows are stopped at the tertiary plant. When flow returns there were short term periods where these solids were noticed but not long enough to create issues. When flows are stopped for longer periods, such as what has recently been occurring, larger amounts of sedimentation may be building up contributing to this issue.

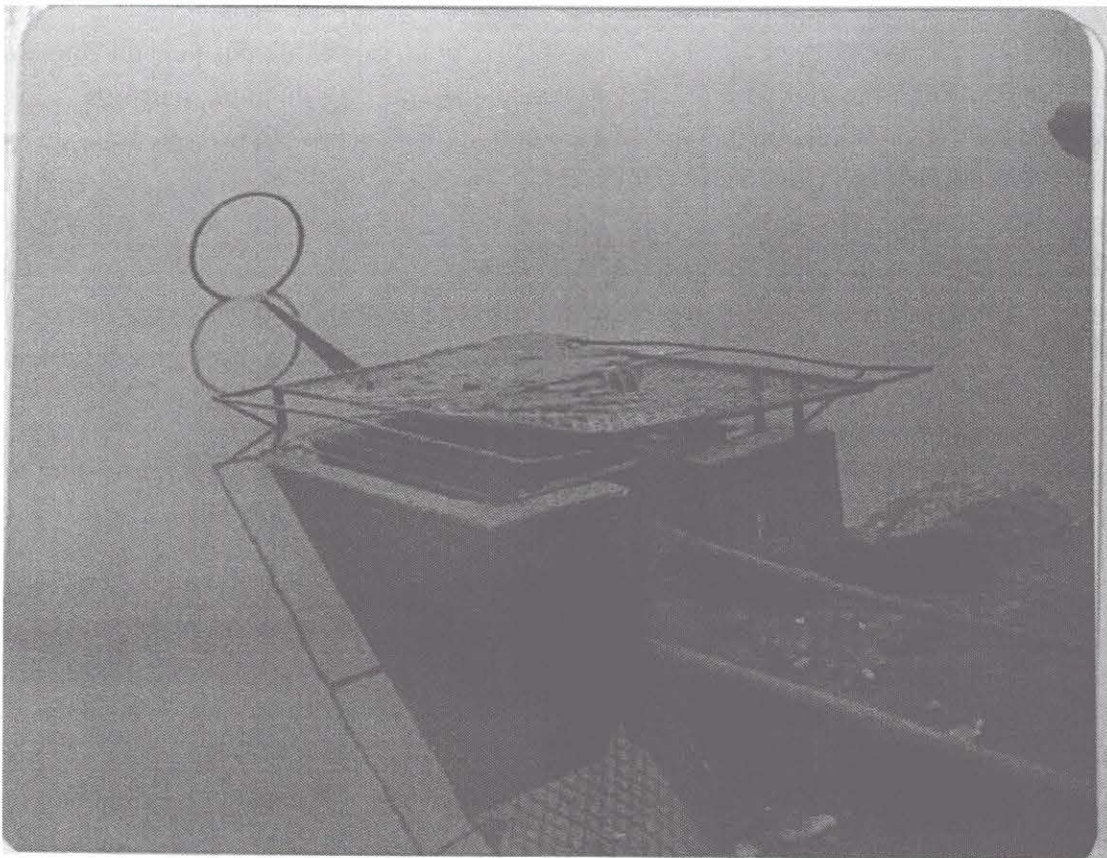
The reservoir contains enough dissolved oxygen to prevent hydrogen sulfide from significantly forming, however I suspect that the organic material settling in the pipeline during stoppages could consume the dissolved oxygen and could result in formation of hydrogen sulfide over time creating some odor as the line flushes out the sediment and could impact the throughput through the filter for a short time.

The West Yost letter infers that all of the issues result from the actions of ARSA and or Sutter Creek when in fact many of these are not. The City of Sutter Creek's wastewater is fully compliant disinfected secondary effluent, which is fully filterable in a properly operated and maintained tertiary filter. Once the wastewater enters the ARSA pipeline their responsibility changes to monitoring the system between the plant and until it enters the Preston reservoir. Once it is there, the only control is the discharge into the tertiary treatment plant which is solely controlled by the City of Lone. The operation and maintenance is then the responsibility of the City of Lone.



From the time the secondary treated effluent is discharged into the pipeline until the unused portion enters Preston reservoir it flows by gravity into the reservoir. The reservoir also receives rainfall and runoff from the surrounding upgradient areas. This flow would include organic and inorganic material flowing off the surface into the reservoir which is a natural occurrence in surface water open storage although it typically is removed by the tertiary system, which is under control of the City of Lone. However, the only information included in the letter does not identify what other measures were taken to investigate the cause of the odors or what was done to investigate the filter performance or polymer used other than increasing the dose.

ARSA and Sutter Creek have conferred with the City of Lone on ways to remove the water from the reservoir nearer the surface by modifying the intake inside the reservoir, but this action can't be taken easily until the reservoir is very low. This action requires cooperation from all parties working through the current situation in spite of the difficulties. See Picture 1. below.



Picture 1 demonstrates the outlet sluice gate currently under water which could be modified to accept water from nearer the surface to minimize sediment from the lower elevation of the reservoir. Notice the accumulation of solids on the coarse screen.

We ask that the RWQCB consider these opinions before taking an action that does not consider all of the potential risks. It is our hope that all of the parties work together to resolve the collective concerns and find a reasonable solution that fairly meets the needs of all.

Sincerely,

Aquality Water Management

A handwritten signature in black ink that reads "Donald Brown". The signature is written in a cursive style with a long, sweeping underline.

Donald Brown, President

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FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By [Signature]

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF GARY GHIO IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

[Signature]



1 I, Gary Ghio, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I have been a licensed engineer in the State of California for 41 years with extensive  
5 experience in managing wastewater disposal systems. Since 2011, I have been the Engineer for the  
6 Amador Regional Sanitation Authority ("ARSA"), a joint powers agency responsible for providing  
7 wastewater conveyance and disposal services to the Cities of Amador City and Sutter Creek and  
8 the County of Amador.

9 3. Wastewater from the City of Sutter Creek, Amador City, and the Martell community  
10 is treated by the Sutter Creek Wastewater Treatment Plant ("Sutter Creek WTP"), which is owned  
11 and operated by the City of Sutter Creek. Disinfected secondary effluent from the Sutter Creek  
12 WTP is conveyed through a series of pipelines and reservoirs, known as the "Henderson/Preston  
13 System," and ultimately to Preston Reservoir for discharge to the City of Lone ("Lone") for tertiary  
14 treatment at its Castle Oaks Water Reclamation Plant ("Castle Oaks WRP") for irrigation use at the  
15 Castle Oaks Golf Course ("Golf Course").

16 4. The Henderson/Preston System is owned by the California Department of  
17 Corrections and Rehabilitation ("CDCR"). Since approximately 1977, CDCR has leased the  
18 pipelines and reservoirs that make up the Henderson/Preston System to ARSA. A true and correct  
19 copy of the current lease between ARSA and CDCR, Ground lease No. L-2070 ("Lease"), executed  
20 on February 23, 2009, is attached as Exhibit "A" hereto.

21 5. Under the Lease, ARSA uses the Henderson/Preston System to transport water and  
22 wastewater pursuant to a separate agreement between ARSA, CDCR, and Lone, identified as the  
23 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September  
24 18, 2007 ("Wastewater Agreement"), a true and correct copy of which is attached as Exhibit B to  
25 the Lease.

26 6. The Wastewater Agreement governs the wastewater rights and obligations among  
27 ARSA, CDCR, and Lone, as well as the relationship and respective rights between ARSA, CDCR,  
28 and Lone with regard to the Henderson/Preston System. The Wastewater Agreement obligates Lone

1 to accept 650 acre feet (or 211,803,427 gallons) of secondarily treated wastewater from Preston  
2 Reservoir annually, specifically up to 95 acre feet (or 30,955,886 gallons) of wastewater per month  
3 from April through September and up to 10 acre feet (or 3,258,514 gallons) of wastewater per  
4 month from October through March.

5 7. The Wastewater Agreement provides for up to 95 acre feet (or 30,955,886 gallons)  
6 of wastewater per month from April through September because those months typically fall within  
7 the irrigation season, i.e., when the wastewater is needed due to a lack of rain. The Wastewater  
8 Agreement only provides for a maximum of 10 acre feet (or 3,258,514 gallons) of wastewater per  
9 month from October through March because those months generally fall within the rainy season,  
10 i.e., when limited water is needed for irrigation. Based on my experience since the Wastewater  
11 Agreement was entered into roughly 15 years ago, however, the respective irrigation and rainy  
12 seasons generally begin roughly one month later than what is reflected in the Wastewater  
13 Agreement, meaning the irrigation season will likely last through at least October, depending on  
14 the commencement of the rainy season.

15 8. The Central Valley Regional Water Quality Control Board's ("Regional Board")  
16 Water Reclamation Requirements ("WRRs") Order No. 93-240 regulates the Castle Oaks WRP  
17 and flows thereto from the Henderson/Preston System. WRRs Order No. 93-240 only permits  
18 wastewater treatment and reuse based on the flows to Preston Reservoir through the  
19 Henderson/Preston System. WRRs Order No. 93-240 also names only ARSA, Ione, and Portlock  
20 International, Ltd. (the Golf Course) as the dischargers. Ione has received no other water quality  
21 permits or permit modifications from the Regional Board that allow Ione to provide reclaimed water  
22 to the Golf Course in any manner other than through the Henderson/Preston System from Preston  
23 Reservoir. A true and correct copy of WRRs Order No. 93-240 is attached as Exhibit "B" hereto.

24 9. Pursuant to WRRs Order No. 93-240, ARSA can store a maximum of 229 acre feet  
25 of water (or 74,619,977 gallons) in Preston Reservoir, which lies within two feet of the freeboard  
26 (i.e., the vertical distance between the reservoir water surface and the crest of the reservoir's  
27 embankment). Although such capacity would exceed WRRs Order No. 93-240, at 270 acre feet (or  
28 86,350,628 gallons), the dam at Preston Reservoir will overtop and wastewater will overflow from

1 the Reservoir.

2 10. In the event Preston Reservoir spills over, or the dam does not hold, the wastewater  
3 will flood a nearby Cal Fire Academy property and then run through a nearby creek, Mule Creek,  
4 and into the residential subdivision surrounding the Golf Course. The flooding and discharge of  
5 disinfected secondary effluent into Mule Creek and onto residential property poses significant  
6 public health and water quality contamination issues, as disinfected secondary effluent contains  
7 harmful pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites. Although  
8 the wastewater that is conveyed into Preston Reservoir through the Henderson/Preston System has  
9 undergone secondary treatment at the Sutter Creek WTP, local runoff and waterfowl contribute to  
10 the bacteria in Preston Reservoir. Attached as Exhibit "C" hereto is a true and correct copy of the  
11 Preston Dam Break Inundation Map, which depicts the areas that would be impacted with flooding  
12 of disinfected secondary effluent in the event Preston Reservoir spills over.

13 11. Based on Preston Reservoir's current amount of 115 acre feet (or 37,472,914  
14 gallons) of wastewater, in the event of a substantial, upcoming rainy season in the region, such as  
15 one that includes a 100-year storm event like that experienced in 2017, Preston Reservoir will reach  
16 its permitted capacity in early March 2023, and will spill over in April 2023, before the end of the  
17 anticipated rainy season. Water balance is required by the Regional Board in order to verify that  
18 the system at issue has sufficient capacity for all flows under a 1 in 100 year storm season scenario.  
19 Per Regional Board requirements, systems must be able to treat, store, and dispose of all flows  
20 under the 1 in 100 year scenario each year.

21 12. In the past, Lone's Castle Oaks WRP has treated 1.2 million gallons (or 3.68 acre  
22 feet) per day. In order to avoid the grave consequences that will ensue in the event Preston Reservoir  
23 overflows, it is imperative that Lone immediately begin accepting at least 500,000 gallons (or 0.15  
24 acre feet) of wastewater from ARSA from Preston Reservoir. Based on my modeling, the  
25 acceptance of at least 500,000 gallons for at least 30 days should be sufficient to avoid Preston  
26 Reservoir spilling over before the end of the upcoming rainy season, depending on the extent and  
27 duration of the rainy season. The only viable option for ARSA to discharge wastewater from the  
28 Preston Reservoir is to discharge the water to the Castle Oaks WRP; no other viable options exist.

1           13. Ione has expressed an unwillingness to accept wastewater from Preston Reservoir  
2 on the grounds that the water is allegedly high in hydrogen sulfide, which could cause odor issues  
3 at the Castle Oaks WRP and the Golf Course, and that the water purportedly has high turbidity (i.e.,  
4 cloudiness), which may cause treatment difficulties.

5           14. On September 9, 2022, the Regional Board issued correspondence to ARSA, Ione,  
6 and the Golf Course addressing the issue, a true and correct copy of which is attached as Exhibit  
7 "D" hereto. Among other items, the Regional Board's September 9, 2022, letter stated in no  
8 uncertain terms that "the capacity issues at Preston [Reservoir] are presenting an even greater risk  
9 to water quality and public health than potential nuisance concerns related to the treatment of  
10 wastewater from Preston [Reservoir] at Ione's [Castle Oaks WRP]."

11           I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct.

13           Executed this 28<sup>th</sup> day of September 2022, at Sutter Creek, California.

14 

15 GARY GHIO  
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# EXHIBIT A

**GROUND LEASE**

Lease No.: L-2070

Lessee: Amador Regional Sanitation Authority

**LEASE COVERING PREMISES LOCATED AT****Mule Creek Prison and Preston Youth  
Correctional Facility****Amador County****AGENCY****Department of Corrections and Rehabilitation****REAL PROPERTY NOS.: 43 and 1575**

This Lease, dated for reference purposes only, January 1, 2009, by and between the State of California, acting by and through the Director of General Services (DGS), with the consent of the California Department of Corrections and Rehabilitation (CDCR), hereinafter collectively referred to as STATE, and the Amador Regional Sanitation Authority (ARSA), a joint powers authority, hereinafter referred to as LESSEE.

**RECITALS**

WHEREAS, CDCR has under its jurisdiction certain real properties located in the County of Amador, State of California, commonly known as the Mule Creek State Prison (MCSP) and the Preston Youth Correctional Facility, formerly known as Lone Youth Authority, and hereinafter referred to as "Preston"; and

WHEREAS, pursuant to Government Code (GC) Section 14672.100, the Director of the Department of General Services, with the consent of CDCR, may lease real property appurtenant to or part of Preston, which real property is located in Amador County and further described in this Lease to ARSA (LESSEE) for a term not to exceed thirty (30) years and at a rate of one dollar (\$1.00) per year for its continued use as a wastewater delivery and disposal system; and

WHEREAS, CDCR owns a series of pipelines and reservoirs, each of which interconnect to allow the transport of water and or wastewater, which is known as Henderson/Preston System. The Henderson/Preston System, hereinafter referred to as the "Premises", is depicted in "Supplement #2 to Appendix L of Amador County Wastewater Management Plan", dated November 1977, and hereinafter referred to as the "Water Plan". Per the Water Plan, said Premises is composed of an upper element and a lower element. The upper element consists of the area from the outfall of the Sutter Creek Treatment Plant to Preston, including all pipelines, rights of way, reservoirs, and water rights. The lower element includes the components that lie below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir. Said Water Plan defines and illustrates the elements of the Henderson/Preston System, is marked Exhibit "A", consists of two (2) pages and is attached hereto and by this reference made a part hereof; and

WHEREAS, the City of Lone, LESSEE and CDCR, entered into the "Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System", hereinafter referred to as "Agreement for Wastewater", dated September 18, 2007. Said Agreement governs the wastewater disposal rights and obligations among the parties to the Agreement, is marked Exhibit "B", which consists of nine (9) pages, and is attached hereto and by this reference made a part hereof; and

WHEREAS, LESSEE currently occupies the Premises per the "Agreement for Wastewater Management" dated March 22, 1977, which agreement shall be superseded by this Lease and the Agreement for Wastewater; and

WHEREAS, STATE is willing to lease the Premises to the LESSEE, and LESSEE is willing to lease the Premises from STATE, on the conditions set forth herein.

**NOW, THEREFORE**, it is hereby mutually agreed as follows:



**WITNESSETH****DESCRIPTION**

1. STATE does hereby lease to LESSEE, and LESSEE hereby hires from STATE, the Premises, as further described and depicted in the Water Plan, Exhibit "A" to this Lease.

**TERM**

2. The term of this Lease shall be for a period of twenty-nine (29) years eight (8) months to commence on January 1, 2009, and shall terminate on September 18, 2037, to coincide with the termination date of the Agreement for Wastewater.

**USE**

3. (a) LESSEE agrees to use the leased Premises to transport water and wastewater through the Premises pursuant to the Agreement for Wastewater, attached hereto as Exhibit "B", and by this reference made a part hereof.

(b) All activities upon the Premises will be conducted hereunder only in a manner which will not interfere with the orderly operation of the MCSP and Preston.

**LESSEE'S  
OBLIGATION FOR  
WATER  
DIVERSION**

4. (a) LESSEE agrees to annually divert a minimum of 250 acre/feet of water and a maximum of 1,100 acre/feet, from the Sutter Creek point of diversion in order to maintain STATE's water rights, as is more particularly described in the Water Plan, Exhibit "A" to this Lease. STATE reserves all of its water rights including the water rights for diversion from Sutter Creek at a maximum level of 1,100 acre/feet; and

(b) LESSEE shall maintain and supply upon reasonable request documentation of water diversion rates. Said documentation shall be sent to:

Department of Corrections and Rehabilitation  
Facilities Management Branch  
9838 Old Placerville Road, Suite B  
Sacramento, California 95827

(c) STATE reserves its claim to receive not less than 250 acre/feet of water annually for use at Preston.

**RENT**

5. The first annual rent payment shall be paid by the LESSEE in the amount of ONE DOLLAR AND 00/100s (\$1.00), due and payable on January 1, 2009. Rent shall be payable annually in advance for the duration of the Lease, or at the LESSEE's option, shall be paid in one lump sum in advance.

**All rent payments shall be addressed and delivered to:**

Department of General Services  
Accounts Receivable PAL (L-2070)  
P.O. Box 989053  
West Sacramento, CA. 95798-9053

**FEE**

6. LESSEE will reimburse DGS for its costs related to the lease, including, but not limited to, any survey costs, title transfer fees, administrative costs, and department staff time. DGS will invoice for the fees and payment shall be made to DGS at the address shown above and shall be made by February 1, 2009.

**LESSEE'S ACCESS  
RIGHTS**

7. During the term of this Lease, STATE hereby grants to LESSEE and its contractors, agents, employees, representatives or licensees, the non exclusive temporary right to access, at any and all times and at any and all places, upon STATE lands and easements identified as the Premises. LESSEE has acquired or shall acquire all access rights for the lands not owned by STATE, at LESSEE's own expense.

**CONDITION  
OF PREMISES**

8. (a) LESSEE has visited and inspected said Premises and it is agreed that the Premises stated herein, and on the attached Exhibit "A", is not described using a legal description and that the description is approximate. It is also acknowledged by all parties to this Lease, that the Premises will be leased "as-is" and the STATE does not warrant or guarantee the condition of the system, its pipelines, ponds, dams, equipment and appurtenances included hereunder.

(b) LESSEE agrees, pursuant to the "Surrender of Premises" clause of this Lease, to surrender up to STATE the Premises with any real property improvements therein, in at least the same condition as when received, reasonable use and wear thereof and damage by act of God, or by the elements excepted.

**TERMINATION  
AND INJUNCTIVE  
RELIEF**

9. The parties to this Lease hereto recognize that the Premises leased hereunder is part of a wastewater system, regulated under the California Water Code, and that termination of this Lease is not practicable nor feasible as it would render an essential utility service inoperable, with no alternate means readily available to STATE and LESSEE to dispose of their effluent that is not in violation of their other permit obligations. Therefore, the parties to this Lease have deleted any reference herein to termination of this Lease for breach, and instead expressly agree that injunctive relief to cure any actual or threatened breach is appropriate, and agree that either party shall be entitled to seek equitable injunctive relief from a court of competent jurisdiction to enforce compliance with the obligations hereunder. Neither party shall be entitled to defend such action on the basis that injunctive relief is improper, or that monetary damages are adequate. In the event of a violation of an injunctive order issued under this provision, in a subsequent proceeding to enforce the injunction, a court may, should it deem it appropriate, issue an order terminating the lease thereafter, on such terms as may be just and which will not work undue hardship on the parties to this Lease.

**HOLD OVER**

10. Any holding over after the expiration of said term or any extension thereof, with the written consent of STATE, shall be deemed a tenancy only from month to month. Otherwise, the terms and conditions specified in lease shall remain applicable.

**UTILITIES**

11. LESSEE agrees to pay at its sole cost and expense any and all water, electric, gas and other utility charges or any other charges payable in connection with LESSEE's use of said Premises during the term of this Lease. No utilities will be provided by STATE and STATE assumes no liability for the existence or nonexistence of utilities.

**REGULATION  
BY STATE**

12. LESSEE agrees to cooperate with the MCSP and or Preston to ensure that activities conducted on the Premises, or persons brought onto the Premises to conduct such activities, do not interfere with the orderly operation of the facilities.



**AGREEMENT TO  
REGULATE**

13. LESSEE hereby agrees to continue to operate the Premises in accordance with those guidelines found within the Agreement for Wastewater as outlined in the attached Exhibit "B".

**IMPROVEMENTS**

14. (a) STATE hereby grants to LESSEE the right to, at its sole cost and expense, improve the Premises. Said improvements include but are not limited to, installing, operating, maintaining, repairing and removing and or demolishing components of the wastewater system. Additionally, LESSEE shall keep the Premises fully functional and operational, in accordance with generally accepted and recommended practices and procedures and in compliance with all applicable federal, state and local laws and regulations, any and all improvements including, but not limited to any pipelines, valves and valve boxes, ponds, dams, equipment, pipes and pipelines, valves, wells, pumps, electrical panels, meter socket and wiring or other improvements existing on the Premises or constructed upon the Premises by LESSEE.

(b) LESSEE hereby assumes, at its sole expense; without limitation, the cost of any necessary improvements as defined in paragraph (a) immediately preceding this paragraph of this Lease, as well as environmental impact reports, engineering reports, government permits, or any other applicable regulatory compliance items.

(c) Prior to making any needed improvements to the Premises, LESSEE shall submit plans, specifications, and/or drawings, as applicable, in writing to the STATE. LESSEE shall receive STATE's written consent to proceed with such improvements. Said consent will not be unreasonably withheld.

(d) LESSEE agrees that in no event shall STATE be required to perform any maintenance on or make repairs or alterations to the leased Premises of any nature whatsoever.

(e) When making any necessary excavation on the Premises, LESSEE shall make such excavation in a manner that will cause the least damage to the surface of the ground, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as existed prior to said excavation as practicable.

**LIENS**

15. (a) During continuance in force of this Lease, LESSEE shall keep the leased Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by LESSEE and shall indemnify, hold harmless and defend STATE from such liens and encumbrances arising out of any work performed or materials furnished by or at the direction of LESSEE or contractors of LESSEE. Notice is hereby given that STATE shall not be liable for any work or materials furnished to LESSEE on credit and no mechanic's or other lien for any such work or materials shall attach to or affect STATE's interest in the leased Premises based on any work or materials supplied to LESSEE or anybody claiming through LESSEE. LESSEE shall within thirty (30) days after being furnished a notice of filing of any such lien, take action, whether by bonding or otherwise, to remove or satisfy any such lien.

(b) STATE shall have the right at all times to post and keep posted on the leased Premises any notices, that STATE deems proper for its protection and the protection of the leased Premises and STATE from liens. If, nevertheless, any

such lien shall be recorded, LESSEE shall, within sixty (60) days after notice from STATE, pay, settle, or otherwise release such lien, or deposit into escrow with a reputable bank or trust company in California a sum sufficient to satisfy such lien, in full. In the event of unsuccessful termination of any litigation in connection with such lien and under the terms of which it shall be obligated to pay such lien upon the unsuccessful termination of such litigation, then, upon the failure of LESSEE to comply with said requirements, STATE may pay or otherwise dispose of said lien, or defend, settle, or compromise any lawsuit brought to foreclose the same, in its sole discretion, and all amounts so paid by it or any loss sustained by STATE on that account, including reasonable amount for its attorney's fees, shall be repaid to STATE and shall be in addition to any other payments by way of rents, or otherwise, required under the terms of this Lease. A failure to pay any such sum within thirty (30) days after mailing of bill therefore to LESSEE shall constitute a breach of this Lease.

**NOTICES**

16. (a) All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.

(b) All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00a.m. and 5:00p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

	To the LESSEE:	ARSA Attn.: Rob Duke General Manager 18 Main Street Sutter Creek, CA 95685 (209) 267-5647 (phone)
STATE:	To the DGS:	Department of General Services Real Estate Services Division-SOLD (L-2070) 707 Third Street, MS 505 Post Office Box 989052 West Sacramento, California 95798-9052 (916) 375-4025 (phone)
	To CDCR:	California Department of Corrections Attn.: Warden Mule Creek State Prison 4001 Highway 104 Sutter Creek, CA 95685 (209) 274-5225 (phone)
		California Department of Corrections Attn.: Superintendent Preston Youth Correctional Facility (PYCS) 201 Waterman Road Ione, CA 95640



**NOTICES  
(CONTINUED)**

(209) 274-8102 (phone)

(c) The address to which notices may be mailed as aforesaid to either party, may be changed by written notice given by subject party to the other, as hereinbefore provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

**SUBLETTING**

17. LESSEE shall not assign this Lease in any event and shall not sublet the leased Premises or any part thereof and will not permit the use of the leased Premises by anyone other than the LESSEE without prior written consent by the STATE.

**RECOVERY OF  
LEGAL FEES**

18. If action is brought by any parties to this Lease for any breach hereof, or to restrain the breach of any agreement contained herein, the prevailing party in such action shall be entitled to the amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

**PARTNERSHIP  
DISCLAIMER**

19. LESSEE, and any and all agents and employees of LESSEE, shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained shall be construed as constituting the parties to this Lease herein as partners.

**HOLD HARMLESS**

20. (a) This Lease is made upon the express condition that STATE is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of STATE.

(b) LESSEE agrees to defend, indemnify and hold harmless STATE from all liability, loss, cost or obligation on account of or arising out of LESSEE's use and/or occupancy of the Premises during the Lease term or any such injury or loss, however occurring.

(c) LESSEE further agrees to provide necessary Workers' Compensation Insurance for all employees of LESSEE upon said Premises at the LESSEE's own cost and expense.

**INSURANCE**

21. STATE acknowledges that LESSEE is self-insured in whole or in part as to any of the below described types and levels of coverage. LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. Said acknowledgment shall contain the STATE Lease Number, L-2070. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this "Insurance" clause pertaining to policies of insurance in regard to those types and levels of insurance as follows:

**COMMERCIAL GENERAL LIABILITY**

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising

injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services, LESSEE, and their officers, agents, employees and servants as additional insureds, but only insofar as the operations under the Lease are concerned.

#### **AUTOMOBILE LIABILITY**

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned.

#### **WORKERS' COMPENSATION**

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California.

#### **GENERAL REQUIREMENTS**

LESSEE shall ensure that the following general requirements are met:

(a) Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.

(b) LESSEE shall provide STATE with a true copy of the policy in place providing coverage for General Liability, within thirty (30) days after each insurance policy renewal.

(c) Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of the original contract.

(d) Insurance policies shall contain a provision that coverage will not be cancelled without thirty (30) days prior written notice to STATE.

(e) LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

(f) In the event LESSEE fails to keep in effect at all times the specified insurance coverage, STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

(g) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by STATE.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.



**NON-DISCRIMINATION**

22. LESSEE agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, age or physical handicap. LESSEE agrees to take action to ensure that applicants for employment and employees are treated during employment without regard to their race, color, religion, ancestry, national origin, sex, age or physical handicap. (See California Government Code Sections 12920-12994 for further details.)

Remedies for willful violation:

(a) STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having the effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(b) STATE shall have the right to seek appropriate legal relief, whether monetary or injunctive, as a result of said breach, and consistent with the provisions of the "Termination and Injunctive Relief" clause of this Lease.

**AMERICANS WITH DISABILITIES ACT**

23. Where applicable, LESSEE shall comply with all federal requirements established under the 28 Code of Regulations, Part 36, Americans with Disabilities Act, to ensure the Premises is accessible to all participants and to provide equally effective communications.

**LOSSES**

24. STATE will not be responsible for losses or damage to personal property, equipment or materials of the LESSEE and all losses shall be reported to STATE immediately upon discovery.

**DEBT LIABILITY DISCLAIMER**

25. STATE will not be liable for any debts or claims that arise from the operation of this Lease.

**TAXES / ASSESSMENTS**

26. LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied upon interest in this agreement. It is understood that this lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

**PROTECTION OF PREMISES**

27. No removal of soil in excess of five (5) cubic yards, or dumping of refuse by LESSEE, except for transport of wastewater as contemplated by this Lease, is permitted in any area of the Premises, and LESSEE shall not commit or suffer to be committed any waste or nuisance upon the Premises; and LESSEE agrees not to cut or remove any trees, larger than four (4) inches in diameter and measured at three (3) feet in height, thereon except as approved in writing by STATE and LESSEE further agrees that at all times to exercise due diligence in the protection of the Premises against damage or destruction by fire or other causes.

**PROPERTY RESTRICTIONS**

28. LESSEE shall comply with the following with respect to activities on the Premises:

(a) LESSEE shall not permit hunting on the Premises but shall not be required to post "No Hunting" signs; and

(b) Compliance to any and all rules and regulations by governing agencies to include EPA, Department of Health or local water quality board must be strictly adhered to; and

(c) Should LESSEE desire to use pesticides on the area (either herbicides, rodenticides or insecticides) all applicable Environmental Protection Agency (EPA) both state and federal, standards must be met and prior approval must be received from STATE as not all EPA approved pesticides will be permitted.

#### AERIAL APPLICATIONS

29. Any aerial applications of any pesticides on the Premises shall be in compliance with the California Food and Agriculture Code (FAC), Section 12972 and Title 3, California Code of Regulations (3 CCR), Section 6614.

LESSEE shall notify the Warden and Superintendent in writing within three (3) business days in advance, of any aerial application and a completed Material Safety Data Sheet (MSDS) shall accompany the notice. LESSEE shall ensure that there will be minimal to no drift over the prison site adjacent to the subject Premises. LESSEE shall insure that any aircraft used for any aerial application will not encroach into the airspace of the MCSP and Preston.

#### WEED ABATE- MENT

30. Any weed burning operations on the leased Premises will be carried out pursuant to local ordinances and at LESSEE's own cost and expense. LESSEE will inform MCSP and Preston in advance of any weed burning operations.

#### ENVIRONMENTAL COMPLIANCE AND HAZARDOUS WASTE

31. (a) Compliance. LESSEE shall be solely responsible for determining the applicability of and for complying with all applicable federal, state and local environmental, natural resources, zoning laws and regulations, including but not limited to CERCLA (42 USC 9601.14), SARA [42 USC 11021(e)], or Resources Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94-580 (1976), 42 USC 6901 et seq. and amendments, including the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616 (1984), with respect to LESSEE's activities on the Premises. LESSEE agrees that it shall comply with all applicable laws, federal, state, and local, existing during the term of this Lease pertaining to the use, storage, generation, treatment, transportation, and disposal of LESSEE's hazardous substances (including petroleum and petroleum derivatives) as that term is defined in such applicable law.

(b) Copies of Materials. LESSEE shall maintain copies of Material Safety Data Sheets (MSDS) and hazardous waste manifests, if any, for all hazardous materials used or transported on or from the Premises. MSDS and manifests shall be provided to the CDCR Facilities Management Division upon its request. If LESSEE is required to prepare a Business Plan, as specified by Health and Safety Code Section 25500 et seq., or a Hazardous Waste Contingency Plan, as specified in 22 CCR 66264.51 et seq., then a copy of the plan shall be submitted first to the Facilities Management Division for review and written approval.

(c) Spill Reporting; Cleanup. Any spill or release of a hazardous substance or material to the air, soil, surface water, or groundwater will be immediately reported to STATE as well as to appropriate government agencies, and shall be promptly and fully cleaned up and the Premises (including soils, surface water, and groundwater) restored to its original condition or such condition as approved by the applicable government agency with jurisdiction.



(d) RCRA Facility Prohibited. LESSEE shall not apply to become a "permitted" RCRA hazardous waste storage or disposal facility on the Premises.

(e) Inspection. STATE or its representatives reserve inspection rights pursuant to the "STATE's Rights to Enter" clause of this Lease.

Termination. Any violation of federal, state, or local environmental law by LESSEE, which continues unaddressed for a period of thirty (30) days from the date LESSEE receives notice of such violation, shall be grounds for STATE to pursue specific performance and injunctive relief in accordance with the "Termination and Injunctive Relief" clause of this Lease. STATE shall not have the right to pursue remedies under said clause if LESSEE commences addressing the violation within such thirty (30) day period and, thereafter, diligently pursues remediation of the violation.

(f) Indemnification by LESSEE. In addition to any other indemnity set forth herein, LESSEE shall fully indemnify, defend, and hold harmless STATE and its agents and representatives for any violation of environmental, hazardous waste, hazardous materials (including petroleum and petroleum derivatives), and/or natural resources law caused by LESSEE or LESSEE's agents or representatives. Furthermore, LESSEE shall reimburse the STATE for any and all costs and liability related to investigation, clean up, settlement amounts, and/or fines, including attorneys' fees, incurred by the STATE for such violation.

(g) Indemnification by STATE. In the event a government order is issued naming LESSEE as a potentially responsible party, or LESSEE incurs any other loss, cost, expense (including attorney's fees) or liability during or after the term of the Lease in connection with contamination which pre-existed LESSEE's obligations and occupancy under this Lease, or which was caused by STATE, STATE will hold harmless and defend LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts, liabilities, losses, costs and expenses therefore, including attorney's fees. LESSEE shall have the burden of proof that the condition pre-existed the LESSEE's use and occupancy of the Premises or was caused by STATE.

#### **SURRENDER OF PREMISES**

32. (a) All personal property and equipment that is nonessential to the wastewater operations on the Premises shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE's tenancy.

(b) Should LESSEE fail to remove said nonessential personal property and equipment within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses associated with the removal of said property belonging to LESSEE.

(c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE's nonessential personal property and equipment, whereupon, as abandoned, title to said improvements will vest in STATE.

**RELOCATION**

33. In the event that Court should terminate this Lease for a refusal to obey an injunctive order as provided in the "Termination and Injunctive Relief" clause of this Lease, LESSEE acknowledges and agrees that it has no claim against STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq, or any regulations implementing or interpreting such sections. LESSEE further agrees that it has no claim in either law or equity against STATE for damages or other relief should the Lease be so terminated, and waives any such claims it may have.

**STATE'S RIGHT TO ENTER**

34. During the term of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises for survey, inspection, or any other lawful STATE purposes.

**EASEMENTS AND RIGHTS OF WAY**

35. This lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easement, as long as such easement does not interfere with the operations of LESSEE's established uses. If the right to grant such easement is exercised, the public utility or their contractor will be required to reimburse LESSEE for any damages caused by the construction work on the easement area.

**MINERAL RIGHTS**

36. LESSEE agrees not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold oil, gas, or other mineral interests upon or under said Premises; nor shall LESSEE, in any way, interfere with the rights of ingress and egress of said interest holders.

**BINDING**

37. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties to this Lease hereto.

**UNDERGROUND UTILITIES**

38. LESSEE shall be responsible for maintaining all underground utilities to include all pipelines connecting to the Premises.

**ESSENCE OF TIME**

39. Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

**CLAUSE HEADINGS**

40. All clause headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**WAIVER**

41. If STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE'S right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.

**SEVERABILITY**

42. If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.



This Lease contains all currently enforceable agreements between STATE and LESSEE. In addition, this Lease and with Exhibit B are intended to be compatible and work together and collectively supersede all prior agreements between STATE and LESSEE. There have been no representations by STATE or understandings made between STATE and LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease hereto.

IN WITNESS WHEREOF, this agreement has been executed by the parties to this Lease hereto as of the date written below.

**STATE OF CALIFORNIA****DIRECTOR OF DEPARTMENT OF  
GENERAL SERVICES**By: 

**TONY PSIHOPAIDAS**, Manager  
State Owned Leasing & Development  
707 Third Street, MS-505  
West Sacramento, CA 95605  
(916) 375-4025

02/23/09  
Execution Date

**LESSEE:****AMADOR REGIONAL SANITATION AUTHORITY,  
a Joint Powers Authority**By: 

**ROB DUKE**, General Manager

1-28-09  
Date Signed

**Consent:****DEPARTMENT OF CORRECTIONS**By: 

**DEBORAH HYSEN**, Chief Deputy Secretary  
Facility Planning, Construction, and Management

**Approved as to form:****MCDONOUGH HOLLAND & ALLEN**By: 

**HARRIET STEINER**  
Attorneys for ARSA

**Approved as to form:****CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,  
OFFICE OF LEGAL AFFAIRS**By: 

**CHRIS SWANBERG**, Senior Staff Counsel  
Attorney for CDCR

**Approval Recommended:****DEPARTMENT OF GENERAL SERVICES  
REAL ESTATE SERVICES DIVISION  
State Owned Leasing and Development**By: 

**PAMELA DYER**,  
Associate Real Estate Officer



# EXHIBIT A

SUTTER CREEK - IONE OUTFALL

WASTEWATER

RECLAMATION PROJECT

SUPPLEMENT #2

TO

APPENDIX L

OF

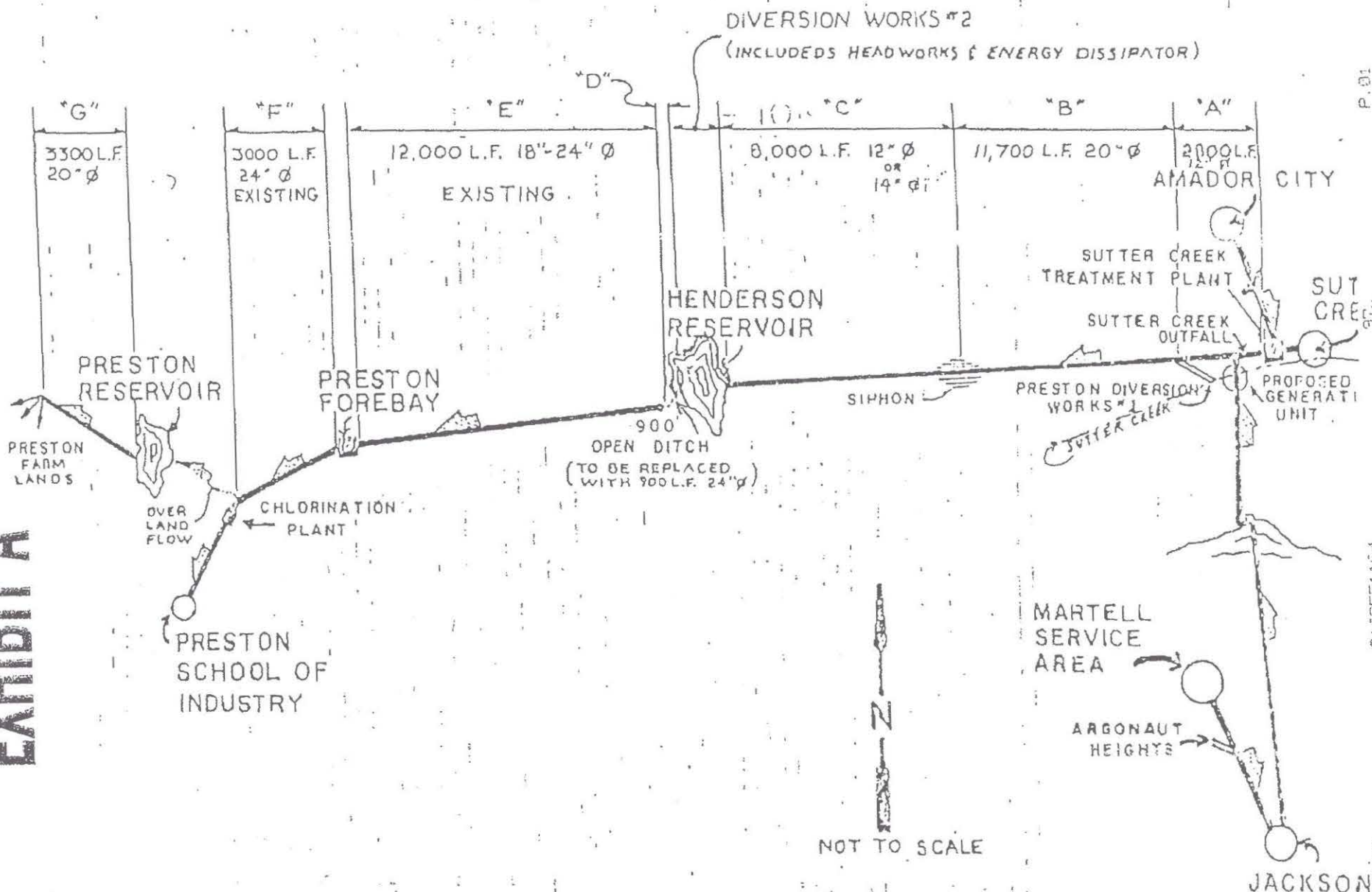
AMADOR COUNTY

WASTEWATER MANAGEMENT PLAN

NOVEMBER, 1977

PROJECT NO. 75-0995

# EXHIBIT A



SUTTER CREEK- IONE OUTFALL PROJECT  
FACILITIES INVENTORY

# EXHIBIT B

## AGREEMENT TO REGULATE USE OF HENDERSON/PRESTON WASTEWATER DISPOSAL SYSTEM

This agreement is made this 18<sup>th</sup> day of September, 2007, by and between the California Department of Corrections and Rehabilitation, a California State Agency ("CDCR"), the City of Ione, a municipality formed pursuant to the laws of the State of California ("Ione"), and the Amador Regional Sanitation Authority, a joint powers agency formed pursuant to the laws of the State of California ("ARSA") (collectively, CDCR, Ione, and ARSA, shall be referred to as the "Parties"). The Parties hereby agree as follows:

WHEREAS, as settlement of past litigation, Ione and ARSA entered into an agreement and grant of easement entitled "Preston Farmlands Wastewater Disposal Contract and Grant of Easement" dated July 30, 1990 ("1990 Settlement Agreement"); and,

WHEREAS, the 1990 Settlement Agreement has been amended or assigned by the parties to the 1990 Settlement Agreement; and,

WHEREAS, this agreement will reallocate and govern the wastewater disposal rights and obligations among the Parties, but will not alter the 1990 Settlement Agreement, any and all amendments thereto, and any agreements implementing the 1990 Settlement Agreement, as those agreements govern the relationship and obligations between Ione or ARSA and any developer of the Preston Farmlands, as referred to in the agreements and amendments, and their successors and assigns and except as those agreements govern the relationship and obligations between Ione or ARSA and the present and future owners, operators, and lessees of the Castle Oaks Golf Course and their successors and assigns; and,

WHEREAS, pursuant to the 1990 Settlement Agreement, as amended, Ione was required to pay ARSA an annual payment (currently \$20,000.00), which payment Ione in turn imposed on Castle Oaks Golf Course. The Parties intend to eliminate such fee for Ione and for Castle Oaks Golf Course by not including it herein as part of this agreement; and,

WHEREAS, this agreement does not extend to, or otherwise affect, Portlock International, Ltd.'s obligation to pay for operation of the Ione Tertiary Plant, which obligation ends December 31, 2013 and is governed by other agreements; and,

WHEREAS, CDCR owns a series of pipelines and reservoirs, including Henderson Reservoir, Preston Forebay and Preston Reservoir, each of which is interconnected so as to allow the transport of water and or wastewater from a point of diversion along Sutter Creek to the Preston Reservoir, in Ione, California ("Henderson/Preston System") (described in Exhibit 1); and,

WHEREAS, CDCR and ARSA have in place a lease agreement whereby ARSA has the right to use the Henderson/Preston System, subject to the terms and conditions contained therein, which lease expires in July 2008 ("ARSA/CDCR Lease"); currently ARSA uses the Henderson/Preston System to transport ARSA's secondary-treated wastewater to Preston Reservoir and then to Ione for treatment, disposal and use; and,



WHEREAS, ARSA and CDCR intend to execute a new lease or extend the existing ARSA/CDCR lease governing the use of the Henderson/Preston System. The new or extended lease will be for thirty (30) years. With regard to the lower system (as hereinafter described), the lease will contain a five (5) year cancellation clause that can be invoked by either party, subject to ARSA's continuing obligations to supply secondary treated wastewater to the CDCR's Preston Youth Correctional Facility and to maintain CDCR's water right from Sutter Creek, which obligations shall remain in effect unaffected by any such cancellation as will their rights to usage to the extent necessary to carry out those obligations; and,

WHEREAS, this agreement will govern the relationship and respective rights between the Parties with regard to the Henderson/Preston System; and,

WHEREAS, the upper Henderson/Preston System as referred to in this agreement includes the parts of the Henderson/Preston System from the outfall of the Sutter Creek Treatment Plant to Preston Youth Correctional Facility, including all pipelines, rights of way, reservoirs, water rights, etc; and,

WHEREAS, the lower Henderson/Preston System as referred to in this agreement includes the components of the Henderson/Preston System from below Preston Forebay to the outfall of the pipeline where it enters Castle Oaks property, including Preston Reservoir; and,

WHEREAS, ARSA will continue to deliver effluent to the lone tertiary plant subject to the five-year termination clause provided herein in sections 8a and 8b; and,

WHEREAS, CDCR operates Mule Creek State Prison ("MCSP") and the Preston Youth Correctional Facility, both located within Ione City limits, and which two facilities along with the California Department of Forestry utilize the wastewater treatment plant at MCSP for their wastewater disposal; and,

WHEREAS, Ione operates two wastewater treatment plants, a portion of one treatment plant is located within the boundaries of Ione providing secondary level treatment of wastewater, and the other located in Amador County providing tertiary treatment of wastewater; and,

WHEREAS, each of the Parties' wastewater disposal systems are interrelated and interconnected; and,

WHEREAS, all of the Parties wish to work together to achieve a solution that addresses their respective wastewater needs; and,

WHEREAS, a water balance study was conducted by Lee and Ro, Inc. and completed on April 11, 2007 to determine the amount, if any, of surplus disposal capacity that currently exists in the Henderson/Preston System; and

WHEREAS, the water balance study resulted in an estimated surplus capacity that is allocated pursuant to this agreement.

IT IS AGREED by and among the parties hereto as follows:

1. Pursuant to the water balance and on the effective date of this agreement, the surplus capacity described above is allocated and each party's total allowable discharge to Preston Reservoir is as follows:

	Total Allowable Discharge to Henderson/Preston System
ARSA	650 acre-feet (af)
CDCR	350 af (counted against ARSA's 650 af disposal amount)
Ione	150 af (this amount is essentially a negative capacity amount to the extent that it relieves Ione of the obligation to take this amount from the other Parties)

2. Ione shall be obligated annually to accept from ARSA/CDCR a combined total of 650 af of secondarily treated wastewater for disposal. The method and location of disposal shall be the concern and obligation of Ione.

3. CDCR may dispose of up to 350 af (increased from its current allowance of 130 af) of treated wastewater into Preston Reservoir annually. CDCR's 350 af allowance shall be counted against ARSA's 650 af disposal right.

4. The effluent discharged to Preston Reservoir must be in compliance with the Waste Discharge Requirements established by the Regional Water Quality Control Board for the discharging party, and shall not contain constituents that cause the Ione tertiary plant to violate its Waste Discharge Requirements. Each party agrees to share all non-privileged wastewater effluent quality data with the other parties including monthly, quarterly, and annual reports submitted to the Central Valley Regional Water Quality Control Board. This information shall be furnished in a timely fashion to permit the City of Ione tertiary plant staff to evaluate potential impacts to operation of the plant. If requested, data shall be transmitted by facsimile or email. Such requests shall include all public information and shall not be limited to monitoring data that the party is required to provide pursuant to its Waste Discharge Requirements.

5. Unless otherwise agreed upon by the parties, discharges from Preston Reservoir to Ione, on a monthly basis, shall be as follows:

- a. October 1 through March 31st: discharges shall be limited to 10 af per month;
- b. April 1 through September 31st: discharges shall be limited to 95 af per month; and



- c. The above limitations may be waived by agreement of the parties in the event of an emergency and where necessary for the prevention of environmental damage or civil liabilities attendant to wastewater violations, and in such event and prior to any deviation from these limits the parties agree to meet and confer and attempt to reach mutual agreement regarding the exceedance amounts necessary to accomplish the prevention or mitigation of the emergency.

6. Subject to five-year termination clauses in sections 8a and 8b, in any year, ARSA and CDCR will continue to provide effluent from Preston Reservoir to the Ione tertiary plant for use on the Castle Oaks Golf Course, if such effluent is available. As provided for in the 1990 Agreement, as amended, Castle Oaks Golf Course will continue to utilize wastewater treated at the Ione tertiary plant prior to using water from any other source until December 31, 2013.

7. From the effective date of this agreement, ARSA agrees to eliminate all flows to Ione's secondary treatment ponds within four years. ARSA holds existing deeded disposal rights, transmittal rights, and rights of way and easements, to dispose of 1300 acre feet of treated effluent on the former Noble Ranch (County Assessor parcel numbers: 011330001501; 011330002501; and 011330003501) comprising approximately 850 acres of arable ranch land. A golf course resort has been entitled to be constructed on the property to be known as "Gold Rush Golf, LLC." A mitigated negative declaration for this project, including effluent disposal options, was adopted February 18, 2003, under City of Sutter Creek Resolution Number 02-03-27. Portions of the project have been constructed (e.g. conduit construction under the Highway 49 Bypass) and the remainder will be completed prior to the four-year deadline described in this section. The completion of the effluent disposal options are independent of the construction of the golf course resort project.

8. This agreement will be in effect for thirty (30) years from the time of its enactment, subject to the following:

- a. With regard to the lower Henderson/Preston System, ARSA agrees to eliminate all flows to the lower Henderson/Preston System within five years of receiving a written request to this effect from Ione, CDCR, or MCSP. Such written notice may only be given after Ione and CDCR have resolved how to provide adequate reclaimed water for both Castle Oaks Golf Course and Preston Youth Correctional Facility. Such resolution may include completing any necessary environmental review pursuant to CEQA for the new source of water; a contract between the new provider of water, MCSP, Ione, the golf course operator; and any necessary permits of modifications to existing permits pursuant to the Porter-Cologne Water Quality Control Act (Cal. Water Code, §§ 13000 et. seq.).
- b. ARSA shall have a right to cancel all discharges to the lower Henderson/Preston System five (5) years after it gives written notice to Ione and CDCR of its intent. ARSA agrees to work with the Parties to

attempt to coincide its withdrawal with the other parties' ability to find an alternate water source.

9. Beginning January 1, 2015, each party whose wastewater is being treated at the Ione Tertiary Plant agrees to pay a proportionate share of the tertiary plant operation and maintenance costs based on the amount of flows the party contributes to the tertiary plant. If any of the parties has withdrawn flows prior to 2014, that party will have no such operation and maintenance obligation. Each party's "proportionate share" will be defined by the JPA proposed herein, if it is formed. If the JPA is not formed, "proportionate share" will be defined by joint agreement of the Parties. To the extent that additional treatment, beyond what the discharging party is required to perform, is necessary to allow recycled water use of water treated at the Ione Tertiary Plant, that party will not be required to pay for such additional treatment, unless required under this agreement. Where the tertiary treated water from the Ione Tertiary Plant is sold to a recycled water user, the revenue generated from the sale will be distributed to the Parties in proportion to the amount of water the each party contributed to the tertiary plant.

10. MCSP shall endeavor to reduce its wastewater disposal into Preston Reservoir as soon as possible by implementing projects, which may include some or all of the following:

- a. Installing flushometers on toilets located in cells at MCSP; and
- b. Installing shower timers, as able, at MCSP.

In addition, CDCR shall conduct a preliminary feasibility study to determine the cost and feasibility for CDCR to increase the Preston Reservoir Dam height by sixteen (16) inches, increasing the capacity of the reservoir thereby.

11. To implement the provisions of this agreement, the Parties may prepare implementation memoranda, as opposed to amendments to this agreement, unless all Parties agree an amendment is necessary. Such implementation agreements may be executed by authorized representatives of the Parties.

12. The Parties to this agreement agree to explore and work towards creating a Joint Powers Authority to develop a sub-regional wastewater master plan for the Ione Valley. This plan may involve the following elements:

- a. Developing a permanent source of reclaimed water for the Castle Oaks Golf Course, Preston Youth Correctional Facility and other potential reclaimed water users within the Ione area.
- b. Developing a master plan and joint projects to improve the treatment and disposal capabilities of the MCSP and Ione wastewater facilities.
- c. ARSA's participation in the JPA will end when ARSA's discharges to the lower Henderson/Preston System end pursuant to sections 8a and 8b of this agreement.

13. Each of the Parties shall work to obtain all necessary permits, approvals, and authorizations to carry out this agreement in compliance with all pertinent Federal, State, and local laws and regulations.

14. In the event of a breach or default of this agreement, the aggrieved party will give written notice to the other parties within ten (10) days. After receiving such written notice, the Parties will meet and confer in an attempt to bring the violating party into compliance with this agreement. If, after meeting and conferring, the Parties fail to agree upon a plan to bring the violating party into compliance, the Parties may pursue mediation or other means agreed upon by the parties, including other remedies available by law.

15. Such non-performance provisions shall not apply if the nature of the breach or default is the result of a force majeure occurrence or is otherwise of a nature such that it cannot be fully cured within thirty (30) days, the party in default shall have such additional time as is reasonably necessary to cure the default so long as the party in default is proceeding diligently to complete the necessary cure after service of written notice by a non-defaulting party.

16. Each party retains any and all remedies it may have at law or in equity against each and every party hereto for breach of any duty established by this agreement.

17. Invalidity of any of the provisions contained in this agreement, or of the application thereof to any party by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other party and said agreement shall remain in full force and effect except for the invalidated provision.

18. This agreement may be amended only by written instrument signed by all the parties.

19. Any notice to any party shall be in writing and by fax or email and given by delivering the notice to such party in person or by sending the notice by registered or certified mail, return receipt requested with postage prepaid, to the party's mailing address. The respective mailing addresses of the parties are:

City:	City Manager City of Ione Post Office Box 398 Ione, CA 95640
ARSA:	Rob Duke General Manager 18 Main Street Sutter Creek, CA 95685



CDCR:

Warden  
Mule Creek State Prison  
4001 Highway 104  
Ione, CA 95640

Either party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices shall be deemed given, received, made or communicated on the delivery date or attempted delivery date shown on the return receipt.

20. Nothing contained in this agreement shall act as a prohibition on the formation of additional contracts and agreements by and between the Parties to further implement the intentions of the Parties.

21. Failure of a party to insist upon the strict performance of any of the provisions of this agreement by any other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by the other party in the future. No waiver by a party of an act constituting breach or default shall be effective or binding upon such party unless the waiver is made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such breach or default under any provision of this agreement.

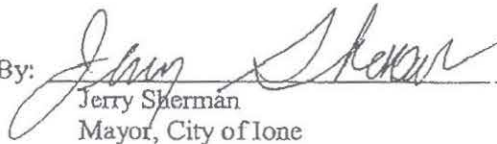
22. This agreement may be signed in counterparts, and shall have the same force and effect as if all signatures existed on the same document.

CITY OF IONE

Dated:

9-20-07

By:

  
Jerry Sherman  
Mayor, City of Ione

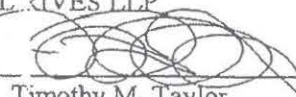
Approved as to form:

STOEL RIVES LLP

Dated:

9-26-07

By:

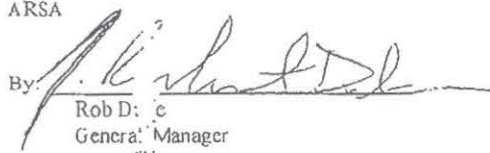
  
Timothy M. Taylor  
Attorneys for the City of Ione

ARSA

Dated:

9-18-07

By:

  
Rob Duke  
General Manager

Approved as to form:

Dated:

9/24/07

MCDONOUGH, HOLLAND & ALLEN

By:

  
Harriet Steiner  
Attorneys for ARSA

Dated:

\_\_\_\_\_

CDCR

By:

Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated:

\_\_\_\_\_

By:

Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR



ARSA

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Rob Duke  
General Manager

Approved as to form:

MCDONOUGH HOLLAND & ALLEN


Dated: \_\_\_\_\_

By: \_\_\_\_\_

Harriet Steiner  
Attorneys for ARSA

Dated: \_\_\_\_\_

CDCR

By:  \_\_\_\_\_

Deborah Hysen  
Chief Deputy Secretary  
Facility Planning, Construction, and Management

Approved as to form:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, OFFICE OF LEGAL  
AFFAIRS

Dated: \_\_\_\_\_

By:  \_\_\_\_\_

Chris Swanberg  
Senior Staff Counsel  
Attorneys for CDCR

# EXHIBIT B

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

3443 Routier Road, Suite A  
Sacramento, CA 95827-3098  
PHONE: (916) 255-3000  
FAX: (916) 255-3015

Body, MARTY, HARK, "ARSA  
DISCHARGE  
REQS  
RECEIVED

PETE WILSON, Governor



7 December 1993

RECEIVED  
PUBLIC WORKS AGENCY

DEC 9 1993

110 COURT STREET  
JACKSON, CA 95642-2390

Mr. Roderick E. Schuler  
Amador Regional Sanitation Authority  
108 Court Street  
Jackson, CA 95642

CERTIFIED MAIL  
P 430 798 037

Mr. Watson Clifford, City Engineer  
City of Ione  
P.O. Box 398  
Ione, CA 95640

CERTIFIED MAIL  
P 430 798 038

Mr. George S. Lee, Vice President  
Portlock International, Ltd.  
P.O. Box 1368  
Ione, CA 95640

CERTIFIED MAIL  
P 430 798 039

**TRANSMITTAL OF ADOPTED/AMENDED WASTE DISCHARGE REQUIREMENTS FOR  
AMADOR COUNTY REGIONAL OUTFALL AND CASTLE OAKS GOLF COURSE AND  
DEVELOPMENT, AMADOR REGIONAL SANITATION AUTHORITY, CITY OF IONE,  
PORTLOCK INTERNATIONAL, LTD.**

Enclosed is an official copy of Order No. 93-240 as amended by the California Regional Water Quality Control Board, Central Valley Region, at its last regular meeting.

JAMES B. MAUGHAN  
Area Engineer

JBW:dlk

Enclosures: Adopted Order, Standard Provisions (Discharger only)

cc+Encl: Office of Drinking Water, Department of Health Services, Sacramento  
Environmental Mgmt. Branch, Department of Health Services, Sacramento  
Department of Fish and Game, Rancho Cordova  
Department of Water Resources, Central District, Sacramento  
Mrs. Betsy Jennings, State Water Resources Control Board, Sacramento  
Mr. Archie Matthews, State Water Resources Control Board, Sacramento  
Amador County Health Department, Jackson  
Amador County Planning Department, Jackson  
Mr. Richard Stowell, Dewante & Stowell, Sacramento

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER NO. 93-240

WATER RECLAMATION REQUIREMENTS  
FOR  
AMADOR COUNTY REGIONAL OUTFALL  
AND  
CASTLE OAKS GOLF COURSE AND DEVELOPMENT  
AMADOR REGIONAL SANITATION AUTHORITY  
CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds that:

1. Amador Regional Sanitation Authority (ARSA), the City of Ione, and Portlock International, Ltd. (hereafter Discharger) submitted a Report of Waste Discharge, dated 5 November 1993, for revised requirements for treatment and reclamation use of wastewater from the Amador County Regional Outfall.
2. ARSA is a special district which operates the Amador County Regional Outfall System. Effluent produced by the City of Sutter Creek wastewater treatment plant is stored in a series of reservoirs. ARSA provides water to a group of ranchers known as the Amador County Reclaimed Wastewater Users and to the Preston School of Industry in Ione. ARSA also augments this supply with water diverted from Sutter Creek.
3. The Board, on 24 June 1988, adopted Order No. 88-114 which prescribed requirements for Amador Regional Sanitation Authority, Amador County Regional Outfall, which included the discharge to 430 acres of State-owned and privately-owned property for pasture irrigation. This pasture area has been developed and is now the site of the Castle Oaks Golf Course and Development Project.
4. ARSA has several orders governing discharges from the Amador County Regional Outfall. Effluent from this system is delivered to the California Youth Authority, Preston School of Industry (Order No. 83-023) and Amador County Reclaimed Wastewater Users (Order No. 83-024) on a as needed basis. Preston filters and chlorinates the ARSA water and uses it for toilet flushing, landscaping irrigation, and fire protection.
5. In order to assure adequate disposal capacity for Amador County Regional Outfall effluent, ARSA has entered into a long-term agreement with the City of Ione to dispose of up to 900 acre-feet/year. The 18-hole Castle Oaks Golf Course is approximately 190 acres with 15 acres of ponds and is owned by the City of Ione.



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6. The City of Ione is proposing to construct a reclamation plant that will treat the secondary effluent in the ARSA outfall system to meet Title 22 requirements for unrestricted use. The treatment facility is owned and will be operated by the City of Ione, with Portlock International, Ltd. managing the irrigation system at the golf course. Until this facility is completed, the discharge will operate under interim effluent limitations. Exposure to golfers or residents will not be allowed during this interim period.
7. The wastewater treatment facilities will include a PVC-lined equalization lake, sand filters and a chlorine contact basin. Effluent will be reclaimed at the Castle Oaks Golf Course. Mostly irrigation will occur from April to November with limited irrigation demand during the winter.
8. The City of Ione will discharge an average of 1.2 million gallons per day (mgd) to holding ponds at the treatment plant and golf course followed by irrigation of the Castle Oaks Golf Course. ARSA will continue operations of Henderson and Preston Reservoirs for storage and regulation.
9. The Outfall System is in Sections 9-12, 16-18, T6N, R10E, MDB&M and Sections 22 and 23, T6N, R9E, MDB&M with surface water drainage to Mule and Sutter Creeks, tributary to Dry Creek, tributary to Mokelumne River as shown on Attachment A, which is attached hereto and a part of the Order by reference.
10. The City of Ione, ARSA and Portlock International, Ltd. on 30 November 1993 entered into an agreement as to the responsibilities each has concerning the treatment, conveyance and disposal of the wastewater.
11. The Board adopted a Water Quality Control Plan, Second Edition, for the Sacramento-San Joaquin Delta Basin (5B) (hereafter Basin Plan), which contains water quality objectives for all waters of the Basin. These requirements implement the Basin Plan.
12. The beneficial uses of Sutter and Mule Creeks and downstream waters are municipal, industrial and agricultural supply; recreation; esthetic enjoyment; navigation; ground water recharge; fresh water replenishment; and preservation and enhancement of fish, wildlife, and other aquatic resources.
13. The beneficial uses of the ground water are municipal, domestic, industrial, and agricultural supply.



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14. City of Ione has certified a Final Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.) and the State CEQA Guidelines. The project as approved will not have a significant effect on water quality.
15. The Board has reviewed the EIR and concurs there are no significant impacts on water quality.
16. The Department of Health Services has established statewide reclamation criteria in Title 22, California Code of Regulations, Section 60301, et seq. (hereafter Title 22) for the use of reclaimed water.
17. The Board consulted with the Department of Health Services, Amador County Health Department and considered their recommendations regarding public health aspects for use of reclaimed water.
18. Section 2511(a), Title 23, of the California Code of Regulations (CCR), exempts this discharge from the requirements of Chapter 15.
19. The Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for this discharge and has provided them with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
20. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that Waste Discharge Requirements Order No. 88-114 is rescinded and the City of Ione, Amador County Regional Outfall System, Amador Regional Sanitation Authority, Portlock International, Ltd., its agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

- A. **Interim Effluent Limitations - Golf Course Irrigation (Construction and Development Phase):**
  1. The discharge of an effluent in excess of the following limits is prohibited:

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<u>Constituent</u>	<u>Units</u>	<u>Weekly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	23	---	240
Flow	mgd	---	1.2	---
BOD <sub>5</sub>	mg/l	---	40	80

**B. Final Effluent Limitations:**

1. The irrigation of the golf course and green space areas which are accessible to the public with reclaimed wastewater in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	2.2	---	23
Flow	mgd	---	1.2	---
Settleable Matter	ml/l	---	0.2	0.5
BOD <sub>5</sub>	mg/l	---	10	30
Turbidity	NTU	2	---	5

2. The irrigation of dedicated disposal areas which are not accessible to golfer, residents or the public with reclaimed wastewater in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	23	---	240
BOD <sub>5</sub>	mg/l	---	40	80

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**C. Discharge Prohibitions:**

1. Discharge of wastes to surface waters or surface water drainage courses is prohibited.
2. The by-pass or overflow of untreated or partially treated waste is prohibited.
3. Discharge of waste classified as 'hazardous' or 'designated,' as defined in Sections 2521(a) and 2522(a) of Chapter 15, is prohibited.

**D. Discharge Specifications:**

1. Neither the treatment nor the discharge shall cause a nuisance or condition of pollution as defined by the California Water Code, Section 13050.
2. The discharge shall not cause degradation of any water supply.
3. The discharge shall remain within the designated disposal area at all times.
4. Collected screenings, sludges, and other solids removed from liquid wastes shall be disposed of in a manner approved by the Executive Officer.
5. Wastewater shall be discharged to Castle Oaks Golf Course in accordance with a Wastewater Disposal Operations Plan which has been approved by the Executive Officer. Prior to irrigation of dedicated disposal areas pursuant to Effluent Limitation B.2., the Discharger shall submit to the Executive Officer a specific operation plan describing the irrigated area, rate of application, irrigated crops, and efforts to prevent public exposure.
6. A 2.0-foot freeboard shall be maintained in all treatment and storage ponds at all times or an operational plan shall be submitted which shows why a 2.0-foot freeboard is not needed to prevent overtopping of the berms.
7. Reclaimed wastewater shall meet the criteria contained in Title 22, Division 4, CCR (Section 60301, et seq.).
8. Reclaimed wastewater conveyance lines shall be clearly marked as such.



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9. The dissolved oxygen content of holding ponds shall not be less than 1.0 mg/l for 16 hours in any 24-hour period.
10. Areas irrigated with reclaimed water shall be managed to prevent breeding of mosquitos. More specifically,
  - a. Tail water must be returned and all applied irrigation water must infiltrate completely within a 12-hour period.
  - b. Ditches not serving as wildlife habitat should be maintained free of emergent, marginal, and floating vegetation.
  - c. Low-pressure and unpressurized pipelines and ditches accessible to mosquitos shall not be used to store reclaimed water.
11. Reclaimed water for irrigation shall be managed to minimize erosion and runoff from the disposal area.
12. Direct or windblown spray shall be confined to the designated reclamation area and prevented from contacting drinking water facilities.
13. The Discharger may not spray irrigate effluent during periods of precipitation and for at least 24 hours after cessation of precipitation, or when winds exceed 30 mph.
14. A 100-foot buffer shall be maintained between any flowing watercourse and the wetted area produced during spray disposal.
15. Signs with proper wording of sufficient size shall be placed at areas of access and around the perimeter of all areas used for effluent disposal to alert the public of the use of reclaimed water.
16. Runoff from irrigated areas, within 24 hours of the last application of reclaimed water, shall not be discharged to any surface water drainage course.
17. There shall be no irrigation or impoundment of reclaimed water within 500 feet of any domestic water well or within 100 feet of any irrigation well unless it is demonstrated to the satisfaction of the Executive Officer that less distance is justified.

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E. Provisions:

1. Reclaimed water controllers, valves, etc., shall be affixed with reclaimed water warning signs, and these and quick couplers and sprinkler heads shall be of a type, or secured in a manner, that permits operation by authorized personnel only.
2. The treatment facilities shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency.
3. The Discharger may be required to submit other technical reports as directed by the Executive Officer.
4. The Discharger shall submit a report by 1 September each year which describes how the Preston Reservoir is being maintained for the up-coming winter season. This report should contain current levels in reservoir and methods planed to dispose of wastewater so that winter storage levels are reached.
5. The Discharger shall comply with the Monitoring and Reporting Program No. 93-240, which is part of this Order, and any revisions thereto as ordered by the Executive Officer.
6. The Discharger shall comply with the "Standard Provisions and Reporting Requirements for Waste Discharge Requirements", dated 1 March 1991, which are attached hereto and by reference a part of this Order. This attachment and its individual paragraphs are commonly referenced as "Standard Provision(s)."
7. The Discharger shall report promptly to the Board any material change or proposed change in the character, location, or volume of the discharge.
8. In the event of any change in control or ownership of land or waste discharge facilities presently described herein, the Discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to this office.
9. The Board will review this Order periodically and will revise requirements when necessary.



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I, WILLIAM H. CROOKS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 3 December 1993.

A handwritten signature in dark ink, appearing to read "William H. Crooks", is written over a horizontal line.

WILLIAM H. CROOKS, Executive Officer

Attachments

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

MONITORING AND REPORTING PROGRAM NO. 93-240

FOR  
AMADOR COUNTY REGIONAL OUTFALL  
AND  
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**EFFLUENT MONITORING**

Effluent samples shall be collected just prior to discharge to the irrigation system. Effluent samples should be representative of the volume and nature of the discharge. Samples collected from the outlet structure of ponds will be considered adequately composited. Time of collection of a grab sample shall be recorded. The following shall constitute the effluent monitoring program:

<u>Constituents</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>
Total Coliform Organisms	MPN/100 ml	Grab	Daily
Flow	mgd	Cumulative	Daily
20°C BOD <sub>5</sub>	mg/l	Grab	Weekly
Settleable Matter	ml/l	Grab	Weekly
Turbidity	NTU	Grab	Weekly

**STORAGE PONDS MONITORING**

All dissolved oxygen samples shall be taken from the surface of the storage ponds.

<u>Constituents</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>
Dissolved Oxygen	mg/l	Grab	Weekly
Freeboard	feet	---	Weekly

MONITORING AND REPORTING PROGRAM  
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### GROUND WATER MONITORING

The following shall constitute the ground water monitoring program:

<u>Constituents</u>	<u>Units</u>	<u>Sampling Frequency</u>
Specific Conductivity	$\mu$ mhos/cm	Monthly
pH	pH Units	Monthly
Nitrate	mg/l	Monthly
Well Elevation	feet, USGS Datum	Monthly

The City of Ione will install at least one upgradient and two downgradient ground water monitoring wells by 1 June 1994 around the storage ponds at the Castle Oaks Golf Course.

### REPORTING

In reporting the monitoring data, the Discharger shall arrange the data in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly the compliance with waste discharge requirements.

Monthly monitoring reports shall be submitted to the Regional Board by the 20th day of the following month.

The results of any monitoring done more frequently than required at the locations specified in the Monitoring and Reporting Program shall be reported to the Board.

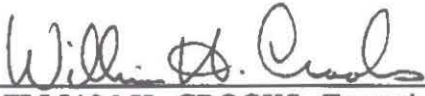
Upon written request of the Board, the Discharger shall submit a report to the Board by 30 January of each year. The report shall contain both tabular and graphical summaries of the monitoring data obtained during the previous year. In addition, the Discharger shall discuss the compliance record and the corrective actions taken or planned which may be needed to bring the discharge into full compliance with the waste discharge requirements.

MONITORING AND REPORTING PROGRAM  
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The Discharger shall implement the above monitoring program as of the date of this Order.

Ordered by:

  
\_\_\_\_\_  
WILLIAM H. CROOKS, Executive Officer

3 December 1993

\_\_\_\_\_  
(date)

JBM



## INFORMATION SHEET

### AMADOR REGIONAL COUNTY OUTFALL AND CASTLE OAKS GOLF COURSE AND DEVELOPMENT, AMADOR REGIONAL SANITATION AUTHORITY, THE CITY OF IONE, PORTLOCK INTERNATIONAL, LTD., AMADOR COUNTY

Year-round irrigation of the Castle Oaks Golf Course with tertiary treated wastewater will replace the existing April to October discharge of secondary effluent to farm land that Amador Regional Sanitation Authority has been using to dispose of its wastewater. The new treatment facility and golf course are off Highway 104, just west of the City of Ione in Amador County. The treatment plant is owned and operated by the City of Ione. Portlock International, Ltd. will manage the irrigation of the golf course.

The Board, on 24 June 1988, adopted Order No. 88-114 prescribing requirements for Amador Regional Sanitation Authority, Amador County Regional Outfall System included the discharge to 430 acres of State-owned and privately-owned property for pasture irrigation. This area is now the site of the Castle Oaks Golf Course and Development Project. The City owns the golf course and ARSA has an agreement with the city to supply wastewater for irrigation purposes up to 900 acre-feet/year.

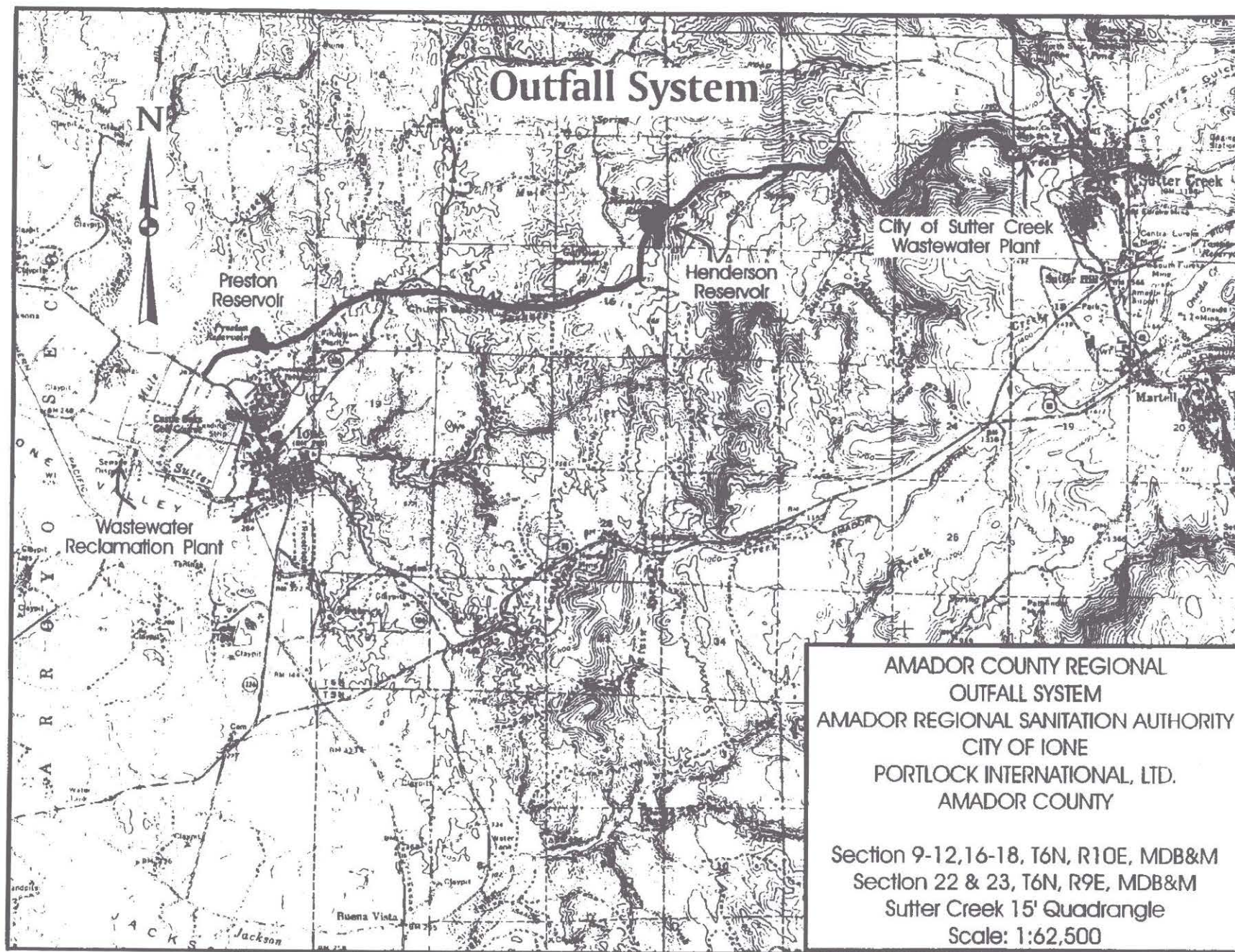
ARSA is a special district which operates the Amador County Regional Outfall System. Secondary effluent produced by the City of Sutter Creek wastewater treatment plant, mixed with water diverted from Sutter Creek is stored in Henderson and Preston reservoirs. ARSA provides water to ranchers from these reservoirs and to the Preston School of Industry in Ione. Preston filters and chlorinates the ARSA water and uses it for toilet flushing, landscaping irrigation, and fire protection.

ARSA also is under Order No. 83-024 governing discharges from the Amador County Regional Outfall to reclaimed wastewater users. Preston School, which receives wastewater from the outfall, is governed by Order No. 83-023.

The 18-hole Castle Oaks Golf Course has been constructed. However, the course is not open for use; the site will continue to use secondary treated wastewater during the construction phase of the treatment facilities. In the spring of 1994, the treatment facility is expected to be completed. The treatment facility will include a PVC-lined equalization lake, sand filters and a chlorine contact basin. Effluent will be used for irrigation and water hazards at the Castle Oaks Golf Course. The average flow of tertiary treated wastewater is expected to reach 1.2 mgd.

Golf course irrigation will occur mostly April to November. Surface water drainage is to Sutter and Mule Creeks, tributary to Dry Creek, and tributary to the Mokelumne River.







CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

STANDARD PROVISIONS AND REPORTING REQUIREMENTS  
FOR  
WASTE DISCHARGE REQUIREMENTS

1 March 1991

**A. General Provisions:**

1. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, or protect the discharger from liabilities under federal, state, or local laws. This Order does not convey any property rights or exclusive privileges.
2. The provisions of this Order are severable. If any provision of this Order is held invalid, the remainder of this Order shall not be affected.
3. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
  - a. Violation of any term or condition contained in this Order;
  - b. Obtaining this Order by misrepresentation, or failure to disclose fully all relevant facts;
  - c. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge;
  - d. A material change in the character, location, or volume of discharge.
4. Before making a material change in the character, location, or volume of discharge, the discharger shall file a new Report of Waste Discharge with the Regional Board. A material change includes, but is not limited to, the following:
  - a. An increase in area or depth to be used for solid waste disposal beyond that specified in waste discharge requirements
  - b. A significant change in disposal method, location or volume, e.g., change from land disposal to land treatment.
  - c. The addition of a major industrial, municipal or domestic waste discharge facility.
  - d. The addition of a major industrial waste discharge to a discharge of essentially domestic sewage, or the addition of a new process or product by an industrial facility resulting in a change in the character of the waste.

A. General Provisions (continued)

5. Except for material determined to be confidential in accordance with California law and regulations, all reports prepared in accordance with terms of this Order shall be available for public inspection at the offices of the Board. Data on waste discharges, water quality, geology, and hydrogeology shall not be considered confidential.
6. The discharger shall take all reasonable steps to minimize any adverse impact to the waters of the state resulting from noncompliance with this Order. Such steps shall include accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance.
7. The discharger shall maintain in good working order and operate as efficiently as possible any facility, control system, or monitoring device installed to achieve compliance with the waste discharge requirements.
8. The discharger shall permit representatives of the Regional Board (hereafter Board) and the State Water Resources Control Board, upon presentation of credentials, to:
  - a. Enter premises where wastes are treated, stored, or disposed of and facilities in which any records are kept,
  - b. Copy any records required to be kept under terms and conditions of this Order,
  - c. Inspect at reasonable hours, monitoring equipment required by this Order, and
  - d. Sample, photograph and video tape any discharge, waste, waste management unit or monitoring device.
9. For any electrically operated equipment at the site, the failure of which could cause loss of control or containment of waste materials, or violation of this Order, the discharger shall employ safeguards to prevent loss of control over wastes. Such safeguards may include alternate power sources, standby generators, retention capacity, operating procedures, or other means.
10. The fact that it would have been necessary to halt or reduce the permitted activity in Order to maintain compliance with this Order shall not be a defense for the discharger's violations of the Order.
11. Neither the treatment nor the discharge shall create a condition of nuisance or pollution as defined by the California Water Code, Section 13050.

**A. General Provisions (continued)**

12. The discharge shall remain within the designated disposal area at all times.

**B. General Reporting Requirements**

1. 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 by telephone at (916) 255-3000 as soon as it or its agents have knowledge of such noncompliance or potential for noncompliance, and shall confirm this notification in writing within two weeks. The written notification shall state the nature, time and cause of noncompliance, and shall describe the measures being taken to prevent recurrences and shall include a timetable for corrective actions.
2. The discharger shall have a plan for preventing and controlling accidental discharges, and for minimizing the effect of such events.

This plan shall:

- a. Identify the possible sources of accidental loss or leakage of wastes from each waste management, treatment, or disposal facility.
- b. Evaluate the effectiveness of present waste management/treatment units and operational procedures, and identify needed changes or contingency plans.
- c. Predict the effectiveness of the proposed changes in waste management/treatment facilities and procedures and provide an implementation schedule containing interim and final dates when changes will be implemented.

The Board, after review of the plan, may establish conditions that it deems necessary to control leakages and minimize their effects.

3. All reports shall be signed by persons identified below:
  - a. For a corporation: by a principal executive officer of at least the level of senior vice-president.
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
  - c. For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected or appointed official.



**B. General Reporting Requirements (continued)**

d. A duly authorized representative of a person designated in 3a, 3b or 3c of this requirement if;

(1) the authorization is made in writing by a person described in 3a, 3b, or 3c of this provision;

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a waste management unit, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) the written authorization is submitted to the Board

Any person signing a document under this Section shall make the following certification:

"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 and imprisonment."

4. Technical and monitoring reports specified in this Order are requested pursuant to Section 13267 of the Water Code. Failing to furnish the reports by the specified deadlines and falsifying information in the reports, are misdemeanors that may result in assessment of civil liabilities against the discharger.

5. The discharger shall mail a copy of each monitoring report and any other reports required by this Order to:

California Regional Water Quality Control Board  
Central Valley Region  
3443 Routier Road, Suite A  
Sacramento, CA 95827-3098

or the current address if the office relocates.



**C. Provisions for Monitoring**

1. All analyses shall be made in accordance with the latest edition of:  
(1) "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" (EPA 600 Series) and (2) "Test Methods for Evaluating Solid Waste" (SW 846-latest edition). The test method may be modified subject to application and approval of alternate test procedures under the Code of Federal Regulations (40 CFR 136).
2. Chemical, bacteriological, and bioassay analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. In the event a certified laboratory is not available to the discharger, analyses performed by a noncertified laboratory will be accepted provided a Quality Assurance-Quality Control Program is instituted by the laboratory. A manual containing the steps followed in this program must be kept in the laboratory and shall be available for inspection by Board staff. The Quality Assurance-Quality Control Program must conform to EPA guidelines or to procedures approved by the Board.

Unless otherwise specified, all metals shall be reported as Total Metals.

3. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings of continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of three years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Board Executive Officer.

Record of monitoring information shall include:

- a. the date, exact place, and time of sampling or measurements,
  - b. the individual(s) who performed the sampling of measurements,
  - c. the date(s) analyses were performed,
  - d. the individual(s) who performed the analyses,
  - e. the laboratory which performed the analysis,
  - f. the analytical techniques or methods used, and
  - g. the results of such analyses.
4. All monitoring instruments and devices used by the discharger to fulfill the prescribed monitoring program shall be properly maintained and calibrated at least yearly to ensure their continued accuracy.

**C. Provisions For Monitoring (continued)**

5. The discharger shall maintain a written sampling program sufficient to assure compliance with the terms of this Order. Anyone performing sampling on behalf of the discharger shall be familiar with the sampling plan.
6. The discharger shall construct all monitoring wells to meet or exceed the standards stated in the State Department of Water Resources Bulletin 74-81 and subsequent revisions, and shall comply with the reporting provisions for wells required by Water Code Sections 13750 through 13755.22

**D. Standard Conditions for Facilities Subject to California Code of Regulations, Title 23, Division 3, Chapter 15 (Chapter 15)**

1. All classified waste management units shall be designed under the direct supervision of a California registered civil engineer or a California certified engineering geologist. Designs shall include a Construction Quality Assurance Plan, the purpose of which is to:
  - a. demonstrate that the waste management unit has been constructed according to the specifications and plans as approved by the Board.
  - b. provide quality control on the materials and construction practices used to construct the waste management unit and prevent the use of inferior products and/or materials which do not meet the approved design plans or specifications.
2. Prior to the discharge of waste to any classified waste management unit, a California registered civil engineer or a California certified engineering geologist must certify that the waste management unit meets the construction or prescriptive standards and performance goals in Chapter 15, unless an engineered alternative has been approved by the Board. In the case of an engineered alternative, the registered civil engineer or certified engineering geologist must certify that the waste management unit has been constructed in accordance with Board-approved plans and specifications.
3. Materials used to construct liners shall have appropriate physical and chemical properties to ensure containment of discharged wastes over the operating life, closure, and post-closure maintenance period of the waste management units.
4. Closure of each waste management unit shall be performed under the direct supervision of a California registered civil engineer or California certified engineering geologist.



**E. Conditions Applicable to Discharge Facilities Exempted From Chapter 15 Under Section 2511**

1. If the discharger's wastewater treatment plant is publicly owned or regulated by the Public Utilities Commission, it shall be supervised and operated by persons possessing certificates of appropriate grade according to California Code of Regulations, Title 23, Division 4, Chapter 14.
2. By-pass (the intentional diversion of waste streams from any portion of a treatment facility, except diversions designed to meet variable effluent limits) is prohibited. The Board may take enforcement action against the discharger for by-pass unless:
  - a. (1) By-pass was unavoidable to prevent loss of life, personal injury, or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a by-pass. Severe property damage does not mean economic loss caused by delays in production); and
  - (2) There were no feasible alternatives to by-pass, such as the use of auxiliary treatment facilities or retention of untreated waste. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a by-pass that would otherwise occur during normal periods of equipment downtime or preventive maintenance; or
  - b. (1) by-pass is required for essential maintenance to assure efficient operation; and
  - (2) neither effluent nor receiving water limitations are exceeded; and
  - (3) the discharger notifies the Board ten days in advance.

The permittee shall submit notice of an unanticipated by-pass as required in paragraph B.1. above.
3. A discharger that wishes to establish the affirmative defense of an upset (see definition in E.6 below) in an action brought for noncompliance shall demonstrate, through properly signed, contemporaneous operating logs, or other evidence, that:
  - a. an upset occurred and the cause(s) can be identified;

**E. Dischargers Exempt from Chapter 15 (continued)**

- b. the permitted facility was being properly operated at the time of the upset;
- c. the discharger submitted notice of the upset as required in paragraph B.1., above; and
- d. the discharger complied with any remedial measures required by waste discharge requirements.

In any enforcement proceeding, the discharger seeking to establish the occurrence of an upset has the burden of proof.

- 4. A discharger whose waste flow has been increasing, or is projected to increase, shall estimate when flows will reach hydraulic and treatment capacities of its treatment, collection, and disposal facilities. The projections shall be made in January, based on the last three years' average dry weather flows, peak wet weather flows and total annual flows, as appropriate. When any projection shows that capacity of any part of the facilities may be exceeded in four years, the discharger shall notify the Board by **31 January**.
- 5. Effluent samples shall be taken downstream of the last addition of wastes to the treatment or discharge works where a representative sample may be obtained prior to disposal. Samples shall be collected at such a point and in such a manner to ensure a representative sample of the discharge.
- 6. Definitions
  - a. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper action.
  - b. The monthly average discharge is the total discharge by volume during a calendar month divided by the number of days in the month that the facility was discharging. This number is to be reported in gallons per day or million gallons per day.

Where less than daily sampling is required by this Order, the monthly average shall be determined by the summation of all the measured discharges by the number of days during the month when the measurements were made.

**E. Dischargers Exempt from Chapter 15 (continued)**

- c. The monthly average **concentration** is the arithmetic mean of measurements made during the month.
- d. The "daily maximum" **discharge** is the total discharge by volume during any day.
- e. The "daily maximum" **concentration** is the highest measurement made on any single discrete sample or composite sample.
- f. A "grab" sample is any sample collected in less than 15 minutes.
- g. Unless otherwise specified, a composite sample is a combination of individual samples collected over the specified sampling period;
  - (1) at equal time intervals, with a maximum interval of one hour
  - (2) at varying time intervals (average interval one hour or less) so that each sample represents an equal portion of the cumulative flow.

The duration of the sampling period shall be specified in the Monitoring and Reporting Program. The method of compositing shall be reported with the results.

**7. Annual Pretreatment Report Requirements:**

Applies to dischargers required to have a Pretreatment Program as stated in waste discharge requirements.)

The annual report shall be submitted by **28 February** and include, but not be limited to, the following items:

- a. A summary of analytical results from representative, flow-proportioned, 24-hour composite sampling of the influent and effluent for those pollutants EPA has identified under Section 307(a) of the Clean Water Act which are known or suspected to be discharged by industrial users.

The discharger is not required to sample and analyze for asbestos until EPA promulgates an applicable analytical technique under 40 CFR (Code of Federal Regulations) Part 136. Sludge shall be sampled during the same 24-hour period and analyzed for the same pollutants as the influent and effluent sampling and analysis. The sludge analyzed shall be a composite sample of a minimum of 12 discrete samples taken at equal time intervals over the 24-hour period. Wastewater and sludge sampling and analysis shall be



**E. Dischargers Exempt from Chapter 15 (continued)**

performed at least annually. The discharger shall also provide any influent, effluent or sludge monitoring data for nonpriority pollutants which may be causing or contributing to Interference, Pass Through or adversely impacting sludge quality. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto.

- b. A discussion of Upset, Interference, or Pass Through incidents, if any, at the treatment plant which the discharger knows or suspects were caused by industrial users of the system. The discussion shall include the reasons why the incidents occurred, the corrective actions taken and, if known, the name and address of the industrial user(s) responsible. The discussion shall also include a review of the applicable pollutant limitations to determine whether any additional limitations, or changes to existing requirements, may be necessary to prevent Pass Through, Interference, or noncompliance with sludge disposal requirements.
- c. The cumulative number of industrial users that the discharger has notified regarding Baseline Monitoring Reports and the cumulative number of industrial user responses.
- d. An updated list of the discharger's industrial users including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The discharger shall provide a brief explanation for each deletion. The list shall identify the industrial users subject to federal categorical standards by specifying which set(s) of standards are applicable. The list shall indicate which categorical industries, or specific pollutants from each industry, are subject to local limitations that are more stringent than the federal categorical standards. The discharger shall also list the noncategorical industrial users that are subject only to local discharge limitations. The discharger shall characterize the compliance status through the year of record of each industrial user by employing the following descriptions:
  - (1) Complied with baseline monitoring report requirements (where applicable);
  - (2) Consistently achieved compliance;
  - (3) Inconsistently achieved compliance;
  - (4) Significantly violated applicable pretreatment requirements as defined by 40 CFR 403.8(f)(2)(vii);

**E. Dischargers Exempt from Chapter 15 (continued)**

- (5) Complied with schedule to achieve compliance (include the date final compliance is required);
- (6) Did not achieve compliance and not on a compliance schedule;
- (7) Compliance status unknown.

A report describing the compliance status of any industrial user characterized by the descriptions in items (d)(3) through (d)(7) above shall be submitted quarterly from the annual report date to EPA and the Board. The report shall identify the specific compliance status of each such industrial user. This quarterly reporting requirement shall commence upon issuance of this Order.

- e. A summary of the inspection and sampling activities conducted by the discharger during the past year to gather information and data regarding the industrial users. The summary shall include but not be limited to, a tabulation of categories of dischargers that were inspected and sampled; how many and how often; and incidents of noncompliance detected.
- f. A summary of the compliance and enforcement activities during the past year. The summary shall include the names and addresses of the industrial users affected by the following actions:
  - (1) Warning letters or notices of violation regarding the industrial user's apparent noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the apparent violation concerned the federal categorical standards or local discharge limitations;
  - (2) Administrative Orders regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations;
  - (3) Civil actions regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations;

E. Dischargers Exempt from Chapter 15 (continued)

- (4) Criminal actions regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations.
  - (5) Assessment of monetary penalties. For each industrial user identify the amount of the penalties;
  - (6) Restriction of flow to the treatment plant; or
  - (7) Disconnection from discharge to the treatment plant.
- g. A description of any significant changes in operating the pretreatment program which differ from the discharger's approved Pretreatment Program, including, but not limited to, changes concerning: the program's administrative structure; local industrial discharge limitations; monitoring program or monitoring frequencies; legal authority or enforcement policy; funding mechanisms; resource requirements; and staffing levels.
  - h. A summary of the annual pretreatment budget, including the cost of pretreatment program functions and equipment purchases.
  - i. A summary of public participation activities to involve and inform the public.
  - j. A description of any changes in sludge disposal methods and a discussion of any concerns not described elsewhere in the report.

Duplicate signed copies of these reports shall be submitted to the Board and:

Regional Administrator  
U.S. Environmental Protection Agency W-5  
75 Hawthorne Street  
San Francisco, CA 94105

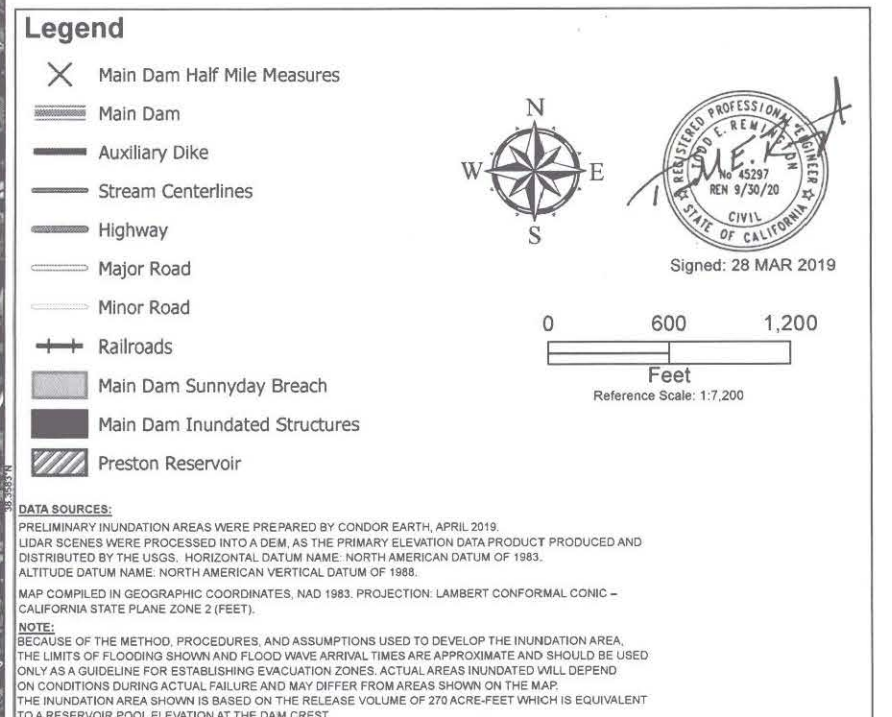
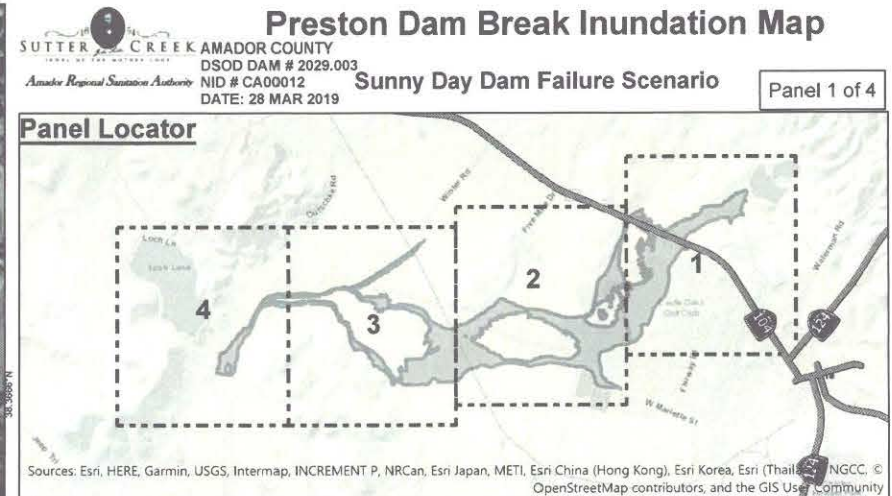
and

State Water Resources Control Board  
Division of Water Quality  
P.O. Box 944213  
Sacramento, CA 94244-2130

Revised March 1993 to update phone number of Central Valley Regional Board.



# EXHIBIT C



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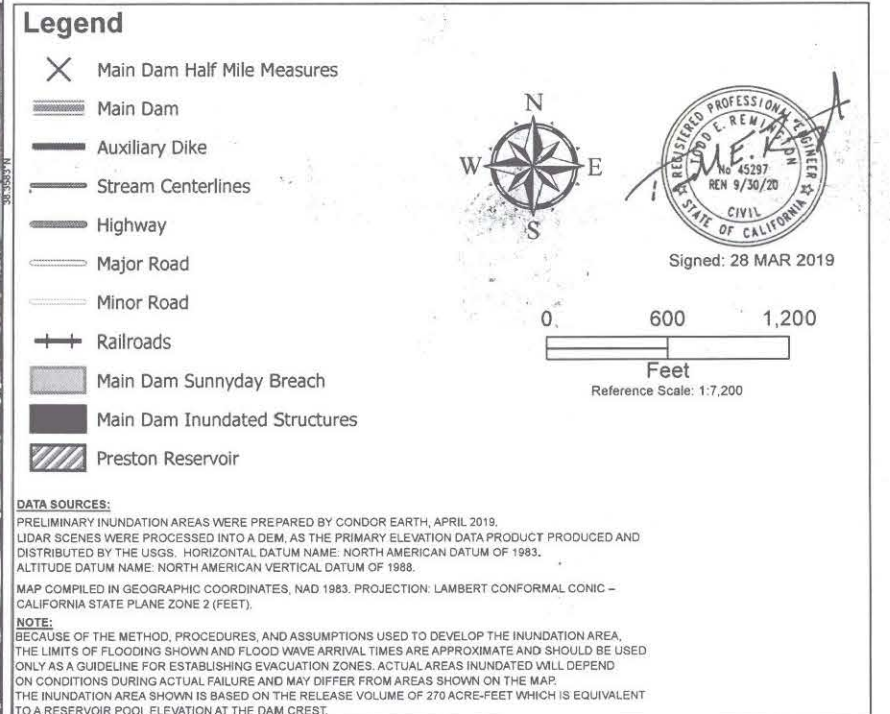
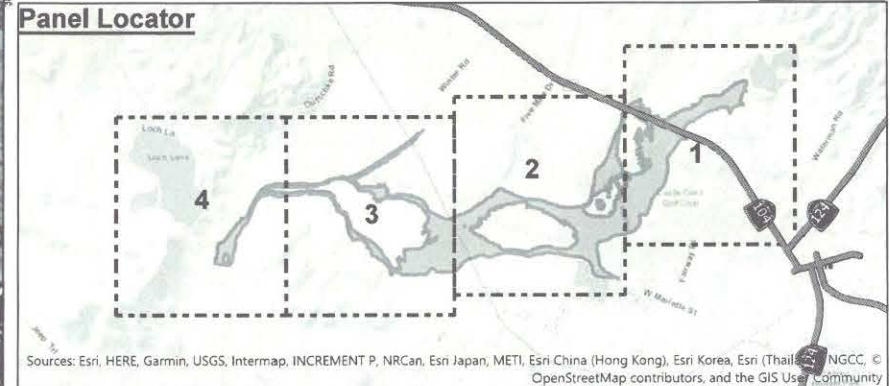


# Preston Dam Break Inundation Map

**SUTTER CREEK** AMADOR COUNTY  
 DSOD DAM # 2029.003  
 NID # CA00012  
 DATE: 28 MAR 2019

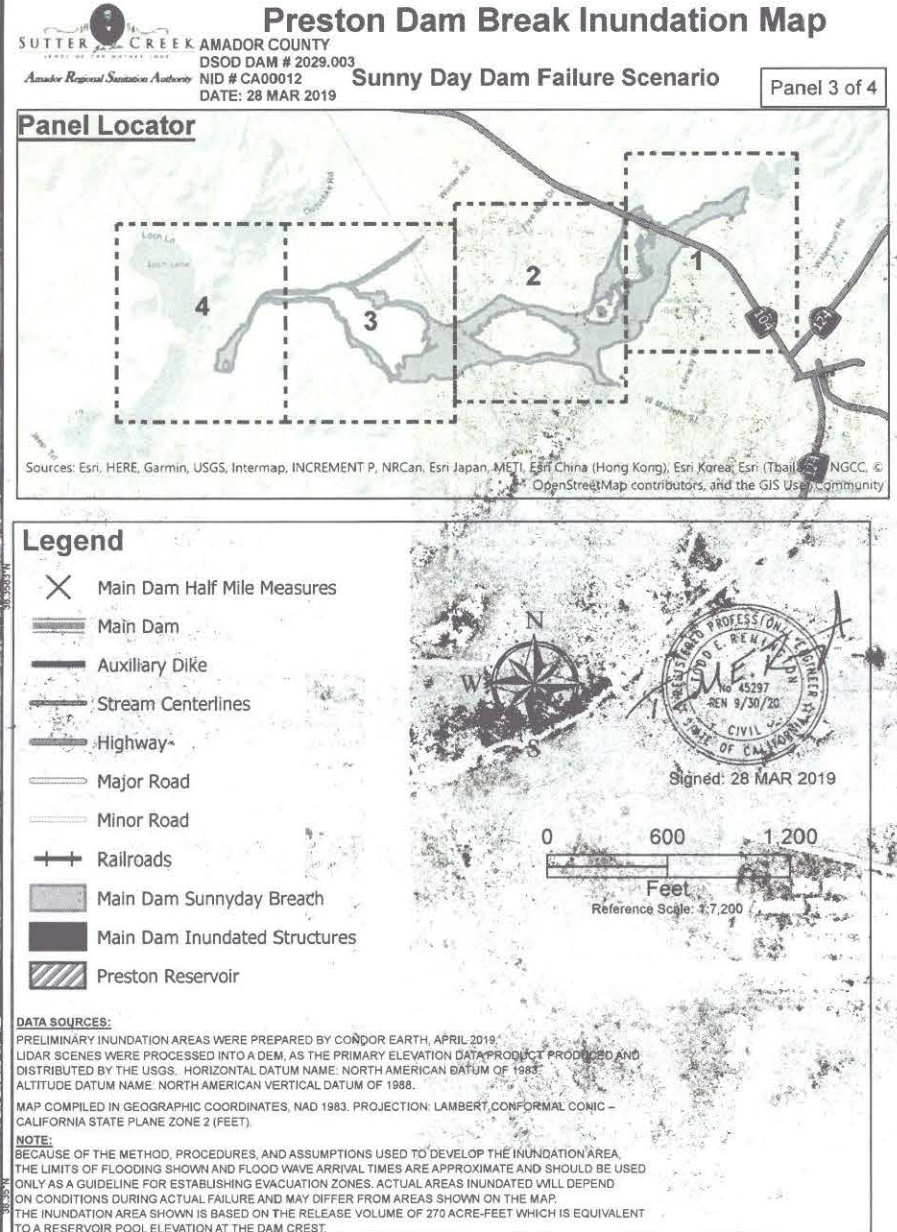
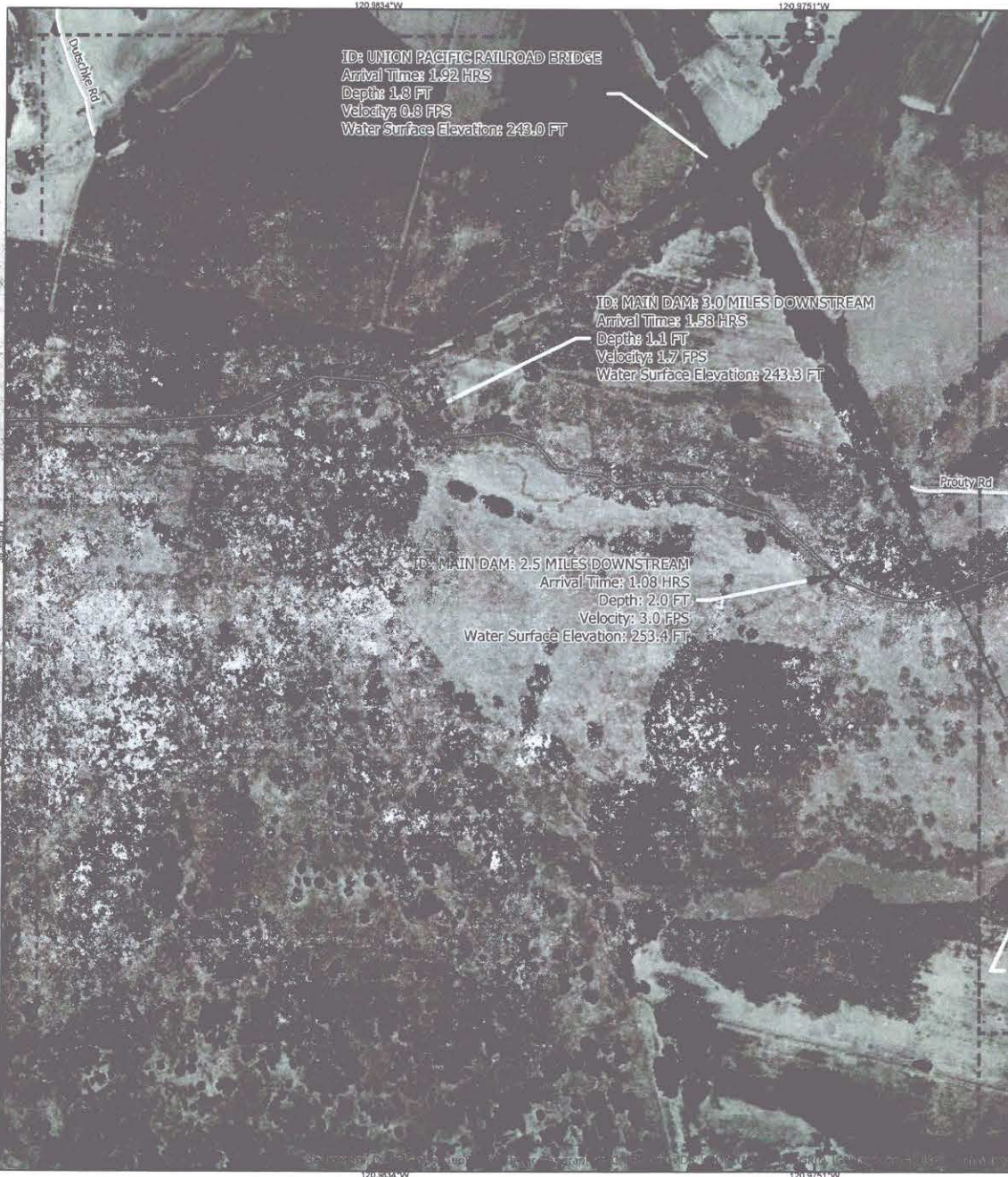
**Sunny Day Dam Failure Scenario**

Panel 2 of 4



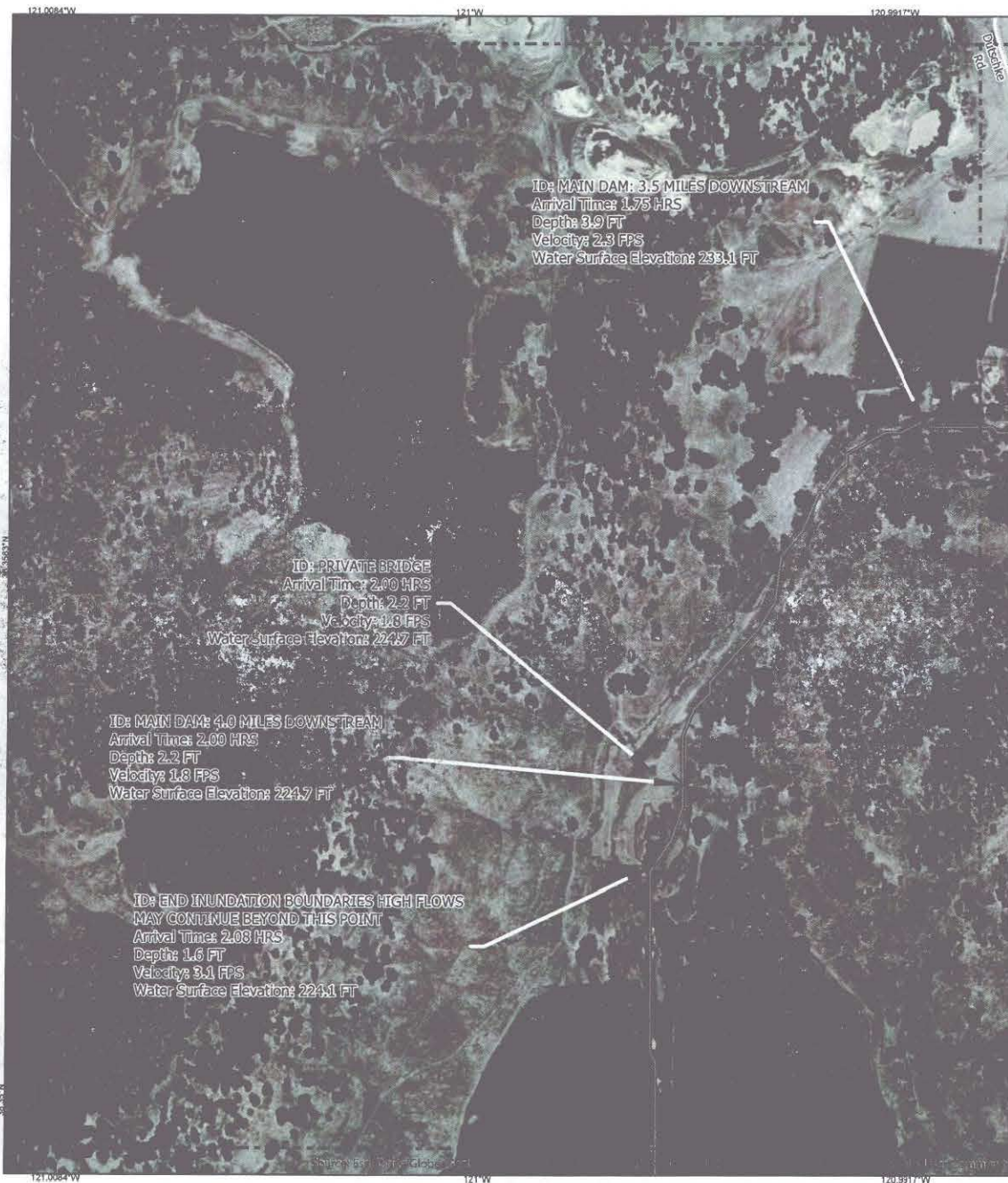
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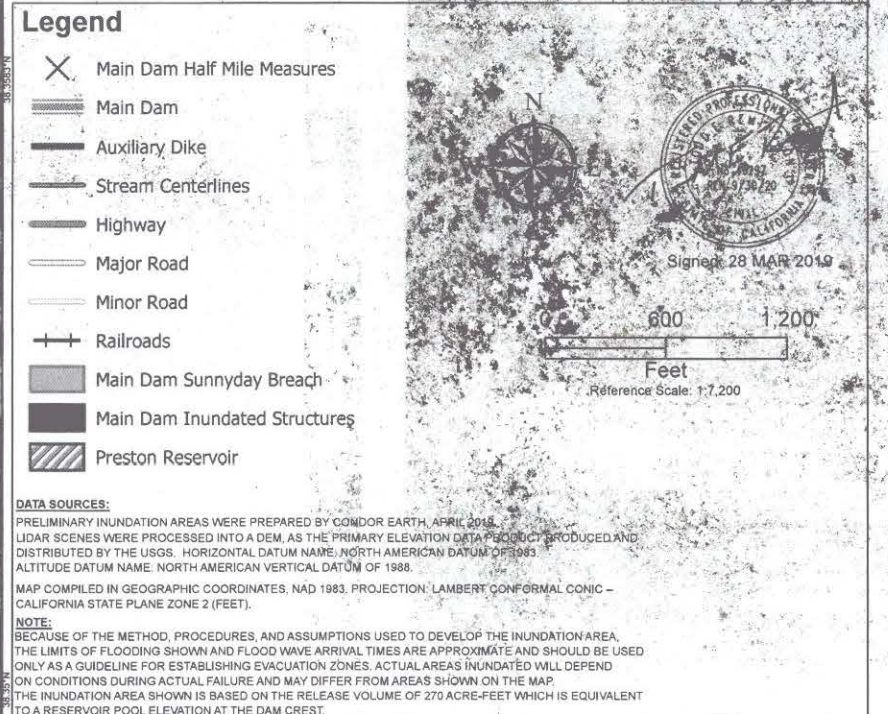
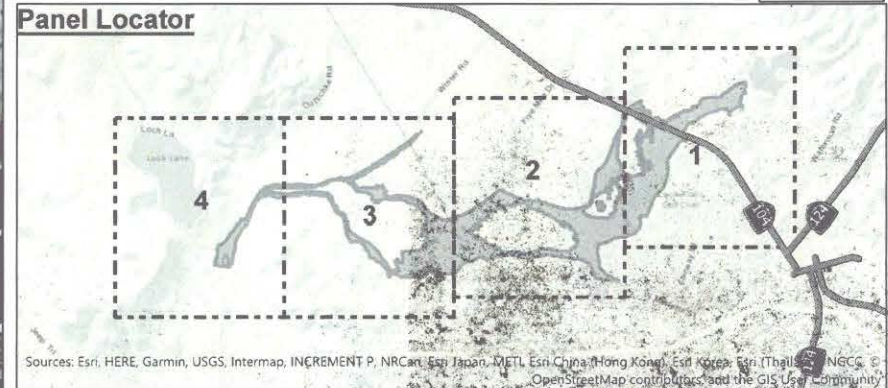


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**Preston Dam Break Inundation Map**  
 SUTTER CREEK AMADOR COUNTY  
 DSOD DAM # 2029.003  
 Amador Regional Sanitation Authority NID # CA00012  
 DATE: 28 MAR 2019 Sunny Day Dam Failure Scenario Panel 4 of 4



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EXHIBIT D



## Central Valley Regional Water Quality Control Board

9 September 2022

Robin Peters  
ARSA, Board Chairman  
18 Main Street  
Sutter Creek, CA 95685  
[RPeters@cityofsuttercreek.org](mailto:RPeters@cityofsuttercreek.org)  
Sent via email

Dominic Atlan  
Castle Oaks Golf Course, Manager  
1000 Castle Oaks Drive  
Ione, CA 95640  
[datlan@ione-ca.com](mailto:datlan@ione-ca.com)  
Sent via email

Dan Epperson  
City of Ione, Mayor  
1 East Main Street  
Ione, CA 95640  
[depperson@ione-ca.com](mailto:depperson@ione-ca.com)  
Sent via email

### PRESTON RESERVOIR CAPACITY AND TERTIARY PLANT NUISANCE CONDITIONS, CITY OF IONE, AMADOR COUNTY REGIONAL OUTFALL AND CASTLE OAKS GOLF COURSE AND DEVELOPMENT, AMADOR COUNTY

On 3 December 1993, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Water Reclamation Requirement (WRRs) 93-240, which regulate the conveyance, storage, tertiary treatment, and land application of secondary treated domestic wastewater from the City of Sutter Creek Wastewater Treatment Plant.

The Amador Regional Sanitation Authority (ARSA) operates the conveyance, storage, and disposal system between the Sutter Creek wastewater treatment plant and Preston Reservoir (Preston). The system moves effluent from the Sutter Creek wastewater treatment plant to several land application areas and storage reservoirs (which includes Henderson Reservoir), eventually discharging to Preston, which is in Ione. ARSA and the City of Ione are both named in the WRRs 93-240 and have entered into a formal agreement<sup>1</sup> to send effluent from Preston to the City of Ione Tertiary Treatment Plant (Tertiary Plant) for further treatment and reuse on Castle Oaks Golf Course (golf course).

It is Central Valley Water Board staff's understanding that the City is concerned the water coming out of Preston may be high in hydrogen sulfide, which could cause odor issues at the Tertiary Plant and on the golf course. In addition, the intake of Preston

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<sup>1</sup> The Board understands that the status of this agreement is in dispute.

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER



water for delivery to the Tertiary Plant occurs at the bottom of the reservoir and has high turbidity which may be causing treatment difficulties. However, the Board has also been made aware that Preston and Henderson Reservoirs are at or near capacity, limiting the ability of the system to withstand higher flows that may occur during the upcoming rainy season. It is of utmost importance for these capacity issues to be resolved promptly to avert potential public health and water quality contamination issues that may occur if the system becomes unable to handle additional inflows.

One way to help alleviate the current situation is for the Board to allow the City to accept water from Preston, even though that may result in the creation of nuisance conditions, which would ordinarily be considered a violation of WRRs 93-240. With the understanding that the capacity issues at Preston are presenting an even greater risk to water quality and public health than potential nuisance concerns related to the treatment of wastewater from Preston at Lone's tertiary facility, the Central Valley Water Board's Compliance and Enforcement Unit will exercise its prosecutorial discretion to not pursue enforcement of odor nuisance conditions that may occur as a result of the City's acceptance of treated wastewater from Preston at the Tertiary Plant or golf course between 9 September 2022 and 1 January 2023.

The Board expects that all dischargers named in WRRs 93-240 will continue to work cooperatively to address both the capacity concerns at Preston and to take all reasonable and appropriate steps to address any odor concerns that may arise. It is also the expectation of the Central Valley Water Board that the City of Lone and ARSA provide the following information on a weekly basis while the Board is exercising its enforcement discretion:

1. Freeboard levels of Preston and Henderson Reservoirs;
2. Flow into Preston and Henderson Reservoirs;
3. Flow in gallons per day from Preston to the Tertiary Plant;
4. A description of any polymer added by added as pre-treatment to address the nuisance conditions.
5. All previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity. This shall be reported to [Kari.Holmes@waterboards.ca.gov](mailto:Kari.Holmes@waterboards.ca.gov); and
6. A weekly summary of any nuisance complaints received by the City and the golf course, along with an explanation of how the complaint(s) were resolved. This summary will include details of coordination efforts made between all dischargers to address areas of concern.

The Board is also committed to working with ARSA to resolve issues related to the operation of their facilities, which may include enhanced maintenance requirements such as the dredging of both Henderson and Preston on a regular basis to ensure that these concerns are adequately addressed in the future.

ARSA, Castle Oaks Golf Course, City of Ione

Amador County

- 3 -

9 September 2022

If you have questions, please contact me directly at [John.Baum@waterboards.ca.gov](mailto:John.Baum@waterboards.ca.gov) or (916) 464-4839.

A handwritten signature in black ink, appearing to read 'J. Baum', with a large, sweeping loop at the end.

JOHN J. BAUM,  
Assistant Executive Officer

cc: list on next page.

ARSA, Castle Oaks Golf Course, City of Ione

Amador County

- 4 -

9 September 2022

cc: Stacey Rhodes, City of Ione, Ione  
Diane Wratten, City of Ione, Ione  
Thomas Reed, City of Ione, Ione  
Dan Epperson, City of Ione, Ione  
Dominic Atlan, Castle Oaks Golf Course, Ione  
Robin Peters, ARSA, Sutter Creek  
Amy Gedney, ARSA, Sutter Creek  
Howard Hold, Central Valley Water Board, Rancho Cordova  
Kenny Croyle, Central Valley Water Board, Rancho Cordova  
Scott Armstrong, Central Valley Water Board, Rancho Cordova  
Lixin Fu, Central Valley Water Board, Rancho Cordova  
Amador County Dept. of Environmental Health, Jackson  
Grant Scavello, USEPA, San Francisco  
Jim Scully, Interested Person, Ione  
Jim Nevin, Interested Person, Ione  
Andrew Packard, Packard Law Offices, Petaluma  
Will Carlon, Packard Law Offices, Petaluma  
Erica Maharg, ATA Law Group, Oakland  
Jack Mitchell, Ledger Dispatch, Jackson  
Jennifer Buckman, Bartkiewicz, Kronick & Shanahan, APC, Sacramento  
Sally Baron, Interested Person, Rancho Cordova  
Virginia Silva, Interested Person, Ione  
David Anderson, Interested Person, Mokelumne Hill

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Sacramento, California 95814  
Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By 

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF STEVEN COREY  
STONE IN SUPPORT OF EX PARTE  
APPLICATION FOR ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022



1 I, Steven Corey Stone, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. Since 2011, I have been the primary Operator of the Amador Regional Sanitation  
5 Authority ("ARSA"), a joint powers agency responsible for providing wastewater conveyance and  
6 disposal services to the Cities of Amador City and Sutter Creek and the County of Amador.

7 3. Wastewater from the City of Sutter Creek, Amador City, and the Martell community  
8 is treated by the Sutter Creek Wastewater Treatment Plant ("Sutter Creek WTP"), which is owned  
9 and operated by the City of Sutter Creek. Disinfected secondary effluent from the Sutter Creek  
10 WTP is conveyed through a series of pipelines and reservoirs, known as the "Henderson/Preston  
11 System," and ultimately to Preston Reservoir for discharge to the City of Ione ("Ione") for tertiary  
12 treatment at its Castle Oaks Water Reclamation Plant for irrigation use at the Castle Oaks Golf  
13 Course.

14 4. As ARSA's primary Operator, I am responsible for overseeing the operation and  
15 maintenance of the Henderson/Preston System, which includes, but is not limited to, oversight over  
16 three reservoirs (Henderson Reservoir, Preston Forebay, and Preston Reservoir) and the water  
17 balances therein in order to ensure compliance with all requirements imposed by the Central Valley  
18 Regional Water Quality Control Board, the California state agency who regulates wastewater  
19 discharges in the area.

20 5. In 2022, Ione has accepted discharges from ARSA from Preston Reservoir as  
21 follows:

Month	Acre-Feet Accepted	Gallons Accepted
January	0	0
February	0	0
March	4.9	1.6 million
April	0	0
May	5.2	1.7 million
June	15.3	5 million

Month	Acre-Feet Accepted	Gallons Accepted
July	0	0
August	1.5	500,000
September	2.8	900,000
<b>Totals:</b>	<b>28.7</b>	<b>9.37 million</b>

6. Preston Reservoir is currently holding approximately 115 acre feet (or 37,472,914 gallons) of wastewater.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28<sup>th</sup> day of September 2022, at Sutter Creek, California.

Steven C. Stone

STEVEN COREY STONE

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Sacramento, California 95814  
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Facsimile: (916) 325-4010

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF MATTHEW L. GREEN  
IN SUPPORT OF EX PARTE  
APPLICATION FOR ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By *[Signature]*

1 I, Matthew L. Green, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am an attorney at law duly licensed to practice before all of the courts of the State  
5 of California. I am Of Counsel at Best Best & Krieger LLP, attorneys of record for Plaintiff  
6 Amador Regional Sanitation Authority ("ARSA"). As one of the attorneys for ARSA, I am familiar  
7 with the proceedings in the above-entitled action.

8 3. On September 28, 2022, at 11:36 a.m., I notified Michael Rock, Defendant City of  
9 Ione's ("Ione") Interim City Manager, by electronic mail at [mrock@ione-ca.com](mailto:mrock@ione-ca.com), and Ione's City  
10 Attorney according to the California Secretary of State's latest edition of the California Roster,  
11 David Prentice, by electronic mail at [david@prenticelongpc.com](mailto:david@prenticelongpc.com), that ARSA would be presenting  
12 to this Court at 8:30 a.m. on October 3, 2022, in Department 1 an application for an order to show  
13 cause and temporary restraining order that would (1) compel Ione to accept from ARSA 500,000  
14 gallons of secondarily treated wastewater per day from Preston Reservoir for 30 days, for a total of  
15 15 million gallons of secondarily treated wastewater over the 30-day period, and (2) order Ione to  
16 show cause why a preliminary injunction requiring such acts should not issue pending trial in this  
17 action. A copy of my electronic mail to Messrs. Rock and Prentice is attached as Exhibit "A" to  
18 this declaration. Although ARSA's ex parte application does not seek any relief against Defendant  
19 California Department of Corrections and Rehabilitation ("CDCR"), I also copied Patrick Covello,  
20 the Warden at CDCR's Mule Creek State Prison, on my ex parte notice electronic mail.

21 4. As of the time of the execution of this declaration, no response has been received,  
22 but opposition is expected.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct.

25 Executed this 28th day of September 2022, at San Diego, California.

26  
27 

28 MATTHEW L. GREEN



# EXHIBIT A

**Lisa Atwood**

---

**From:** Matthew Green  
**Sent:** Wednesday, September 28, 2022 11:36 AM  
**To:** 'mrock@ione-ca.com'; 'david@prenticelongpc.com'  
**Cc:** 'Patrick.Covello@cdcr.ca.gov'; 'Amy Gedney'; Frank Splendorio  
**Subject:** Amador Regional Sanitation Authority v. City of Ione, Case No. 22CV12824 - Ex Parte Notice for 10/3 at 8:30 a.m.

Dear Messrs. Rock and Prentice,

Pursuant to the California Rules of Court, rule 3.1204, subdivision (a), Plaintiff Amador Regional Sanitation Authority ("ARSA") will be appearing ex parte in Department 1 of the Superior Court of California, County of Amador, located at 500 Argonaut Lane in Jackson, California, on **Monday, October 3, 2022, at 8:30 a.m.**, or as soon thereafter as the matter may be heard, to apply for an order to show cause and temporary restraining order (1) compelling Defendant City of Ione ("Ione") to accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons of secondarily treated wastewater over the 30-day period, and (2) ordering Ione to show cause why a preliminary injunction requiring such acts should not issue pending trial in this action. Please advise whether Ione intends to appear to oppose the application.



Matthew Green  
Of Counsel  
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FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

Clerk of the Superior Court

By: 

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11 Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
17 agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
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28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

PROPOSED TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION

Complaint Filed: September 20, 2022

1 **ORDER TO SHOW CAUSE**

2 To Defendant City of Lone ("Lone"):

3 Based upon Plaintiff Amador Regional Sanitation Authority ("ARSA") ex parte application  
4 for an order to show cause and temporary restraining order, and on the documents filed therewith,  
5 you are ordered to appear on Oct. 10, 2022, at 8:30 a.m. in Department 1 of this  
6 Court located at 500 Argonaut Lane, Jackson, California. 95642 to show cause why a preliminary  
7 injunction should not be ordered compelling you and your employees and agents, or any other  
8 persons acting with you or in your behalf, to accept from ARSA 500,000 gallons of secondarily  
9 treated wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons of  
10 secondarily treated wastewater over the 30-day period, pending trial in this action.

11 **TEMPORARY RESTRAINING ORDER**

12 Pending hearing on the Order to Show Cause, you and your employees and agents, or any  
13 other persons acting with you or in your behalf are required to immediately accept from ARSA  
14 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for 30 days, for  
15 a total of 15 million gallons of secondarily treated wastewater over the 30-day period, pending trial  
16 in this action.

17 **IT IS FURTHER ORDERED THAT:**

18 This Order to Show Cause and Temporary Restraining Order and supporting papers shall  
19 be served on Lone no later than Sept. 30, 2022, by electronic mail and overnight  
20 mail. Proof of such service shall be filed at least 5 court days prior to the hearing.

21 Any opposition papers to the Order to Show Cause shall be filed and served on ARSA by  
22 overnight mail no later than Oct 5, 2022. Any reply papers to the opposition  
23 shall be filed and served on Lone by electronic mail and overnight mail no later than  
24 Oct 7, 2022.

25  
26 Dated: 9-29-22



JUDGE OF THE SUPERIOR COURT



# **ATTACHMENT 3**

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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

~~PROPOSED~~ TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION

Complaint Filed: September 20, 2022

FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

Clerk of the Superior Court

By: 



1 **ORDER TO SHOW CAUSE**

2 To Defendant City of Ione ("Ione"):

3 Based upon Plaintiff Amador Regional Sanitation Authority ("ARSA") ex parte application  
4 for an order to show cause and temporary restraining order, and on the documents filed therewith,  
5 you are ordered to appear on Oct. 10, 2022, at 8:30 a.m. in Department 1 of this  
6 Court located at 500 Argonaut Lane, Jackson, California. 95642 to show cause why a preliminary  
7 injunction should not be ordered compelling you and your employees and agents, or any other  
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13 other persons acting with you or in your behalf are required to immediately accept from ARSA  
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23 shall be filed and served on Ione by electronic mail and overnight mail no later than  
24 Oct 7, 2022.

25  
26 Dated: 9-29-22



JUDGE OF THE SUPERIOR COURT

# **ATTACHMENT 4**



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Exempt from Filing

Fees Per Govt. Code § 6103

Attorneys for Respondent City of Ione

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

vs.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, a California  
state agency; and DOES 1 through 20,  
inclusive,

Defendants.

CASE NO. 22CV12824

**OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINING ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: October 10, 2022

Time: 8:30 a.m.

Dept.: 1

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1 Defendant City of Ione ("Ione") by and through its counsel of record, hereby submits this  
2 Opposition to Amador Regional Sanitation Authority's ("ARSA") Ex Parte Application for Order  
3 to Show Cause and Temporary Restraining Order, dated September 28, 2022. This Opposition is  
4 based upon the complete files and records in this action, the following Memorandum of Points and  
5 Authorities, Declarations of Margaret Long, Brett Moroz, and Michael Rock filed concurrently  
6 herewith in support thereof, and any documentary and/or oral evidence as may be presented at the  
7 time of the hearing of the Motion.  
8

9  
10 **I.**  
**INTRODUCTION**

11 Ione had a contract with Amador Regional Sanitation Authority (ARSA) that terminated on  
12 July 31, 2022 in accordance with its termination provisions, to process secondarily treated wastewater  
13 from Preston Reservoir. Ione is unable to continue to process this water because it would endanger the  
14 health and safety of its citizens, and violate existing state-issued operational permits. As a result, Ione  
15 has been unwilling to continue processing while a new contract is negotiated, which requires changes  
16 to the water and system to address these issues. Specifically, the permit limit on coliform bacteria  
17 ("MPN") is monthly median 2.2 MPN, daily maximum 23 MPN. The last three days Ione took  
18 ARSA water, the MPN results were 33 MPN, <1 MPN and 4 MPN, resulting in the daily maximum  
19 be over one time, while the other results were inconsistent and could cause violations and harm the  
20 public's health and safety.  
21

22 In addition, the release of hydrogen sulfide is above the OSHA standards of ceiling  
23 concentration of 20 ppm and max peak of 50 ppm. The odor can be detected at 1.5 ppm. ARSA  
24 water has had hydrogen sulfide tested with a MSA combined gas detector ranging from 15 to 55  
25 ppm. The odor threshold is 1.5 ppm, meaning that is where the odor is easily detected. In the  
26 proper concentration it is also explosive. These high hydrogen sulfide levels will also be in  
27  
28



1 violation of California Water Code section 13050, nuisance, is injurious to health, or is indecent of  
2 offensive to the senses, or an obstruction to the free use of property, so as to interfere with the  
3 comfortable enjoyment of life or property. Not surprisingly, Ione has received several odor  
4 complaints including one from the U.S. Environmental Protection Agency.  
5

6 Making matters worse, ARSA wastewater is currently untreatable. The reason for ARSA  
7 water being untreatable is that the outflow from Preston Reservoir (the location of ARSA  
8 wastewater) is from the bottom, which is covered in stagnate sludge resulting from decades of use  
9 without being cleaned. If ARSA had a pump with the suction line on floats hanging down into the  
10 upper level of the reservoir and the discharge line connected to the reservoir discharge line, Ione  
11 would most likely be able to treat their water. Unfortunately, and harmfully, ARSA has remained  
12 unwilling to do this.  
13

14 As matters stand now, after recent attempts to accept ARSA water, it is simply too  
15 dangerous to accept said input without major modifications to ARSA's delivery of the water from  
16 Preston Reservoir. Accepting the water under these current conditions would be a knowing  
17 violation of the facility operational permit, a public nuisance, and a clear threat to the health and  
18 safety of local residents.  
19

20 ARSA requested, and was granted, an ex parte temporary restraining order, which was based  
21 on inaccurate information in support of its request, particularly related to the significant danger this  
22 order could cause citizens of Ione and surrounding areas. The Court ordered the temporary restraining  
23 order and 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for 30  
24 days. The Order allows for dangerous activity to occur and results in untenable risk of serious harm, or  
25 worse, to the health and safety of public in and around Ione. As a result, the Temporary Restraining  
26 Order and Order to Show Cause should be immediately vacated, as it is entirely contrary to the  
27  
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1 purpose of such relief by actually exacerbating the very risk of severe and irreparable harm that Ione is  
2 seeking to prevent by not processing the secondarily treated wastewater from Preston Reservoir until  
3 such time ARSA takes the necessary remedial steps to make the wastewater treatable. Further, the  
4 Temporary Restraining Order and Order to Show Cause should be immediately vacated on grounds  
5 that ARSA blatantly failed to follow applicable notice and service of paper requirements in furtherance  
6 of it obtaining the temporary restraining order, which was issued solely on the basis of its moving  
7 papers, and, upon review of this Court's Order, apparently without any appearances by ARSA or its  
8 counsel.  
9

## 10 II.

### 11 MEMORANDUM OF POINTS AND AUTHORITIES

#### 12 A. THE EX PARTE APPLICATION FOR TEMPORARY RESTRAINING 13 ORDER IS FACIALLY DEFICIENT AND MUST BE VACATED

14 Parties appearing at the ex parte hearing must serve the application, and all other required  
15 documents, on all other appearing parties "at the first reasonable opportunity." *Absent exceptional*  
16 *circumstances, no hearing will be conducted unless such service has been made.* (CRC 3.1206,  
17 emphasis added; see *Newsom v. Sup.Ct. (Gallagher)* (2020) 51 CA5th 1093, 1098, – all ex parte  
18 papers required under CRC 3.1201 must be served, including proposed order.)  
19

20 A court's authority to enjoin or restrain a party requires that it first have jurisdiction  
21 over them. (See *Moffett v. Barclay* (1995) 32 Cal.App.4th 980, 983 ["It requires no citation of  
22 authority to state that judgment may be taken only as to parties over whom the court has  
23 acquired jurisdiction."]) The jurisdiction of any California court over a party begins on the  
24 date the party is properly served with a summons. (Code Civ. Proc., § 410.50.) A plaintiff's  
25 failure to properly serve a summons defeats a court's jurisdiction over that party. (See *Moffett*  
26  
27  
28

1 v. *Barclay*, *supra*, 32 Cal.App.4th at p. 983 – "A person is not subjected to the jurisdiction of  
2 the court until a summons has been served or they have made a general appearance.”.)

3 The superior court lacked jurisdiction over Ione at the time it issued the Order  
4 because, as of September 29, 2022, ARSA had not yet effectuated service on Ione.  
5 Counsel for ARSA emailed to Ione copies of the ex parte action. (Declaration of Margaret  
6 Long.) While the law permits service of process by mail, such service must include a copy  
7 of "the summons and complaint to the person to be served, together with two copies of the  
8 notice and acknowledgment ... and a return envelope, postage prepaid. (Code Civ. Proc., §  
9 415.30, subd. (a).) Service by mail is only deemed complete "on the date a written  
10 acknowledgement of receipt of summons is executed, if such acknowledgment thereafter is  
11 returned to the sender." (*Id.* at subd. (c).) ARSA failed to perfect service. (See *Dill v.*  
12 *Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439, 1443 – granting motion to quash  
13 service upon finding plaintiff failed to strictly comply with California's service requirements;  
14 see also *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 392 – "No  
15 California appellate court has gone so far as to uphold a service of process solely on the  
16 ground the defendant received actual notice when there has been a complete failure to  
17 comply with the statutory requirements for service.)

18 Since applications for ex parte restraining orders are governed by ex parte rules, these  
19 requirements apply with equal force to the ex parte TRO application. (Cal. Rules of Court,  
20 rule 3.1150(g).) Further, since ARSA had yet appeared in court, it was required to serve the  
21 ex parte TRO application in the same manner as a summons and complaint. (Cal. Rules of  
22 Court, rule 3.1150(a).) It did not.

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1 Absent any showing of service on Ione, the Court acted without jurisdiction when it  
2 entertained the ex parte TRO application, and moreover did so without any party present. (Cal.  
3 Rule of Court, rules 3.1150(d), 3.1206(c) – "Absent exceptional circumstances, no hearing may  
4 be conducted unless such service has been made.") Accordingly, the Order is invalid because  
5 ARSA failed to effect service before it was entered by the Court. The superior court therefore  
6 lacked jurisdiction over Ione at the time the Order was issued. These substantial procedural  
7 irregularities render the Order invalid, and it should be promptly vacated.  
8

9 **B. ARSA HAS NOT, AND CANNOT, MEET ITS BURDEN TO OBTAIN THE**  
10 **INJUNCTIVE RELIEF IT SEEKS.**

11 For reasons entirely unclear, ARSA appears to be seeking a preliminary injunction on grounds  
12 that it will prevail on a breach of contract cause of action. However, a breach of contract has not been  
13 pled, nor is there a valid contract between ARSA and Ione upon which a breach of contract claim may  
14 be brought, as the City of Ione complied with the mandatory five-year notice of termination required in  
15 the 2007 agreement at issue, resulting in an effective termination date of July 31, 2022. (See  
16 Declaration of Michael Rock in Support of Opposition.)  
17

18 The standard for granting a temporary restraining order is the same as that for granting a  
19 preliminary injunction. (See *Church of Christ in Hollywood v. Superior Court* (2002) 99  
20 Cal.App.4th 1244, 1251–52.) "In determining whether to issue a preliminary injunction, the trial  
21 court considers two related factors: (1 the likelihood that the plaintiff will prevail on the merits of its  
22 case at trial; and (2 the interim harm that the plaintiff is likely to sustain if the injunction is denied as  
23 compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction."  
24 (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177,  
25 quoting 14859 *Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402; see  
26 also Code Civ. Proc., § 526, subd. (a).)  
27  
28



1 The court's determination as to whether there is a reasonable probability that plaintiffs will  
2 prevail on the merits must be guided by a "mix" of the potential-merit and interim-harm factors; the  
3 greater plaintiff's showing on one, the less must be shown on the other to support an injunction.  
4 (*Butt v. State of Calif.* (1992) 4 C4th 668, 678; citing *King v. Meese* (1987) 43 C3d 1217, 1226-  
5 1228.) An irreparable injury is one that, "cannot be adequately compensated in damages." (*Intel*  
6 *Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.)

8 **1. ARSA is not Likely to Succeed on the Merits of its Claims**

9 A trial court may not issue an injunction, regardless of the amount of interim harm, "unless  
10 there is some possibility" that plaintiff will ultimately prevail on the merits of the claim. (*Jamison*  
11 *v. Department of Transp.* (2016) 4 CA5th 356, 362, 208 CR3d 610, 614.)

13 For reasons entirely unclear, ARSA appears to be seeking a preliminary injunction on grounds  
14 that it will prevail on a breach of contract cause of action. However, a breach of contract has not been  
15 pled, nor is there a valid contract between ARSA and Ione upon which a breach of contract claim may  
16 be brought. (See Long Declaration.) In fact, ARSA's two cause of action against Ione pertain solely to  
17 requests for injunctive and declaratory relief, respectively, which seek to compel and declare Ione to  
18 accept ARSA's secondarily treated wastewater on the false contention that a valid contract exists  
19 between ARSA and Ione mandating such action. (Complaint, pp. 9, 11.) Similarly, ARSA's Prayer for  
20 Relief is silent as to demanding a trial on the issue of a breach of any contract, nor does it seek any  
21 actual contract damages for that matter. Even ignoring the fact that a contract does not exist between  
22 the parties, breach of contract is not actionable without damage, which the plaintiff must show to  
23 recover for the breach; this requires a showing of appreciable and actual damage. (see, generally,  
24 *Emerald Bay Community Ass'n v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, 1088-  
25 1089.) Even assuming solely for purposes of argument that a contract exists between the parties,  
26  
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1 which one does not, ARSA has not alleged actual damages, rather it relies on entirely speculative  
2 harm in support of its request for injunctive relief on the possibility the Preston Reservoir being  
3 “unable to withstand the higher flows *that may* occur during the upcoming rainy season... .”  
4 (Complaint, p.9, ¶ 37.)  
5

6 In summary, ARSA cannot assert that it is likely to succeed at trial on the merits of its claims  
7 when there is no contract, and therefore no cause of action or controversy for which the relief is  
8 intended to preserve the status quo pending trial. A ruling on an application for preliminary  
9 injunction is *not* an adjudication of the ultimate rights in controversy. It merely represents the trial  
10 court's discretionary decision whether defendant should be restrained from exercising a claimed  
11 right pending trial. (*Cohen v. Board of Supervisors* (1985) 40 C3d 277, 286.)  
12

13 **2. ARSA has not Demonstrated Requisite Imminent Irreparable Harm**

14 In order to obtain injunctive relief, the threat of “irreparable harm” must be *imminent* as  
15 opposed to a mere possibility of harm sometime in the future: “An injunction cannot issue in a  
16 vacuum based on the proponents' fears about something that may happen in the future.” (*Korean*  
17 *Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 CA4th 1069, 1084.)  
18

19 A moving party's failure to provide evidence demonstrating imminent irreparable harm alone  
20 is fatal. (*Newsom v. Superior Court*, supra, 51 Cal.App.5th at 1097 – “[a]n applicant must make an  
21 affirmative factual showing in a declaration containing competent evidence based on personal  
22 knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex  
23 parte,” citing Cal. Rules of Court, rule 3.1202(c).) Absent such a requisite showing, a trial court  
24 should deny an ex parte application. (*Ibid.*) Such is the case.  
25

26 ARSA has failed to demonstrate actual, or even imminent, irreparable harm. Rather, it relies  
27 on speculative concerns and untenable conclusions regarding high flows *that may* occur this rainy  
28

1 season, and the potential harm that could occur in such a case. (Complaint, p.9, ¶37.) The  
2 declarations in support of ARSA’s request for injunctive relief, upon which such relief is to be  
3 based, are also lacking in requisite evidentiary support. The Declaration of Don Brown does not  
4 address any actual harm suffered by ARSA. The Declaration of Amy Gedney, ARSA’s General  
5 Manager, consists of legal conclusions concerning alleged breach of contract by Ione, and references  
6 to correspondence requesting Ione accept wastewater in order to reduce the risk of Preston Reservoir  
7 spilling over during the upcoming rainy season.” (See Gedney Declaration, p. 4, ¶12.)<sup>1</sup> The  
8 Declaration of Gary Ghio, an Engineer with ARSA, also provides speculative and entirely conclusory  
9 contentions as to the potential for the Preston Reservoir reaching its permitted capacity some six  
10 months from now should there be a substantial rainy season that includes a 100-year storm event,  
11 thereby posing “significant” public health and water quality issues. (Ghio Declaration, p. 4, ¶¶ 10 – 1  
12 1.) Further, Mr. Ghio’s education, training, and experience supporting his qualifications to provide  
13 such opinions as to significant public health risks that may result are absent, thereby leaving the  
14 utility of his declaration highly questionable. The Declaration of Steven Corey, the “Primary  
15 Operator of ARSA, is of no utility with regard to demonstrating the requisite immediate harm to  
16 ARSA, as it simply addresses operational issues and discharge rates from the Preston Reservoir.  
17 (Declaration, ¶¶2 – 6.)

21 In conclusion, the declarations supporting ARSA’s request for injunctive relief are based  
22 on self-serving speculative contentions and conclusions, which fail to demonstrate any actual or  
23 imminent harm, thereby justifying dismissal of this action for injunctive and declaratory relief in its  
24 entirety.

---

28 <sup>1</sup> Declarant Gedney confirms at ¶14 that the within Complaint is a “Complaint for Injunctive and Declaratory Relief.”

1           3.     **The Interim Harm Suffered by Ione Should the Injunctive Relief be Granted is**  
2                   **Significantly Greater than any Harm to ARSA should its Requested Injunctive**  
3                   **Relief not be Granted.**

4           As stated more fully above, ARSA seeks injunctive relief based on a contract that is no longer  
5           in effect, and speculative assertions of harm that may occur some six months from now in the event of  
6           a 100-year storm event. ARSA has not, and cannot, articulate immediate harm. Further, ARSA  
7           entirely minimizes the actual and present harm their actions have caused, and will continue to cause by  
8           way of their negligent operations.

9           If the preliminary injunction is granted, the health and safety of the citizens of Amador  
10          County will be in jeopardy. As determined by Brett Moroz, certified operator of the City of Ione  
11          Tertiary and WWTP Plant ("Plant") with over 25 years of experience operating tertiary wastewater  
12          treatment plants, the wastewater facility subject to this action, the Plant is not capable of accepting  
13          current wastewater deliveries from ARSA, as the acceptance of said water would violate the Plant's  
14          permit of operation issued by the Regional Water Quality Board in Sacramento, California. (Moroz  
15          Declaration, p. 2, No. 3.) More specifically, the Nephelometric Turbidity Units ("NTU") permit  
16          limits are 2.0 for monthly median, and daily maximum of 5.0. (*Ibid.*) The ARSA water cannot  
17          reliably meet these limits even at low flows dosing polymer coagulant as high as 69.2 mg/L at  
18          flows as low as 250 gpm. CDCR water polymer dose is usually under 20 mg/L. (*Ibid.*)

19          Further, the permit limit on coliform bacteria ("MPN") is a monthly median 2.2 MPN, daily  
20          maximum 23 MPN. (*Id.* at No. 4.) The last three days of September 2022, ARSA water samples  
21          returned MPN of results of 33 MPN, <1 MPN and 4 MPN. These results were over the daily  
22          maximum one time, and the other results were inconsistent and could cause violations and harm the  
23          public's health and safety. (*Ibid.*)



1 Still yet, the ARSA water currently includes hydrogen sulfide levels that result in the release  
2 hydrogen sulfide above the OSHA standards of ceiling concentration of 20 ppm and max peak of  
3 50 ppm. (*Id.* at No. 5.) As a result, these hydrogen sulfide levels create an odor that can be  
4 detected at 1.5 ppm. (*Ibid.*) ARSA water has had hydrogen sulfide tested with a MSA combined  
5 gas detector ranging from 15 to 55 ppm. The hydrogen sulfide odor threshold is 1.5 ppm, meaning  
6 that the odor is easily detected. (*Ibid.*) In the proper concentration, the hydrogen sulfide is also  
7 explosive. (*Ibid.*) These high hydrogen sulfide levels also fall squarely within California Water  
8 Code section 13050 – nuisance, is injurious to health, or is indecent or offensive to the senses, or  
9 an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life  
10 or property. (*Ibid.*) According to Plant Operator Moroz, they have had several odor complaints  
11 including one from the U.S. Environmental Protection Agency. (*Ibid.*)  
12

14 Even more concerning is the determination that ARSA’s wastewater is currently untreatable.  
15 (*Id.* at p. 5, No. 6). The outflow from Preston Reservoir (the location of ARSA wastewater) is from  
16 the bottom, which is covered in stagnate sludge from decades of use without being cleaned. (*Ibid.*)  
17 Plant Operator Munoz reported that if ARSA had a pump with a suction line on floats that reached  
18 down to the upper level of the reservoir, and the discharge line connected to the reservoir discharge  
19 line, it is likely they would be able to effectively treat ARSA’s water. (*Ibid.*) However, as the  
20 situation stands now, Plant Operator Munoz has determined that after recent attempts to accept  
21 ARSA’s wastewater, “it is simply too dangerous to accept said input without major modifications to  
22 ARSA’s delivery of the water from Preston Reservoir. Accepting the water as it now would be a  
23 knowing violation of the facility operational permit, a public nuisance, and a threat to the health and  
24 safety of local residents.” (*Id.* at No. 7.)  
25  
26  
27  
28

1 City of Ione Manager, Michael Rock, provides further evidence in support of the immediate  
2 risk of harm should Ione be required to accept ARSA's wastewater under current conditions. As City  
3 Manager. Mr. Rock works closely with the operator of the City's Tertiary and WWTP Plant, and is  
4 fully aware of the issues involving the acceptance of water from ARSA, including the "extremely  
5 unhealthy nature of the offered water from ARSA." (Declaration of Michael Rock, p. 2, ¶¶ 1-3.) More  
6 specifically, the acceptance of ARSA's wastewater would violate the City's permit issued by Regional  
7 Water Quality and subject the public to severe exposure to danger associated with pollutants in  
8 wastewater. (*Id.* at No. 4.) As an example, the Nephelometric turbidity units (NTU) in Ione's permit  
9 has limits of 2.0 for monthly median and daily maximum of 5.0. The ARSA water cannot reliably  
10 meet these limits even at low flows dosing polymer coagulant as high as 69.2 mg/L at flows as low  
11 as 250 gpm. (*Ibid.*) CDCR water which is accepted into the system has a polymer dose under 20  
12 mg/L as compared to ARSA's 69.2 mg/L. From a public safety standpoint, the coliform level  
13 detected in ARSA's water during the last attempt to introduce it into the Ione system was 33 MPN  
14 (Coliform). The daily maximum under the permit is a monthly median 2.2 MPN, daily maximum  
15 23 MPN. (*Ibid.*)

16  
17 Accordingly, the harm Ione will suffer by the issuance of a preliminary injunction forcing it to  
18 currently accept water from ARSA would be immediate, be it the obvious threat to the health and  
19 safety of the public, the resulting mandate that it accept the wastewater when not contractually  
20 obligated to do so, violations of its operating permits, and the obvious perpetuation of a public  
21 nuisance. Such irreparable harm substantially outweighs the entirely speculative harm asserted by  
22 ARSA, which must be viewed in terms of its own making by failing to take the necessary steps to  
23 ensure the water it seeks to supply to Ione for treatment meets permitting and minimum health and  
24 safety requirements. In sum, ARSA comes to this Court with unclean hands soiled by their very  
25  
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1 negligence, which they now are attempting to pass, literally and figuratively, onto Ione, thereby  
2 leaving it to Ione to deal with the very harm ARSA has created on false grounds that Ione is  
3 contractually bound to do so. However, even if the terminated agreement ARSA contends still exists  
4 between the parties were it at issue, ARSA ignores the glaring fact that the very agreement they are  
5 attempting to revive specifically requires that “[t]he effluent discharged to Preston Reservoir must be  
6 in compliance with the Waste Discharge Requirements established by the Regional Water Quality  
7 Board. (See Exhibit B to Declaration of Amy Gedney in support ARSA’s Application for Injunctive  
8 Relief, p. 3, No. 4.) Certainly, in light of ARSA’s awareness of the quality of its wastewater that  
9 violate Ione’s operating permits, it would be responsible for taking the steps necessary to avoid being  
10 in breach of the contract, were it still in effect, by delivering wastewater to Ione in a manner that  
11 complies with Ione’s operating permits. (*Id.* at p. 6, No. 14 – in the event of a breach, “...the parties  
12 will meet and confer in an attempt to bring the violating party into compliance with this  
13 agreement.”.)

14  
15  
16 Accordingly, as matters stand now, after recent attempts to accept ARSA water, it is simply  
17 too dangerous to accept said input without major modifications to ARSA’s delivery of the water  
18 from Preston Reservoir, nor is Ione under any contractual obligation to do so. Accepting the water  
19 as it now would be a knowing violation of the facility operational permit, a public nuisance, and a  
20 threat to the health and safety of local residents. It is ARSA that must remedy these issues, such that  
21 Ione will be in a position to accept their wastewater in a manner that is not harmful to the public and  
22 complies with Ione’s operational permits when and if a new agreement is entered between the parties.  
23 Even accepting ARSA’s speculative timeline for avoiding the potential flooding should it not have a  
24 mechanism to release its wastewater from Preston Reservoir, which is reported to be some six months  
25 from now, ARSA would appear to have sufficient time to mitigate the current unhealthy quality of its  
26  
27  
28

1 water and allow Ione to safely, and lawfully, resume acceptance of the water in manner that does not  
2 place public health and safety at risk.

3 It is for these reasons that any relief issued by this Court should be in the form of mandating  
4 and overseeing ARSA's remediation of these issues.  
5

6 **III.**

7 **CONCLUSION**

8 For all of the aforementioned reasons, ARSA's request for a preliminary injunction, let alone  
9 any relief, should be denied by this Court. Alternatively, this Court should compel ARSA to take all  
10 necessary steps to mitigate the issues that have resulted in the untenable risk to the health and safety  
11 of the general public, and enabling Ione to accept its wastewater that meets minimum state-issued  
12 permit requirements.  
13

14  
15 Dated: October 5, 2022

16 PRENTICE LONG, PC

17   
18 \_\_\_\_\_  
19 David A. Prentice  
20 Margaret Long  
21 Attorneys for Respondent City of Ione  
22  
23  
24  
25  
26  
27  
28



1 RE: *Amador Regional Sanitation Authority v. City of Ione*  
2 Alpine County Superior Court Case No.: 22CV12824

3 PROOF OF SERVICE

4 I am employed in the County of Shasta, State of California, I am over the age of eighteen years and  
5 not a party to the foregoing action, my business address is 2240 Court Street, Redding, California 96001. I am  
6 familiar with this company's practice of placing its daily mail, with postage prepaid thereon, in a designated  
7 area for deposit in a U.S. mailbox in the City of Redding, California, after the close of the day's business. On  
8 the date shown below, I served,

9 **OPPOSITION TO EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND**  
10 **TEMPORARY RESTRAINING ORDER; MEMORANDUM OF POINTS AND**  
11 **AUTHORITIES**

12 X Via electronic/email service, the document(s) listed above were served via email to the email  
13 address as set forth below on this date.

14 \_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully  
15 prepaid thereon, and placing said envelope in the area designated for outgoing daily mail, addressed as  
16 follows:

17 Shawn D. Hagerty, Esq.  
18 Matthew Green, Esq.  
19 Best Best & Krieger, LLP  
20 655 West Broadway, 15th Floor  
21 San Diego, CA 92101  
22 Tel: (619) 525-1370  
23 Fax: (619) 233-6118  
24 Email: [shawn.hagerty@bbklaw.com](mailto:shawn.hagerty@bbklaw.com)  
25 [matthew.green@bbklaw.com](mailto:matthew.green@bbklaw.com)

*Attorneys for Plaintiff*

26 Frank A. Splendorio, Esq.  
27 Best & Krieger, LLP  
28 500 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Tel: (916) 325-4000  
Fax: (916) 325-4010  
Email: [frank.splendorio@bbklaw.com](mailto:frank.splendorio@bbklaw.com)

*Attorneys for Plaintiff*

29 X **BY FEDERAL EXPRESS:** I am readily familiar with my employer's practice for the collection and  
30 processing of FedEx packages. Under that practice, packages would be deposited with FedEx that  
31 same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.

32 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
33 October 5, 2022, at Redding, California.

34   
35 Caren Miller

1 **PRENTICE LONG, PC**

2 David A. Prentice, SBN 144690

3 Margaret Long, SBN 227176

4 Carolyn Walker, SBN 262247

2240 Court Street

Redding, California 96001

5 Telephone: (530) 691-0800

6 Facsimile: (530) 691-0700

E-Mail: [david@prenticelongpc.com](mailto:david@prenticelongpc.com)

7 [margaret@prenticelongpc.com](mailto:margaret@prenticelongpc.com)

8 [carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)

Exempt from Filing

Fees Per Govt. Code § 6103

9 Attorneys for Defendant City of Ione

10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF AMADOR

13  
14 AMADOR REGIONAL SANITATION  
15 AUTHORITY, a California joint powers  
agency,

16 Plaintiff,

17 vs.

18 CITY OF IONE, a California municipal  
19 corporation; CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
20 AND REHABILITATION, a California  
21 state agency; and DOES 1 through 20,  
inclusive,

22 Defendants.  
23

CASE NO. 22CV12824

**DECLARATION OF BRETT MOROZ  
IN SUPPORT OF OPPOSITION TO EX  
PARTE APPLICATION FOR ORDER  
TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER**

Date: October 10, 2022

Time: 8:30 a.m.

Dept.: 1

24 I, BRETT MOROZ, DO HEREBY DECLARE:

25 1. I am the operator of the City of Ione Tertiary and WWTP Plant which is the subject of  
26 this action. I am employed by PERC Water which is a water infrastructure company that contracts  
27 with the City of Ione to operate the wastewater system into which Plaintiff Amador Regional  
28

1 Sanitation Authority ("ARSA") is attempting to force its wastewater discharges pursuant to this action.  
2 I make this declaration in support of the City of Ione's Opposition to Ex Parte Application for Order to  
3 Show Cause and Temporary Restraining Order. I am over the age of 18 years, have personal  
4 knowledge of the matters stated herein, except those matters set forth on information and belief, and  
5 if called upon to testify concerning the same, could do so competently.  
6

7 2. I have been a certified wastewater operator in the state of California since 1977, and  
8 have had my Grade IV operator license since 1988. During that time, I have operated different  
9 types of tertiary wastewater treatment plants for over 25 years.  
10

11 3. The system I operate on behalf of the City of Ione is not capable of accepting current  
12 wastewater deliveries from ARSA, in that acceptance of said water would violate our permit of  
13 operation issued by the Regional Water Quality Board in Sacramento, California. The Nephelometric  
14 Turbidity Units ("NTU") in our permit has limits of 2.0 for monthly median, and daily maximum of  
15 5.0. The ARSA water cannot reliably meet these limits even at low flows dosing polymer  
16 coagulant as high as 69.2 mg/L at flows as low as 250 gpm. CDCR water polymer dose is usually  
17 under 20 mg/L.  
18

19 4. The permit limit on coliform bacteria ("MPN") is monthly median 2.2 MPN, daily  
20 maximum 23 MPN. The last three days we took ARSA water the MPN results were 33 MPN, <1  
21 MPN and 4 MPN. We were over the daily maximum one time, and the other results were  
22 inconsistent and could cause violations.  
23

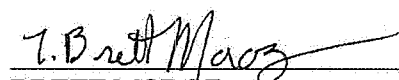
24 5. In addition, the release of hydrogen sulfide is above the OSHA standards of ceiling  
25 concentration of 20 ppm and max peak of 50 ppm. The odor can be detected at 1.5 ppm. ARSA  
26 water has had hydrogen sulfide tested with a MSA combined gas detector ranging from 15 to 55  
27 ppm. The odor threshold is 1.5 ppm, meaning that is where the odor is easily detected. In the  
28

1 proper concentration it is also explosive. These high hydrogen sulfide levels will also be a violation  
2 of California Water Code section 13050, nuisance, is injurious to health, or is indecent or offensive  
3 to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable  
4 enjoyment of life or property. We have had several odor complaints including one from the U.S.  
5 Environmental Protection Agency.  
6

7 6. Making matter worse, ARSA water is untreatable. The reason for ARSA water  
8 being untreatable is that the outflow from Preston Reservoir (the location of ARSA wastewater) is  
9 from the bottom which is covered in stagnate sludge from decades of use without being cleaned. If  
10 ARSA had a pump with the suction line on floats hanging down into the upper level of the reservoir  
11 and the discharge line connected to the reservoir discharge line, we would most likely be able to  
12 treat their water.  
13

14 7. As matters stand now, after recent attempts to accept ARSA water, it is simply too  
15 dangerous to accept said input without major modifications to ARSA's delivery of the water from  
16 Preston Reservoir.  
17

18 I declare under penalty of perjury under the laws of the State of California that the foregoing  
19 is true and correct to the best of my knowledge. Executed this 5th day of October, 2022, in Ione,  
20 California.  
21

22   
23 BRETT MOROZ  
24  
25  
26  
27  
28



1 RE: *Amador Regional Sanitation Authority v. City of Ione*  
2 Alpine County Superior Court Case No.: 22CV12824

3 PROOF OF SERVICE

4 I am employed in the County of Shasta, State of California, I am over the age of eighteen years and  
5 not a party to the foregoing action, my business address is 2240 Court Street, Redding, California 96001. I am  
6 familiar with this company's practice of placing its daily mail, with postage prepaid thereon, in a designated  
7 area for deposit in a U.S. mailbox in the City of Redding, California, after the close of the day's business. On  
8 the date shown below, I served,

9 **DECLARATION OF BRETT MOROZ IN SUPPORT OF OPPOSITION**  
10 **TO EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE**  
11 **AND TEMPORARY RESTRAINING ORDER**

12 X Via electronic/email service, the document(s) listed above were served via email to the email  
13 address as set forth below on this date.

14 \_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully  
15 prepaid thereon, and placing said envelope in the area designated for outgoing daily mail, addressed as  
16 follows:

17 Shawn D. Hagerty, Esq.  
18 Matthew Green, Esq.  
19 Best Best & Krieger, LLP  
20 655 West Broadway, 15th Floor  
21 San Diego, CA 92101  
22 Tel: (619) 525-1370  
23 Fax: (619) 233-6118  
24 Email: [shawn.hagerty@bbklaw.com](mailto:shawn.hagerty@bbklaw.com)  
25 [matthew.green@bbklaw.com](mailto:matthew.green@bbklaw.com)


*Attorneys for Plaintiff*

26 Frank A. Splendorio, Esq.  
27 Best Best & Krieger, LLP  
28 500 Capitol Mall, Suite 1700  
Sacramento, CA 958114  
Tel: (916) 325-4000  
Fax: (916) 325-4010  
Email: [frank.splendorio@bbklaw.com](mailto:frank.splendorio@bbklaw.com)

*Attorneys for Plaintiff*

29 X **BY FEDERAL EXPRESS:** I am readily familiar with my employer's practice for the collection and  
30 processing of FedEx packages. Under that practice, packages would be deposited with FedEx that  
31 same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.

32 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
33 October 5, 2022, at Redding, California.

34   
35 Caren Miller

**PRENTICE LONG, PC**

David A. Prentice, SBN 144690

Margaret Long, SBN 227176

Carolyn Walker, SBN 262247

2240 Court Street

Redding, California 96001

Telephone: (530) 691-0800

Facsimile: (530) 691-0700

E-Mail: [david@prenticelongpc.com](mailto:david@prenticelongpc.com)

[margaret@prenticelongpc.com](mailto:margaret@prenticelongpc.com)

[carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)

Exempt from Filing

Fees Per Govt. Code § 6103

Attorneys for Respondent City of Ione

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

vs.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, a California  
state agency; and DOES 1 through 20,  
inclusive,

Defendants.

CASE NO. 22CV12824

**DECLARATION OF MARGARET  
LONG IN SUPPORT OF OPPOSITION  
TO EX PARTE APPLICATION FOR  
ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER**

Date: October 10, 2022

Time: 8:30 a.m.

Dept.: 1

I, Margaret Long, declare as follows:

1. I am an attorney at law, duly licensed to practice before all courts of the State of California, and am a partner in the law firm of Prentice Long, PC, attorney of record for Defendant City of Ione in this action. This declaration is based on my own personal knowledge except as to

1 those matters stated upon information and belief, and as to those matters, I believe them to be true.

2 If called as a witness to testify to the matters asserted herein, I would do so completely.

3 2. On September 29, 2022, Counsel for the Amador Regional Sanitation Authority  
4 (ARSA) emailed to the City of Ione copies of this ex-parte action. As of this date, ARSA had not  
5 effectuated service of their ex parte pleadings on counsel for the City of Ione.  
6

7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct. Executed this 5th day of October, 2022 in Ione, California.

9  
10   
11 \_\_\_\_\_  
12 MARGARET LONG  
13  
14  
15  
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27  
28

1 RE: *Amador Regional Sanitation Authority v. City of Ione*  
2 Alpine County Superior Court Case No.: 22CV12824

3 PROOF OF SERVICE

4 I am employed in the County of Shasta, State of California, I am over the age of eighteen years and  
5 not a party to the foregoing action, my business address is 2240 Court Street, Redding, California 96001. I am  
6 familiar with this company's practice of placing its daily mail, with postage prepaid thereon, in a designated  
7 area for deposit in a U.S. mailbox in the City of Redding, California, after the close of the day's business. On  
8 the date shown below, I served,

9 **DECLARATION OF MARGARET LONG IN SUPPORT OF OPPOSITION**  
10 **TO EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE**  
11 **AND TEMPORARY RESTRAINING ORDER**

12 X Via electronic/email service, the document(s) listed above were served via email to the email  
13 address as set forth below on this date.

14 \_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully  
15 prepaid thereon, and placing said envelope in the area designated for outgoing daily mail, addressed as  
16 follows:

17 Shawn D. Hagerty, Esq.  
18 Matthew Green, Esq.  
19 Best Best & Krieger, LLP  
20 655 West Broadway, 15th Floor  
21 San Diego, CA 92101  
22 Tel: (619) 525-1370  
23 Fax: (619) 233-6118  
24 Email: [shawn.hagerty@bbklaw.com](mailto:shawn.hagerty@bbklaw.com)  
25 [matthew.green@bbklaw.com](mailto:matthew.green@bbklaw.com)

*Attorneys for Plaintiff*

17 Frank A. Splendorio, Esq.  
18 Best & Krieger, LLP  
19 500 Capitol Mall, Suite 1700  
20 Sacramento, CA 958114  
21 Tel: (916) 325-4000  
22 Fax: (916) 325-4010  
23 Email: [frank.splendorio@bbklaw.com](mailto:frank.splendorio@bbklaw.com)

*Attorneys for Plaintiff*

24 X **BY FEDERAL EXPRESS:** I am readily familiar with my employer's practice for the collection and  
25 processing of FedEx packages. Under that practice, packages would be deposited with FedEx that  
26 same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.

27 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
28 October 5, 2022, at Redding, California.

29   
30 Caren Miller



1 **PRENTICE LONG, PC**  
2 David A. Prentice, SBN 144690  
3 Margaret Long, SBN 227176  
4 Carolyn Walker, SBN 262247  
5 2240 Court Street  
6 Redding, California 96001  
7 Telephone: (530) 691-0800  
8 Facsimile: (530) 691-0700  
9 E-Mail: [david@prenticelongpc.com](mailto:david@prenticelongpc.com)  
10 [margaret@prenticelongpc.com](mailto:margaret@prenticelongpc.com)  
11 [carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)

Exempt from Filing  
Fees Per Govt. Code § 6103

Attorneys for Respondent City of Ione

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF AMADOR

14 AMADOR REGIONAL SANITATION  
15 AUTHORITY, a California joint powers  
16 agency,

Plaintiff,

17 vs.

18 CITY OF IONE, a California municipal  
19 corporation; CALIFORNIA  
20 DEPARTMENT OF CORRECTIONS  
21 AND REHABILITATION, a California  
22 state agency; and DOES 1 through 20,  
23 inclusive,

Defendants.

CASE NO. 22CV12824

**DECLARATION OF MICHAEL ROCK  
IN SUPPORT OF OPPOSITION TO EX  
PARTE APPLICATION FOR ORDER  
TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER**

Date: October 10, 2022

Time: 8:30 a.m.

Dept.: 1

24 I, MICHAEL ROCK, DO HEREBY DECLARE:

25 1. I am the City Manager for the City of Ione, Defendant in the above-entitled action. I  
26 am over the age of 18 years, have personal knowledge of the matters stated herein, except those  
27 matters set forth on information and belief, and if called upon to testify concerning the same,  
28

1 could do so competently.

2 2. I make this declaration in support of the City of Ione's Opposition to Temporary  
3 Restraining Order issued against the City of Ione with opportunity of the City to be heard.

4 3. As City Manager I work closely with the operator of the City's Tertiary and WWTP  
5 Plant. I am fully aware of all the issues with the acceptance of water from the Amador Regional  
6 Sanitation Authority (ARSA). The main issue is the extremely unhealthy nature of the offered water  
7 from ARSA.

8 4. ARSA water, if added to the Ione system, would violate the City's permit issued by  
9 Regional Water Quality and subject the public to severe exposure to danger associated with pollutants  
10 in wastewater. For instance, the Nephelometric turbidity units (NTU) in our permit has limits of 2.0  
11 for monthly median and daily maximum of 5.0. The ARSA water cannot reliably meet these limits  
12 even at low flows dosing polymer coagulant as high as 69.2 mg/L at flows as low as 250 gpm.  
13 CDCR water which is accepted into the system has a polymer dose under 20 mg/L as compared to  
14 ARSA's 69.2 mg/L. More importantly of public safety is that coliform with ARSA water during  
15 the last attempt to introduce that water into the Ione system was 33 MPN (Coliform). The daily  
16 maximum under the permit is a monthly median 2.2 MPN, daily maximum 23 MPN.

17 5. Moreover, the release of hydrogen sulfide in ARSA water is above the OSHA  
18 standards of ceiling concentration of 20 ppm and max peak of 50 ppm. The odor can be detected at  
19 1.5 ppm. ARSA water has had hydrogen sulfide tested with a MSA combined gas detector ranging  
20 from 15 to 55 ppm. The odor threshold is 1.5 ppm meaning that is where the odor is easily  
21 detected. In the proper concentration it is also explosive. These high hydrogen sulfide levels will  
22 also be a violation of the California Water Code § 13050, nuisance, is injurious to health, or is  
23 indecent or offensive to the senses, or an obstruction to the free use of property. The City has had  
24

1 many order complaints when accepting ARSA water, including a complaint from the  
2 Environmental Protection Agency (EPA).

3 6. Regardless of the ARSA water being unacceptable and untreatable, the City of Ione  
4 would take water from ARSA if they took steps to correct the issues above. I have personally  
5 advised ARSA of steps that could be taken with little time or expense which would lead to our  
6 ability to accept their water. They have ignored these suggestions which are attached hereto as  
7 **Exhibit A.**

8  
9 7. Contrary to the ARSA's contention that the City of Ione is contractually obligated  
10 under a 2007 agreement to accept ARSA's wastewater, the 2007 agreement was terminated by the  
11 City of Ione by way of a notice of termination, dated July 19, 2017, with a set termination date of  
12 July 31, 2022, in accordance with its termination provisions that required a minimum of five years  
13 notice. Attached as **Exhibit B** are the minutes of the August 30, 2017, meeting of the ARCA Board  
14 of Directors, directing staff to acknowledge receipt of the Ione's termination letter.  
15

16 I declare under penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct. Executed this 5th day of October, 2022 in Ione, California.  
18

19   
20 MICHAEL ROCK

## **EXHIBIT A**





## **CITY OF IONE**

1 E. MAIN STREET  
P.O. BOX 398  
IONE, CA 95640  
(209) 274-2412

July 20, 2022

Amy Gedney, General Manager  
Amador Regional Sanitation Authority  
18 Main Street  
Sutter Creek, CA 95685

Dear Amy:

Per your request on July 11, 2022, and our ongoing discussions about a long-term agreement between the City of Ione and ARSA I submit this letter with key points that are a basis for beginning formal negotiations on a long-term agreement with ARSA to accept wastewater effluent from Preston Reservoir to the City of Ione Tertiary Plant.

1. The new term will be 5 years with an option for both parties to extend for two additional 5-year terms for a total of 15 years
2. ARSA must have retention ponds to deal with years where water must be stored. Heavy rainfall years should not result in releasing too much water but rather controlling the balance through storage ponds.
3. Strongly recommend ARSA divert water from the creek. This will give ARSA more options and flexibility in balancing the water throughout the year for all parties.
4. Strongly recommended ARSA dredge the bottom of Preston Reservoir as soon as practically possible and no longer than two years from the approval date of this new agreement
5. The City of Ione will take the following range of acre feet per year from ARSA: 100-400
6. If the City rejects water from ARSA because of discharge violations that liability and cost is on ARSA to cure the problem
7. If ARSA cannot send the minimum 100 ac/ft per/year the financial penalty will be \_\_\_\_\_ for every acre foot not delivered

8. If the City of Lone does not take the minimum 100-acre ft/year the City is fined \_\_\_\_ foot every acre foot not taken if and only if the City can release the water to COGC without causing a violation of the City's WDR permit.
9. A flow meter must be installed at Preston Reservoir so that ARSA knows how much water it is discharging. This is required in ARSAs current WDR Permit
10. City strongly recommends ARSA cure the CDO currently on their WDR Permit

If the City and ARSA immediately embark on negotiating a new agreement then the five-year notice to eliminate all flows to the lower Henderson/Preston system as per Section 8a of the 2007 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal will be suspended until such time the new agreement is approved by the City and ARSA. If no agreement is achieved within eighteen months of August 1, 2022, then the five-year notice to eliminate flows will take full force and effect on February 1, 2024.

This letter is meant to be a strong starting point to negotiate a very detailed and long-term agreement that is intended to be beneficial to all parties affected by the outcome of this hopefully very successful partnership with ARSA. All the items listed above are negotiable and nothing is set in concrete.

I look forward to beginning the process of negotiating a new agreement that will benefit the City of Lone, City of Sutter Creek, ARSA, COGC, CDCR and other affected parties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Rock', is written over a horizontal line.

Michael Rock  
Interim City Manager  
City of Lone, CA

## **EXHIBIT B**

# *Amador Regional Sanitation Authority*

*"Servicing Amador City, Martell, & Sutter Creek"*

## **MINUTES OF THE BOARD OF DIRECTORS MEETING August 30, 2017**

**Present:**

Robin Peters, Chairman  
Richard Forster, Vice Chairman  
Jim Swift, Board Member  
Frank Axe, Board Member  
Susan Bragstad, Board Member

**Staff Present:**

Amy Gedney, Interim General Manager  
Harriet Steiner, ARSA Attorney  
Karen Darrow, Secretary

- 1. CALL TO ORDER AND ESTABLISH A QUORUM**  
Meeting called to order by Chairman Peters at 10:05 A.M.
- 2. PLEDGE OF ALLEGIANCE TO THE FLAG**  
Chairman Peters led the Pledge of Allegiance.
- 3. PUBLIC FORUM- None.**
- 4. INFORMATION/CORRESPONDENCE**
  - A. 2017 July Monthly Monitoring Report  
So noted.
  - B. System status update  
So noted.

Mike Kirkley of Sutter Creek asked if the new spray guns were more automated or more labor intensive.

Chairman Peters responded that they would require at least as much work and noted that this was a short term solution.

- 5. CONSENT AGENDA – *Items listed on the consent agenda are considered routine and may be enacted in one motion. Any item may be removed for discussion at the request of the Board or the Public.***
  - A. Approval of Minutes of July 26, 2017
  - B. Warrants
  - C. July Financial Statements

**M/S Forster/Bragstad to Approve the Consent Agenda Items A, B and C.**

**AYES:** Axe, Bragstad, Forster, Swift and Peters  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None  
**MOTION CARRIED**

- D. Adopt Resolution 17-18-\* Extending the loan term with the City of Sutter Creek for the Noble Ranch spray easement.**



Board member Bragstad noted that she believes that ARSA needs to start getting repaid.

ARSA Attorney Steiner noted that all payments have been deferred and that ARSA and the City of Sutter Creek will be looking at the Master Plan to evaluate how to move forward.

The Board directed staff to bring back a summary of the loan agreement terms from the original loan that originated in 2002 and to look into options for a repayment plan.

Mike Kirkley of Sutter Creek commented.

**M/S Forster/Swift to Adopt Resolution 17-18-03 Extending the loan term with the City of Sutter Creek for the Noble Ranch spray easement.**

**AYES:** Forster, Swift and Peters

**NOES:** Bragstad

**ABSTAIN:** Axe

**ABSENT:** None

**MOTION CARRIED**

**6. ADMINISTRATIVE MATTERS**

- A. Direct staff to acknowledge receipt and understanding of Ione's letter terminating the 2007 Agreement.

ARSA Interim General Manager Gedney noted that HydroScience is aware of the five year notice.

Chairman Peters noted that the termination notice seems to lead to the discussion of whether ARSA is really needed and recommended that Interim General Manager Gedney work with ARSA Attorney Steiner to determine the necessity of ARSA and the possibility of dissolving it.

Dan Epperson, Mayor of the City of Ione noted that the letter was not sent to antagonize and that they are willing to work together to part ways.

The Board directed staff to move forward with a letter acknowledging receipt of Ione's termination letter.

**Open Session Adjourned at 10:55 a.m.**

**7. CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION – Litigation pursuant to paragraph (1) of subdivision (d) of Section 59456.9: CDCR v. ARSA et. al. Case No. 17-CV-10084

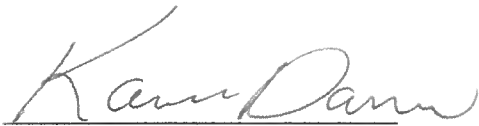
**8. REPORT OUT OF CLOSED SESSION**

Chairman Peters noted that in regards to Item 7A there was no reportable action.

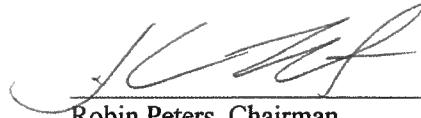
**Closed Session Adjourned at 11:40 p.m**

**9. ADJOURNMENT**

The meeting was adjourned at 11:40 p.m.



Karen Darrow, Secretary



Robin Peters, Chairman

Date Approved: September 27, 2017

1 RE: *Amador Regional Sanitation Authority v. City of Ione*  
2 Alpine County Superior Court Case No.: 22CV12824

3 PROOF OF SERVICE

4 I am employed in the County of Shasta, State of California, I am over the age of eighteen years and  
5 not a party to the foregoing action, my business address is 2240 Court Street, Redding, California 96001. I am  
6 familiar with this company's practice of placing its daily mail, with postage prepaid thereon, in a designated  
7 area for deposit in a U.S. mailbox in the City of Redding, California, after the close of the day's business. On  
8 the date shown below, I served,

9 **DECLARATION OF MICHAEL ROCK IN SUPPORT OF OPPOSITION**  
10 **TO EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE**  
11 **AND TEMPORARY RESTRAINING ORDER**

12 X Via electronic/email service, the document(s) listed above were served via email to the email  
13 address as set forth below on this date.

14 \_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully  
15 prepaid thereon, and placing said envelope in the area designated for outgoing daily mail, addressed as  
16 follows:

17 Shawn D. Hagerty, Esq.  
18 Matthew Green, Esq.  
19 Best Best & Krieger, LLP  
20 655 West Broadway, 15th Floor  
21 San Diego, CA 92101  
22 Tel: (619) 525-1370  
23 Fax: (619) 233-6118  
24 Email: [shawn.hagerty@bbklaw.com](mailto:shawn.hagerty@bbklaw.com)  
25 [matthew.green@bbklaw.com](mailto:matthew.green@bbklaw.com)


*Attorneys for Plaintiff*

17 Frank A. Splendorio, Esq.  
18 Best & Krieger, LLP  
19 500 Capitol Mall, Suite 1700  
20 Sacramento, CA 958114  
21 Tel: (916) 325-4000  
22 Fax: (916) 325-4010  
23 Email: [frank.splendorio@bbklaw.com](mailto:frank.splendorio@bbklaw.com)

*Attorneys for Plaintiff*

24 X **BY FEDERAL EXPRESS:** I am readily familiar with my employer's practice for the collection and  
25 processing of FedEx packages. Under that practice, packages would be deposited with FedEx that  
26 same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.

27 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
28 October 5, 2022, at Redding, California.

  
Caren Miller

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: <b>Margaret Long</b> FIRM NAME: <b>Prentice Long, PC</b> STREET ADDRESS: <b>2240 Court Street</b> CITY: <b>Redding</b> TELEPHONE NO.: <b>(530) 691-0800</b> EMAIL ADDRESS: <b>margaret@prenticelongpc.com</b> ATTORNEY FOR (name): <b>Defendant City of Ione</b>	STATE BAR NUMBER: <b>(SBN: 227176)</b>  STATE: <b>CA</b> ZIP CODE: <b>96001</b> FAX NO.: <b>(530) 691-0700</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Amador</b> STREET ADDRESS: <b>500 Argonaut Lane</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Jackson, CA 95642</b> BRANCH NAME:	
PLAINTIFF/PETITIONER: <b>Amador Regional Sanitation Authority</b> DEFENDANT/RESPONDENT: <b>City of Ione</b> OTHER CASE NAME: <b>ARSA v. City of Ione</b>	
<b>NOTICE OF REMOTE APPEARANCE</b>	
CASE NUMBER: <b>22CV12824</b>	

Exempt from Filing Fees  
Per Govt. Code § 6103

You must use this form to tell the court you intend to appear remotely in a civil case, unless the court's website describes an online process for giving notice. You may also use it to give the required notice to all other parties in the case. (Do not use this form in a juvenile dependency proceeding.)

Check the court's website for information about how to appear remotely, including the departments and types of cases or proceedings that allow remote appearances and ways to appear remotely in their departments for such appearances.

See page 3 of this form for more information, including deadlines for giving notice and for opposing a remote appearance if this notice is for an evidentiary hearing or trial.

**A person appearing remotely should conduct themselves as though appearing in court in person.**

1. The person who intends to appear remotely is (check and complete all that apply):
  - ☐ Plaintiff/Petitioner (name):
  - ☐ Attorney for Plaintiff/Petitioner (name):
  - ☐ Defendant/Respondent (name):
  - ☒ Attorney for Defendant/Respondent (name): **Margaret Long and/or David Prentice**
  - ☐ Other (name and role in case):
  
2. The person or persons in 1 intends to appear remotely (check one):
  - a. ☐ Throughout the case.
  - b. ☒ At the proceeding described below, including on any later dates if the proceeding is continued (describe):  
 Type of proceeding: **Ex Parte Hearing re Order to Show Cause and Temporary Restraining Order**  
 Set on (date): **October 10, 2022** at (time): **8:30 a.m.** in (department): **1**  
 Before (name of judicial officer, if known):
  
3. The person intends to appear by (check court's website for method that may be used):
  - ☒ Videoconference ☐ Audio only (including telephone)
  
4. ☐ For evidentiary hearing or trial only (where testimony may be given): the party requests the following additional aspects of the proceeding be conducted remotely (describe what the party wants to be done remotely and why; attach form MC-025 if more space is needed):



PLAINTIFF: Amador Regional Sanitation Authority  
 DEFENDANT: City of Ione

CASE NUMBER:  
 22CV12824

5. ☒ I agree to keep the proceeding confidential to the same extent as would be required if I were appearing in person.

Date: October 5, 2022

Margaret Long

(TYPE OR PRINT NAME)

(SIGNATURE)

### Notice to Other Parties

Anyone intending to appear remotely must provide notice to all other parties by the deadlines stated in Cal. Rules of Court, rule 3.672, and described on the next page. Notice may be provided orally, electronically, or by giving the other parties this form in a way to ensure it is received by the applicable deadline. The party must tell the court this was done either by filing a proof of service (this may be done on forms POS-040 or POS-050 for electronic service) or by completing and signing the declaration below.

### Declaration of Notice

I gave notice that I intend to appear remotely to the other parties or persons entitled to receive notice in this case as stated below.

Complete one item below for each person notice was given to, and enter one of the following options for "Method of notice" in c.

- **Mail:** By mailing them a copy of this form (write the mailing address in d.)
- **Overnight delivery:** By having a copy of this form delivered overnight (write the delivery address in d.)
- **Electronic notice:** By e-mail or text message (write the e-mail or phone number in d.)
- **Phone:** By telling them over the telephone or leaving them voice mail (write the phone number in d.), or
- **In person:** By giving them a copy of this form in person, or by telling them orally in person (write the address in d.)

1. ☐ Plaintiff/Petitioner

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

2. ☒ Attorney for: Plaintiff

- a. Name: Shawn D. Hagerty and Matthew Green
- b. Date of notice: October 5, 2022
- c. Method of notice: Overnight Mail
- d. Address (mailing, in-person, or email) or phone number:  
 655 W. Broadway, 15th Flr., San Diego, CA 92101

3. ☐ Defendant/Respondent

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

4. ☒ Attorney for: Plaintiff

- a. Name: Frank A. Splendorio, Esq.
- b. Date of notice: October 5, 2022
- c. Method of notice: Overnight Mail
- d. Address (mailing, in-person, or email) or phone number:  
 500 Capitol Mall, Ste. 1700, Sacramento, CA 95814

5. ☐ Other (specify):

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

6. ☐ Attorney for:

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

7. ☐ Other (specify):

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

8. ☐ Other (specify):

- a. Name:
- b. Date of notice:
- c. Method of notice:
- d. Address (mailing, in-person, or email) or phone number:

☐ If more people were given notice, check here, attach form MC-025, titled as Attachment Notice, and add the information about how and when notice was given to each person.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 5, 2022

Caren Miller

(TYPE OR PRINT NAME)

(SIGNATURE)

### NOTICE OF REMOTE APPEARANCE

# **ATTACHMENT 5**

1 SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
2 MATTHEW L. GREEN, Bar No. 227904  
matthew.green@bbklaw.com  
3 BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
4 San Diego, California 92101  
Telephone: (619) 525-1300  
5 Facsimile: (619) 233-6118

6 FRANK A. SPLENDORIO, Bar No. 272601  
frank.splendorio@bbklaw.com  
7 BEST BEST & KRIEGER LLP  
500 Capitol Mall, Suite 1700  
8 Sacramento, California 95814  
Telephone: (916) 325-4000  
9 Facsimile: (916) 325-4010

10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

**FILED**  
AMADOR SUPERIOR COURT

OCT 7 2022

Clerk of the Superior Court

By: B. MORRIS

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
17 agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

REPLY MEMORANDUM IN SUPPORT OF  
ISSUANCE OF PRELIMINARY  
INJUNCTION

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

By Fax

Pursuant to the Court’s September, 29, 2022, Order to Show Cause (“OSC”), Plaintiff Amador Regional Sanitation Authority (“ARSA”) respectfully submits the following reply memorandum in support of issuance of a preliminary injunction against Defendant City of Ione (“Ione”).

**I.**

**REPLY**

Due to Ione’s ongoing failure to comply with its contractual obligations under the parties’ Wastewater Agreement, Preston Reservoir is at serious risk of overflowing during the upcoming rainy season and exposing the public, including the residential community surrounding the Castle Oaks Golf Course (“Gold Course”) in Ione, to harmful wastewater containing pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites. (Ghio Decl., ¶¶ 10-12.) In order to prevent the public health and water quality contamination crises that will occur in the event Preston Reservoir spills over, and based on modeling performed by ARSA’s engineer, ARSA applied ex parte for a temporary restraining order (“TRO”) compelling Ione to immediately accept 500,000 gallons of wastewater from Preston Reservoir for a 30-day period, as well as an order to show cause (“OSC”) why a preliminary injunction should not issue.

Recognizing the urgency that exists, the Court issued the requested TRO and OSC on September 29, 2022, set a shortened briefing schedule, and scheduled the OSC hearing for October 10, 2022. Rather than wait for the Court to receive full briefing and hear the OSC on an expedited schedule, or seek other relief sooner in this Court, Ione filed a petition for writ of mandate asking the Court of Appeal to vacate the TRO and to stay the TRO during the pendency of the writ petition. While the Court of Appeal agreed to stay the TRO pending the OSC hearing in this Court, the Court of Appeal stated that “[the] stay does not deprive [this Court] of its authority to issue injunctive relief at [the OSC] hearing.” (Supp. Green Decl., Ex. C [10/4/22 Ct. App. Order].)

Ione’s opposition to the OSC raises both substantive and procedural arguments against injunctive relief. Regarding the former, Ione claims that the irreparable harm to ARSA and the public is not imminent because Preston Reservoir spilling over is not a certainty. (Opp’n, at pp. 10:13-11:25.) Ione also contends the harm that it would suffer if an injunction is issued, i.e., the



1 violation of its operating permit and associated public health concerns, outweighs the harm to  
2 ARSA in the absence of an injunction. (*Id.*, at pp. 12:1-16:2.) Ione also argues ARSA is unlikely  
3 to prevail on the merits because ARSA has not asserted a breach of contract cause of action, and  
4 ARSA's injunctive and declaratory relief claims nevertheless fail because Ione purportedly  
5 terminated the Wastewater Agreement. (*Id.*, at pp. 9:8-10:12.) As to its procedural argument, Ione  
6 claims it was not personally served with ARSA's ex parte papers. (*Id.*, at pp. 6:13-8:8.)

7 Ione's arguments are unavailing. As Ione notes in its own opposition, injunctive relief  
8 merely requires the threat of irreparable injury, (Opp'n, at p. 10:14); proof of inevitable or certain  
9 injury is not required. If an injunction is not issued, there is a serious and real threat of Preston  
10 Reservoir overflowing and causing public health and water quality contamination crises. (Ghio  
11 Decl., ¶¶ 10-11, Ex. C; Supp. Ghio Decl., ¶ 5, Ex. E.) When balanced against the permit violations  
12 claimed by Ione, such harm is far outweighed by the risk of wastewater spilling out of Preston  
13 Reservoir and flooding a residential neighborhood.

14 Although ignored by Ione, the Central Valley Regional Water Quality Control Board  
15 ("Regional Board"), the agency responsible for regulating wastewater discharges in the area, has  
16 said as much. (Ghio Decl., Ex. D.) Indeed, as recent as October 3, 2022, the Regional Board again  
17 confirmed that Ione's permit violation concerns are not a reason for Ione to refuse to accept  
18 wastewater from Preston Reservoir. (Supp. Ghio Decl., ¶ 7.)

19 The simple reality is that Ione does not like the deal it negotiated in the Wastewater  
20 Agreement because it does not want to pay the costs to treat the wastewater that it is contractually  
21 obligated to accept from ARSA. (See Gedney Decl., Ex. D [Compl.], Ex. E thereto.) Incredibly,  
22 Ione instead wishes to put its residents at risk of being exposed to harmful wastewater if Preston  
23 Reservoir overflows, and the resulting public health and water quality contamination crises that  
24 will occur. Such harm to Ione's residents clearly outweighs Ione's financial concerns.

25 Ione's arguments regarding the merits of ARSA's claims fare no better. As is evident from  
26 ARSA's complaint, injunctive relief is the remedy sought against Ione, but the underlying cause of  
27 action supporting such relief is breach of contract. (Gedney Decl., Ex. D [Compl.], ¶¶ 39-41.)  
28 Contrary to Ione's assertion, the Wastewater Agreement remains in effect and is thus the proper

1 basis of ARSA's injunctive and declaratory relief claims. Ione cannot terminate the Wastewater  
2 Agreement unless it has resolved how to provide adequate water for the Golf Course, which  
3 expressly includes procuring the necessary water quality permits or permit modifications from the  
4 Regional Board. (Ghio Decl., Ex. A, Ex. B thereto [Wastewater Agreement], at p. 4, ¶ 8.a.)

5 It is uncontroverted that Ione has received no water quality permits or permit modifications  
6 from the Regional Board that allow Ione to provide reclaimed water to the Golf Course in any  
7 manner other than from Preston Reservoir. (Ghio Decl., ¶ 8.) Any purported notice of termination  
8 of the Wastewater Agreement given by Ione therefore lacks any force and effect. (See Gedney  
9 Decl., Ex. D [Compl.], ¶ 26.) Ione's failure to accept wastewater from ARSA from Preston  
10 Reservoir amply demonstrates more than "some possibility" that ARSA will ultimately prevail on  
11 the merits of its injunctive and declaratory relief claims. (*Jamison v. Dept. of Transp.* (2016)  
12 4 Cal.App.5th 356, 362.)

13 Finally, Ione's contention that it was not personally served with ARSA's ex parte papers is  
14 wholly without merit. The proof of service on file with the Court clearly shows Ione was personally  
15 served with the ex parte papers on September 29, 2022. (Supp. Green Decl., Ex. B.)

16 For the reasons set forth herein, and in the ex parte application, the Court should issue a  
17 preliminary injunction requiring Ione to accept from ARSA 500,000 gallons of secondarily treated  
18 wastewater per day from Preston Reservoir for the next 30 days, for a total of 15 million gallons of  
19 secondarily treated wastewater over the 30-day period.

## 20 II.

### 21 ARGUMENT

#### 22 A. THE BALANCING OF HARDSHIPS MILITATES IN FAVOR OF ISSUING 23 A PRELIMINARY INJUNCTION

##### 24 1. ARSA Has Amply Demonstrated Irreparable Injury In The Absence Of A 25 Preliminary Injunction.

26 Beginning with the balancing of hardships prong, Ione argues ARSA has failed to  
27 demonstrate irreparable injury that is imminent. (Opp'n, at pp. 10:13-11:25.) According to Ione,  
28 "[ARSA] relies on speculative concerns and untenable conclusions regarding high flows that may  
occur this rainy season, and the potential harm that could occur in such a case." (*Id.*, at pp. 10:26-

11:1.) Ione overstates the showing required to support a preliminary injunction.

While Ione correctly notes that a mere possibility of harm is insufficient to justify a preliminary injunction, the irreparable injury need not be imminent to warrant injunctive relief. Rather, a preliminary injunction is warranted where there is a threat of irreparable injury. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292; *Costa Mesa City Employee'' Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305-306; *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 431; *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46; see also *Lezama v. Justice Court* (1987) 190 Cal.App.3d 15, 21 [describing prerequisite of injunctive relief as “a serious risk of irreparable harm”].) As Ione itself notes, it is “the threat of ‘irreparable injury’” that must be imminent. (Opp’n, at p. 10:14 [emphasis added].)

There clearly exists a serious risk and real threat of irreparable injury if Ione is not ordered to immediately accept wastewater from ARSA from Preston Reservoir. As detailed in ARSA’s engineer, Gary Ghio, P.E.’s, declarations, in the event of a 100-year storm during the upcoming rainy season, Preston Reservoir will reach its permitted capacity in early March 2023, and will spill over in April 2023. (Ghio Decl., ¶ 11; Supp. Ghio Decl., ¶ 5, Ex. E.) The threat of a 100-year storm is also not some abstract proposition; the Regional Board requires ARSA’s system to account and plan for flows under a 1 in 100 year scenario each year. (Ghio Decl., ¶ 11.)

If Preston Reservoir spills over, the wastewater will flood the property below the dam and then run through Mule Creek and into the residential subdivision surrounding the Golf Course. (Ghio Decl., ¶ 10, Ex. C.) The flooding and discharge of disinfected secondary effluent into Mule Creek and onto residential property poses significant public health and water quality contamination issues, as disinfected secondary effluent contains harmful pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites. (Ghio Decl., ¶ 10.)

Ione’s attempt to minimize the immediate need for injunctive relief by noting that Preston Reservoir is not at risk of spilling over until “some six months from now” is specious. (See Opp’n, at p. 12:3-6.) Although ignored by Ione, there is a very small window of time that exists before the rainy season begins. Pursuant to the Wastewater Agreement, Ione provides tertiary treatment to the

1 wastewater received from Preston Reservoir for irrigation use at the Golf Course. (Gedney Decl.,  
2 ¶ 3; Ghio Decl., ¶ 3; Stone Decl., ¶ 3.) Once the rainy season begins, however, limited water is  
3 needed for irrigation, and Ione no longer has anywhere to send the treated wastewater. (Ghio Decl.,  
4 ¶ 7.) Given the rainy season is expected to arrive by November, and a discharge of at least 500,000  
5 gallons per day for 30 days is needed to reduce the risk of Preston Reservoir spilling over during  
6 the upcoming rainy season, (Ghio Decl., ¶¶ 7, 11-12), the need for Ione to accept wastewater from  
7 Preston Reservoir is immediate.

8 Ione's attack on Mr. Ghio's purported lack of qualifications is also without merit. (See  
9 Opp'n, at p. 11:8-17.) Mr. Ghio has a B.S. in Civil Engineering from the University of Pacific and  
10 a M.S. in Structural Engineering from Stanford University, and has been a licensed engineer in the  
11 State of California for 41 years with extensive experience in managing wastewater disposal  
12 systems. (Supp. Ghio, ¶¶ 3-4.) Indeed, during his distinguished career, he has been the City  
13 Engineer for no less than five cities, and the District Engineer for no less than nine water, public  
14 utility, and sanitation districts, in the region. (Supp. Ghio, ¶ 4.)

15 Mr. Ghio accordingly has the expertise to opine on the water balance of Preston Reservoir  
16 and the serious consequences that will result if Preston Reservoir overflows. (See Ghio Decl., ¶¶  
17 10-11.) Mr. Ghio's conclusions are also supported by the Preston Dam Break Inundation Map,  
18 which depicts the areas that will be flooded with wastewater in the event Preston Reservoir spills  
19 over. (Ghio Decl., ¶ 10, Ex. C.) Regarding the public health and water contamination issues that  
20 secondarily treated wastewater poses, ARSA's water quality consultant, Donald Brown, also  
21 concurs with Mr. Ghio's opinions on the matter. (Supp. Brown Decl., ¶ 12.) Even absent Messrs.  
22 Ghio's and Brown's declarations, Brett Moroz's declaration underscores the hazardous nature of  
23 the wastewater from Preston Reservoir.<sup>1</sup> (Moroz Decl., ¶¶ 3-5.) The public health and water  
24 contamination hazards associated with wastewater containing pathogens (protozoa, bacteria, and  
25 viruses), inorganic compounds, and parasites should also be self-evident.

26 ///

27  
28 <sup>1</sup> While Michael Rock's declaration duplicates the bulk of Mr. Moroz's declaration, Mr. Rock  
is a City Manager with no apparent qualifications or expertise on such topics.

2. The Harm To ARSA In The Absence Of An Injunction Greatly Outweighs  
The Harm To Ione If An Injunction Is Issued.

The gist of the interim harm claimed by Ione is that the treatment of wastewater from Preston Reservoir will violate its operating permit from the Regional Board because the turbidity and coliform bacteria in the water exceed the permit limits. (Moroz Decl., ¶¶ 3-4.) Ione also claims that Preston Reservoir's wastewater poses public health issues because it contains odor-causing hydrogen sulfide, and that the water is difficult to treat because of sedimentation caused by the water being delivered from the bottom of Preston Reservoir. (Moroz Decl., ¶¶ 5-7.)

Curiously, Ione fails to address the fact that Ione raised these exact same issues to the Regional Board to justify Ione's refusal to accept water from Preston Reservoir before ARSA was forced to file the instant action. (Ghio Decl., Ex. D.) Although ignored by Ione, the Regional Board's September 9, 2022, letter confirmed that "the capacity issues at Preston [Reservoir] are presenting an even greater risk to water quality and public health than potential nuisance concerns related to the treatment of wastewater from Preston [Reservoir] at Ione's [water reclamation plant]." (Ghio Decl., Ex. D.) At a recent meeting on October 3, 2022, between Ione, ARSA, and the Regional Board, among other parties, the Regional Board's Executive Officer also stated in no uncertain terms that Ione's concern regarding Regional Board permit violations is not a reason for Ione to refuse to accept wastewater from ARSA from Preston Reservoir. (Supp. Ghio Decl., ¶ 7.)

Not only does the risk of flooding of hazardous wastewater exceed Ione's concerns, but Ione's issues are of their own doing. As detailed in Mr. Brown's supplemental declaration, Ione's issues are the responsibility of Ione to address through the tertiary treatment process, they are issues that Ione can in fact address, and its issues are inconsequential, particularly compared with the public health and water contamination issues that would result from Preston Reservoir spilling over. (Supp. Brown Decl., ¶¶ 5-11.)

The simple reality is that Ione does not want to pay the costs to accept and treat wastewater from Preston Reservoir despite its unconditional contractual obligation to do so. (See Gedney Decl., Ex. D [Compl.], Ex. E thereto [noting the cost to Ione to perform under the Wastewater Agreement].) Astoundingly, Ione instead wishes to put its residents at risk of exposure to harmful



1 wastewater in the event Preston Reservoir spills over, and the public health and water quality  
2 contamination crises that will ensue. Such irreparable injury to the people of Ione far outweighs  
3 Ione's financial concerns.

4 3. The Installation Of A Surface Pump Is Not A Feasible Solution To Prevent  
5 Preston Reservoir From Overflowing.

6 Ione also attempts to defeat the issuance of the preliminary injunction sought by ARSA by  
7 suggesting that Ione could treat the water from Preston Reservoir if the outflow came from the  
8 surface of the Reservoir through the installation of a surface pump, rather than from the bottom of  
9 the Reservoir under the current distribution system. (Opp'n, at p. 5:6-13; Moroz Decl., ¶¶ 6-7.) In  
10 addition to being speculative, the installation of a surface pump at this juncture, with the rainy  
11 season likely to begin within the next three (3) weeks, is not a feasible solution because there is not  
12 enough time to remove the amount of water necessary to avert the risk of the Reservoir overflowing.  
13 (Supp. Brown Decl., ¶ 4.)

14 The procurement and installation of the necessary infrastructure to pump water from the  
15 surface of Preston Reservoir would take at least two (2) weeks. (Supp. Brown Decl., ¶ 4.) The  
16 amount of water that can be pumped from the surface and delivered to Ione through such a system  
17 would also be half the amount that can be delivered to Ione through the current discharge line  
18 located at the bottom of Preston Reservoir. (Supp. Brown Decl., ¶ 4.) In other words, it would take  
19 roughly two and one half months from now, i.e., until late December, to discharge the same amount  
20 of water that can be delivered to Ione over the next 30 days through the current discharge line if  
21 500,000 gallons are delivered per day. (Supp. Brown Decl., ¶ 4.)

22 **B. ARSA HAS ESTABLISHED MORE THAN "SOME POSSIBILITY" THAT**  
23 **IT WILL PREVAIL ON THE MERITS OF ITS CLAIMS**

24 It is uncontroverted that ARSA need only show "some possibility" that it will ultimately  
25 prevail on the merits of its claims. (*Jamison, supra*, 4 Cal.App.5th at p. 362.) As detailed in the ex  
26 parte application, ARSA's complaint seeks injunctive relief arising from Ione's breach of the  
27 Wastewater Agreement, as well as declaratory relief regarding ARSA's and Ione's respective rights  
28 and obligations thereunder. (Gedney Decl., Ex. D [Compl.], ¶¶ 39-41, 47-50.) Ione contends ARSA

1 is unlikely to prevail on the injunctive relief claim because no breach of contract claim is pled, and  
2 unlikely to prevail on the injunctive relief and declaratory relief claims because Ione purports to  
3 have terminated the Wastewater Agreement. (Opp’n., at pp. 9:8-10:12.) Ione’s contentions miss the  
4 mark.

5 1. ARSA’s First Cause Of Action Seeks Injunctive Relief Based On Ione’s  
6 Breach Of The Wastewater Agreement.

7 Regarding ARSA’s first cause of action, injunctive relief is the remedy sought, not the cause  
8 of action; as should be evident from ARSA’s complaint, the underlying cause of action is breach  
9 of contract. (Gedney Decl., Ex. D [Compl.], ¶¶ 39-41; *Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d  
10 164, 168 [“[i]njunctive relief is a remedy and not, in itself, a cause of action, and a cause of action  
11 must exist before injunctive relief may be granted”]; Civ. Code., § 3422 [permitting injunctive  
12 relief to prevent breach of a contract where damages would not afford adequate relief or it would  
13 be extremely difficult to ascertain the amount of damages that would be adequate].)

14 2. The Wastewater Agreement Has Not Been Terminated And Is Thus The  
15 Proper Basis Of ARSA’s Injunctive And Declaratory Relief Claims.

16 Setting aside its pleading concerns, Ione’s injunctive and declaratory relief claims are both  
17 predicated on the existence of a contract, i.e., the Wastewater Agreement. (Gedney Decl., Ex. D  
18 [Compl.], ¶¶ 39, 48-49.) While Ione purports to have terminated the Wastewater Agreement  
19 pursuant to a July 19, 2017, letter, any such termination is void and of no force and effect under the  
20 Agreement’s plain language. (Gedney Decl., Ex. D [Compl.], ¶¶ 15, 21-26, Ex. B thereto.)

21 The Wastewater Agreement contains a termination provision that allows Ione to terminate  
22 flows to the lower Henderson/Preston System upon five-years’ written notice, but such right cannot  
23 be exercised unless Ione has resolved how to provide adequate reclaimed water for the Golf Course,  
24 which expressly includes obtaining any necessary water quality permits or permit modifications  
25 required by state law. (Ghio Decl., Ex. A, Ex. B thereto [Wastewater Agreement], at p. 4, ¶ 8.a.)  
26 Ione provides water to the Golf Course from the Castle Oaks Water Reclamation Plant, which Ione  
27 operates pursuant to the Regional Board’s Water Reclamation Requirements (“WRRs”) Order No.  
28 93-240. (Ghio Decl., ¶ 8, Ex. B.) WRRs Order No. 93-240 only permits wastewater treatment and

1 reuse based on the flows to Preston Reservoir from ARSA through the Henderson/Preston System.  
2 (Ghio Decl., ¶ 8.) WRRs Order No. 93-240 also names only ARSA, Ione, and the Golf Course as  
3 the dischargers. (Ghio Decl., ¶ 8.)

4 Ione has received no other water quality permits or permit modifications from the Regional  
5 Board that allow Ione to provide reclaimed water to the Golf Course in any manner other than  
6 through the Henderson/Preston System from Preston Reservoir. (Ghio Decl., ¶ 8.) Due to Ione's  
7 failure to provide adequate reclaimed water for the Golf Course, namely its failure to procure the  
8 water quality permits or permit modifications required by state law necessary to allow for the  
9 provision of adequate reclaimed water to the Golf Course without use of the Henderson/Preston  
10 System, Ione's July 19, 2017, letter, is void and of no force and effect. (See Gedney Decl., Ex. D  
11 [Compl.], ¶ 26.) The Wastewater Agreement thus remains a valid contract enforceable via ARSA's  
12 injunctive and declaratory relief claims.<sup>2</sup>

13 **C. IONE WAS PERSONALLY SERVED WITH ARSA'S EX PARTE**  
14 **APPLICATION**

15 Finally, Ione erroneously suggests the Court lacks jurisdiction over Ione because ARSA  
16 failed to personally serve the ex parte papers on Ione. (Opp'n, at pp. 6:13-8:8.) ARSA's proof of  
17 service on file with the Court clearly demonstrates otherwise. ARSA's ex parte papers were  
18 personally served on Ione at 1:22 p.m. on September 29, 2022, via its City Clerk, Janice Traverso.  
19 (Supp. Green Decl., Ex. B.)

20 **III.**

21 **CONCLUSION**


22 For the reasons set forth above, and in ARSA's ex parte papers, the Court should issue a  
23 preliminary injunction compelling Ione to accept from ARSA 500,000 gallons of secondarily  
24 treated wastewater per day from Preston Reservoir for the next 30 days, for a total of 15 million  
25 gallons of secondarily treated wastewater over the 30-day period.

26 \_\_\_\_\_  
27 <sup>2</sup> Ione's purported termination of the Wastewater Agreement has become nothing more than  
28 a negotiation tactic used by Ione to try to leverage a new agreement because Ione does not like the  
deal it negotiated in 2007. (Gedney Decl., Ex. D [Compl.], Ex. E thereto [complaining about the  
costs to perform under the Wastewater Agreement, but offering to extend the Agreement if there is  
"a new agreement with a new fee structure"].)

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Dated: October 7, 2022

BEST BEST & KRIEGER LLP

By:   
SHAWN D. HAGERTY  
MATTHEW L. GREEN  
FRANK A. SPLENDORIO  
Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION  
AUTHORITY

**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 7, 2022, I served a copy of the within document(s):

REPLY MEMORANDUM IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION;

SUPPLEMENTAL DECLARATION OF MATTHEW L. GREEN IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION;

SUPPLEMENTAL DECLARATION OF DONALD BROWN IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION;

SUPPLEMENTAL DECLARATION OF GARY GHIO, P.E. IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION

☐ **By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.





2 **By e-mail or electronic transmission.** Based on a court order or an agreement of  
3 the parties to accept service by e-mail or electronic transmission, I caused the  
4 documents to be sent to the persons at the e-mail addresses listed below. I did not  
5 receive, within a reasonable time after the transmission, any electronic message or  
6 other indication that the transmission was unsuccessful.

7 Margaret Long, Esq.  
8 David Prentice, Esq.  
9 Prentice Long, PC  
10 2240 Court Street  
11 Redding, CA 96001

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OF IONE

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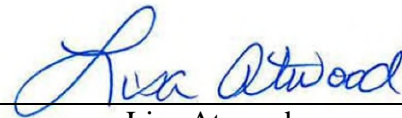
12 California Department of Corrections and  
13 Rehabilitation  
14 1515 S Street, Suite 314 South  
15 Sacramento, CA 95811

Attn: Patrick Covello

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

16 I declare under penalty of perjury under the laws of the State of California that the above  
17 is true and correct.

18 Executed on October 7, 2022, at San Diego, California.

19 

20 Lisa Atwood

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**FILED**  
AMADOR SUPERIOR COURT

OCT 7 2022

Clerk of the Superior Court

By: B. MORRIS

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

SUPPLEMENTAL DECLARATION OF  
DONALD BROWN IN SUPPORT OF  
ISSUANCE OF PRELIMINARY  
INJUNCTION

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

By Fax

1 I, Donald Brown, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am submitting this declaration to supplement my prior declaration of September  
5 28, 2022, in order to respond to recent assertions made by the City of Ione (“Ione”).

6 3. In his declaration, Brett Moroz alleges that Ione cannot treat wastewater received  
7 from Amador Regional Sanitation Authority (“ARSA”) from Preston Reservoir because the  
8 discharge line is located at the bottom of the Reservoir, which has led to sedimentation in the  
9 discharge line. Mr. Moroz nevertheless suggests that Ione could treat the water from Preston  
10 Reservoir if the outflow came from the surface of the Reservoir through the installation of a surface  
11 pump. (Moroz Decl., ¶¶ 6-7.)

12 4. The installation of a surface pump at this juncture, with the rainy season likely to  
13 begin within the next three (3) weeks, is not a feasible solution because there is not enough time to  
14 remove the amount of water necessary to avert the risk of the Reservoir spilling over before the end  
15 of the rainy season. The procurement and installation of the necessary infrastructure to pump water  
16 from the surface of Preston Reservoir would take at least two (2) weeks. The amount of water that  
17 can be pumped from the surface and delivered to Ione through such a system would also be half  
18 the amount that can be delivered to Ione through the current discharge line located at the bottom of  
19 Preston Reservoir. In other words, it would take roughly two and one half months from now, i.e.,  
20 until late December, to discharge the same amount of water that can be delivered to Ione over the  
21 next 30 days through the current discharge line if 500,000 gallons are delivered per day.

22 5. While Mr. Moroz’s declaration complains about sedimentation due to the  
23 wastewater being discharged from the bottom of Preston Reservoir, Ione’s intermittent acceptance  
24 of water from Preston Reservoir is a primary cause of any increased sedimentation. By accepting  
25 wastewater in fits and starts, and stopping discharges for long periods of time, Ione has contributed  
26 to any alleged sedimentation building up in the system. Once the water from Preston Reservoir is  
27 allowed to flow continuously, such flows should break up any existing sedimentation, and  
28 sedimentation should no longer be an issue.

1           6.       While I have not inspected Ione's tertiary treatment plant and am not privy to its  
2 maintenance records, I also suspect that Ione's concerns regarding sedimentation stem from the  
3 condition of its own tertiary filters, not the condition of the water from Preston Reservoir. Over  
4 time, the filter media in the system diminishes due to the abrasion that occurs during the backwash  
5 cycle. As the media gets smaller, it compacts tighter, and the smaller particles that are not flushed  
6 out of the filter settle onto the media surface. This further restricts the flow through the filter and  
7 increases the backwash frequency, which further reduces the treatment volume. The overuse of  
8 polymers is also known to cause clumping of the media which also reduces the flow. Regardless,  
9 these are issues that can only be resolved by Ione and have nothing to do with the quality of the  
10 water delivered from Preston Reservoir.

11           7.       Mr. Moroz's declaration, along with the declaration of Michael Rock, also  
12 complains about the amounts of coliform bacteria and hydrogen sulfide in the wastewater received  
13 from ARSA, which they claim exceed the requirements in Ione's permit from the Central Valley  
14 Regional Water Quality Control Board. (Moroz Decl., ¶¶ 4-5; Rock Decl., ¶¶ 4-5.) Although it is  
15 not clear where and how Ione tested the water received from ARSA, the highest level of coliform  
16 bacteria detected was 33 MPN on one day, with the levels well below the permit limit on the other  
17 days of testing. (Moroz Decl., ¶ 4; Rock Decl., ¶ 4.) Regardless of the permit limit on coliform  
18 bacteria, 33 MPN is insignificant because a standard tertiary treatment plants can receive  
19 undisinfected secondary effluent of >2400 MPN.

20           8.       That the water only tested above the permit limit one time also suggests that the  
21 result was either an anomaly or was due to Ione's failure to use a sufficient dose of disinfectant to  
22 treat the coliform bacteria.

23           9.       As to Messrs. Moroz's and Rock's concerns regarding hydrogen sulfide, hydrogen  
24 sulfide occurs as a result of anaerobic decomposition of sulfur in organic wastewater and can create  
25 odor issues. Ione, however, can treat hydrogen sulfide by adding an oxidant, such as chlorine or  
26 hydrogen peroxide, into the line ahead of the filter feed.

27           10.      The likely cause of hydrogen sulfide once again stems from Ione's decision to stop  
28 deliveries of wastewater from Preston Reservoir. By doing so, stagnant water remained in the

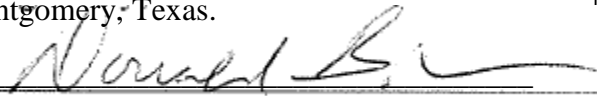
1 closed pipeline between the reservoir discharge valve and the tertiary treatment plant, which likely  
2 allowed the remaining oxygen to be consumed, anaerobic bacteria to be formed, and hydrogen  
3 sulfide to generate.

4 11. The bacteria, hydrogen sulfide, and turbidity issues identified in Messrs. Moroz's  
5 and Rock's declarations all relate to tertiary effluent requirements. They are part of the costs of  
6 providing tertiary treatment and therefore must be resolved by Ione as the operator of the tertiary  
7 treatment plant.

8 12. Finally, I have reviewed the declaration of Gary Ghio, ARSA's engineer, prepared  
9 in support of ARSA's ex parte application. Based on my water quality expertise, I agree entirely  
10 with Mr. Ghio's statement that the flooding and discharge of disinfected secondary effluent into  
11 Mule Creek and onto residential property poses significant public health and water quality  
12 contamination issues. As noted by Mr. Ghio, disinfected secondary effluent contains harmful  
13 pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing  
15 is true and correct.

16 Executed this 6<sup>th</sup> day of October 2022, at Montgomery, Texas.

17 

18 DONALD BROWN  
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10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
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Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

SUPPLEMENTAL DECLARATION OF  
MATTHEW L. GREEN IN SUPPORT OF  
ISSUANCE OF PRELIMINARY  
INJUNCTION

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

FILED  
AMADOR SUPERIOR COURT

OCT 7 2022

Clerk of the Superior Court

By: B. MORRIS

By: *[Signature]*

1 I, Matthew L. Green, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

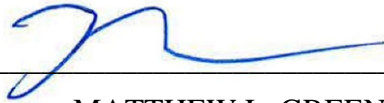
4 2. I am submitting this declaration to supplement my prior declaration of September  
5 28, 2022, in light of certain arguments made by the City of Ione ("Ione").

6 3. Attached as Exhibit "B" hereto is a true and correct copy of the proof of service  
7 reflecting personal service of ARSA's ex parte papers on Ione at 1:22 p.m. on September 29, 2022,  
8 via its City Clerk, Janice Traverso.

9 4. Attached as Exhibit "C" hereto is a true and correct copy of the stay order issued by  
10 the California Court of Appeal, Third Appellate District, on October 4, 2022.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct.

13 Executed this 7th day of October 2022, at San Diego, California.

14   
15 \_\_\_\_\_

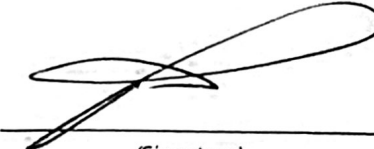
16 MATTHEW L. GREEN  
17  
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# EXHIBIT B

Attorney or Party without Attorney: Shawn D. Hagerty, Esq. (SBN 182435) BEST BEST & KRIEGER LLP 655 West Broadway, 15th Floor San Diego, CA 92101 Telephone No: 619-525-1300 Attorney For: Plaintiff			For Court Use Only  <b>FILED</b> AMADOR SUPERIOR COURT  OCT 04 2022  CLERK OF THE SUPERIOR COURT By <u>T. MOYER</u>	
Ref. No. or File No.: 82456.000002/MLG				
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF AMADOR				
Plaintiff: AMADOR REGIONAL SANITATION AUTHORITY, a California joint powers agency Defendant: CITY OF IONE, a California municipal corporation; et al.				
PROOF OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number: 22-cv-12824

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER; SEE ATTACHED LIST OF ADDITIONAL DOCUMENTS SERVED
- Party served: City of Ione, a California municipal corporation
  - Person served: Janice Raverso, City Clerk (Caucasian, Female, 60s, Blonde Hair, 5'4", 190 Pounds)
- Address where the party was served: 1 E Main Street, Ione, CA 95640
- I served the party:
  - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: ~~Fri~~, Sep 29 2022 (2) at: 01:22 PM
- Person Who Served Papers:
  - Peter Campbell (#19-006, Amador County)
  - c/o FIRST LEGAL  
530 B Street, Suite 1050  
SAN DIEGO, CA 92101
  - (619) 231-9111
  - The Fee for Service was: \$299.77
  - I am: A Registered California Process Server
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10-3-22  
 (Date)

  
 (Signature)



Judicial Council Form  
 Rule 2.150.(a)&(b) Rev January 1, 2007

PROOF OF  
 SERVICE

7738740  
 (15058048)

By PC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF AMADOR**

**CASE NO.: 22CV12824**

**CASE NAME: AMADOR REGIONAL SANITATION AUTHORITY, a California joint powers agency v. CITY OF IONE, a California municipal corporation, et al.**

**ADDITIONAL DOCUMENTS SERVED:**

- **DECLARATION OF DONALD BROWN IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **DECLARATION OF AMY GEDNEY IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **DECLARATION OF GARY GHIO IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **DECLARATION OF MATTHEW L. GREEN IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **DECLARATION OF STEVEN COREY STONE IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**
- **[PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**



# EXHIBIT C

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

CITY OF IONE,  
Petitioner,  
v.  
THE SUPERIOR COURT  
OF AMADOR COUNTY,  
Respondent;  
AMADOR REGIONAL  
SANITATION AUTHORITY,  
Real Party in Interest.

C097044  
Amador County  
No. 22CV12824

BY THE COURT:

The temporary restraining order issued September 29, 2022, requiring petitioner "to immediately accept from [Amador Regional Sanitation Authority] 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for 30 days" is stayed pending the hearing on the order to show cause, currently set for October 10, 2022, and further order of this court. This stay does not deprive the superior court of its authority to issue injunctive relief at that hearing. The court is considering dismissing the petition as moot depending on the outcome of that hearing. Petitioner is directed to provide this court with a status update following that hearing accompanied by a supplemental letter brief addressing whether the matter is moot on or before October 12, 2022.

  
ROBIE, Acting P.J.

-----

cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: City of Ione v. The Superior Court of Amador County  
C097044  
Amador County Super. Ct. No. 22CV12824

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

Margaret Long  
Prentice Long, PC  
2240 Court Street  
Redding, CA 96001

Shawn David Hagerty  
Best Best & Krieger, LLP  
655 West Broadway, 15th Floor  
San Diego, CA 92101

Matthew Lawrence Green  
Best Best & Krieger, LLP  
655 West Broadway, 15th Floor  
San Diego, CA 92101

Frank Allen Splendorio  
Best Best & Krieger, LLP  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814

✓ Amador Superior Court  
500 Argonaut Lane  
Jackson, CA 95642

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shawn.hagerty@bbkllaw.com  
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9 Facsimile: (916) 325-4010

10

11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13

SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

COUNTY OF AMADOR

15

16

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

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Plaintiff,

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v.

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CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23

24

Defendants.

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FILED  
AMADOR SUPERIOR COURT

OCT 7 2022

Clerk of the Superior Court

By: B. MORRIS

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

SUPPLEMENTAL DECLARATION OF  
GARY GHIO, P.E. IN SUPPORT OF  
ISSUANCE OF PRELIMINARY  
INJUNCTION

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

By *[Signature]*

1 I, Gary Ghio, P.E., declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am submitting this declaration to supplement my prior declaration of September  
5 28, 2022, in light of certain arguments made by the City of Ione (“Ione”).

6 3. I obtained a B.S. in Civil Engineering from the University of Pacific in 1979, and a  
7 M.S. in Structural Engineering from Stanford University in 1980.

8 4. As previously noted, I have been a licensed engineer in the State of California for  
9 41 years with extensive experience in managing wastewater disposal systems. Following various  
10 civil engineering work in the 1980s, I was a civil engineer at Weber Associates from 1990 until  
11 1993, at which time I became a principal of Weber, Ghio, & Associates, Inc. (“WGA”). During my  
12 time at WGA, I have served as the City Engineer for multiple cities, including the Cities of Angels,  
13 Amador City, Jackson, Plymouth, and Sutter Creek. I have also served as the District Engineer for  
14 numerous water, public utility, and sanitation districts during my time at WGA, including Union  
15 Public Utility District, Valley Springs Public Utility District, Murphys Sanitary District, Bear  
16 Valley Water District, Linden County Water District, Drytown Water District, Mokelumne Hill  
17 Sanitary District, and Calaveras Public Utility District. As stated in my prior declaration, I have  
18 been the Engineer for the Amador Regional Sanitation Authority (“ARSA”) since 2011.

19 5. As stated in my prior declaration, in the event of a substantial, upcoming rainy  
20 season in the region, namely one that includes a 100-year storm event like that experienced in 2017,  
21 Preston Reservoir will reach its permitted capacity in early March 2023, and will spill over in April  
22 2023, before the end of the anticipated rainy season. This projection is reflected in the water balance  
23 spreadsheet attached as Exhibit “E” hereto.

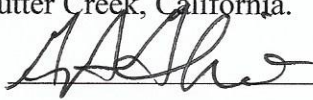
24 6. The manner in which wastewater from Preston Reservoir is currently delivered to  
25 Ione, i.e., through a discharge line located at the bottom of the Reservoir, is the same delivery  
26 system that existed in 2007, when Ione entered into the Agreement to Regulate Use of  
27 Henderson/Preston Wastewater Disposal System with ARSA and the California Department of  
28 Corrections and Rehabilitation.



1           7.       On October 3, 2022, representatives from ARSA, which included myself, and  
2 representatives from Ione, which included Michael Rock, among other parties, met with Patrick  
3 Pulupa, Executive Officer of the Central Valley Regional Water Quality Control Board, to discuss  
4 the outstanding issues between the parties, including the urgent need to discharge wastewater from  
5 Preston Reservoir before the arrival of the rainy season. During that meeting, and consistent with  
6 the Regional Board's September 9, 2022, letter, Mr. Pulupa stated in no uncertain terms that Ione's  
7 concern regarding Regional Board permit violations is not a reason for Ione to refuse to accept  
8 wastewater from ARSA from Preston Reservoir.

9           I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct.

11           Executed this 6<sup>th</sup> day of October 2022, at Sutter Creek, California.



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13           GARY GHIO, P.E.  
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# EXHIBIT E

# 1 in 100 Year Water Balance - Sutter Creek Facilities (Bowers Ranch, Henderson, Preston and Hoskins Ranch)

Preston Reservoir Average Water Balance															
Assumptions: <i>Bowers Ranch has 24 Acres in use and 40 Acres in total available.</i> <i>Hoskins Ranch has 24 Acres in use and 60 Acres in total available.</i> <i>The Preston Forebay has 2 Acres of Surface Area.</i> <i>Preston Reservoir ranges from 0 Acres when empty to 18 when full with 14 acres of watershed area and Capacity of 235 ac-ft.</i> <i>The assumed Percolation rate is 100 Gallons per Day or 0.01 Acre-Feet per Month.</i>															
Month			October	November	December	January	February	March	April	May	June	July	August	September	Total
Rainfall Average Year	<div><input type="radio"/> <input checked="" type="radio"/></div>	In	1.20	2.57	3.45	3.97	3.58	3.35	1.86	0.85	0.26	0.04	0.06	0.29	21.48
Rainfall 100 Year		In	3.32	5.40	8.79	7.65	4.00	3.40	6.47	2.05	0.04	0.00	0.00	0.00	41.11
Pan Evaporation		In	3.14	1.12	0.91	0.92	1.00	1.63	3.18	4.67	6.23	7.53	6.76	5.30	42.40
Month			October	November	December	January	February	March	April	May	June	July	August	September	Total
<b>Henderson Reservoir</b>															
Effluent		AF	10	10	10	10	10	10	80	80	80	80	80	30	490
<b>Hoskins Ranch</b>															
Hoskins Ranch Available Disposal		AF	10	0	0	0	0	0	0	0	7	16	10	7	50
<b>Preston Forebay</b>															
Preston Forebay Influent		AF	0	10	10	10	10	10	80	80	73	64	70	23	440
Precipitation		AF	1	1	1	1	1	1	1	0	0	0	0	0	7
Evaporation		AF	0	0	0	0	0	0	0	0	1	1	1	0	4
Percolation		AF	0	0	0	0	0	0	0	0	0	0	0	0	0
Preston Forebay Effluent		AF	0	11	11	11	11	10	81	80	73	63	69	23	444
<b>CDCR</b>															
CDCR Effluent to Preston Reservoir		AF	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Preston Reservoir</b>															
Preston Reservoir Maximum Available Storage		AF	235	235	235	235	235	235	235	235	235	235	235	235	
Water in Storage at Beginning of Month		AF	114	121	145	179	210	231	249	345	426	495	552	616	
Influent		AF	0	11	11	11	11	10	81	80	73	63	69	23	444
Precipitation		AF	9	14	23	20	11	9	17	5	0	0	0	0	110
Evaporation		AF	2	1	1	1	1	1	2	4	5	6	5	4	32
Percolation		AF	0	0	0	0	0	0	0	0	0	0	0	0	0
Water sent to lone		AF	0	0	0	0	0	0	0	0	0	0	0	0	0
Water Applied(+)/Removed(-) from Storage		AF	7	24	34	31	20	18	96	82	68	57	64	19	
Estimated End of Month Storage		AF	121	145	179	210	231	249	345	426	495	552	616	635	

# **ATTACHMENT 6**

1 SHAWN D. HAGERTY, Bar No. 182435  
shaw.hagerty@bbkllaw.com  
2 MATTHEW L. GREEN, Bar No. 227904  
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Telephone: (916) 551-2086  
10 Facsimile: (916) 325-4010

11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
21 corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
22 REHABILITATION, a California state agency;  
and DOES 1 through 20, inclusive,

23 Defendants.  
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Case No. 22-CV-12824  
Judge: Hon. Renee C. Day

**ORDER AND  
PRELIMINARY INJUNCTION**

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 2

Action Filed: September 20, 2022  
Trial Date: Not Set

By *FLY*

**FILED**  
Superior Court of California,  
County of Amador  
**10/10/2022 at 03:40:55 PM**  
By: B. MORRIS, Deputy Clerk



OCT 10 2022

CLERK OF THE SUPERIOR COURT

1 The order to show cause why a preliminary injunction should not ~~issue in favor of Plaintiff~~  
2 Amador Regional Sanitation Authority ("ARSA") came on for hearing in Department 2 of this  
3 Court on October 10, 2022. Matthew L. Green and Frank A. Splendorio of Best Best & Krieger  
4 LLP appeared on behalf of ARSA. Margaret Long and Carolyn Walker of Prentice Long, PC and  
5 Theresa C. Barfield of Somach Simmons & Dunn appeared on behalf of Defendant City of Ione  
6 ("Ione"). Having read ARSA's ex parte application for a temporary restraining order and for an  
7 order to show cause why a preliminary injunction should not issue, the memoranda and declarations  
8 filed by the parties, and having heard argument of counsel, and satisfactory evidence having been  
9 presented,

10 IT IS ORDERED THAT a preliminary injunction shall issue in favor of ARSA. Ione and  
11 its employees and agents, and any other persons acting with or on behalf of Ione, are required to  
12 accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston  
13 Reservoir for the next 30 days, for a total of 15 million gallons of secondarily treated wastewater  
14 over the 30-day period, pending the trial of this action or further order of this Court.

15  
16 Dated: October FE, 2022

By: 

JUDGE OF THE SUPERIOR COURT

**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 10, 2022, I served a copy of the within document(s):

**[PROPOSED] ORDER AND PRELIMINARY INJUNCTION**

- ☐ **By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.
- ☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1 Margaret Long, Esq.  
2 David Prentice, Esq.  
3 Prentice Long, PC  
4 2240 Court Street  
5 Redding, CA 96001

ATTORNEYS FOR DEFENDANT CITY  
OF IONE

Tel.: (530) 691-0800

Email: [margaret@prenticelongpc.com](mailto:margaret@prenticelongpc.com)  
[David@prenticelongpc.com](mailto:David@prenticelongpc.com)  
[Caren@prenticelongpc.com](mailto:Caren@prenticelongpc.com)  
[Carolyn@prenticelongpc.com](mailto:Carolyn@prenticelongpc.com)

6 Theresa C. Barfield, Esq.  
7 Michele E. Chester, Esq.  
8 Somach Simmons & Dunn  
9 500 Capitol Mall, Suite 1000  
10 Sacramento, CA 95814

SPECIAL COUNSEL TO THE CITY  
ATTORNEY OF IONE

Tel: (916) 446-7979

Email: [tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)  
[mchester@somachlaw.com](mailto:mchester@somachlaw.com)

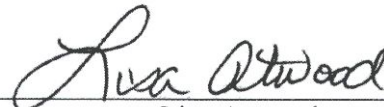
11 California Department of Corrections and  
12 Rehabilitation  
13 1515 S Street, Suite 314 South  
14 Sacramento, CA 95811

Attn: Patrick Covello

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

15 I declare under penalty of perjury under the laws of the State of California that the above  
16 is true and correct.

17 Executed on October 10, 2022, at San Diego, California.

18 

19 Lisa Atwood  
20  
21  
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23  
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# **ATTACHMENT 7**

## Central Valley Regional Water Quality Control Board

9 September 2022

Robin Peters  
ARSA, Board Chairman  
18 Main Street  
Sutter Creek, CA 95685  
[RPeters@cityofsuttercreek.org](mailto:RPeters@cityofsuttercreek.org)  
Sent via email

Dominic Atlan  
Castle Oaks Golf Course, Manager  
1000 Castle Oaks Drive  
Ione, CA 95640  
[datlan@ione-ca.com](mailto:datlan@ione-ca.com)  
Sent via email

Dan Epperson  
City of Ione, Mayor  
1 East Main Street  
Ione, CA 95640  
[depperson@ione-ca.com](mailto:depperson@ione-ca.com)  
Sent via email

### PRESTON RESERVOIR CAPACITY AND TERTIARY PLANT NUISANCE CONDITIONS, CITY OF IONE, AMADOR COUNTY REGIONAL OUTFALL AND CASTLE OAKS GOLF COURSE AND DEVELOPMENT, AMADOR COUNTY

On 3 December 1993, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Water Reclamation Requirement (WRRs) 93-240, which regulate the conveyance, storage, tertiary treatment, and land application of secondary treated domestic wastewater from the City of Sutter Creek Wastewater Treatment Plant.

The Amador Regional Sanitation Authority (ARSA) operates the conveyance, storage, and disposal system between the Sutter Creek wastewater treatment plant and Preston Reservoir (Preston). The system moves effluent from the Sutter Creek wastewater treatment plant to several land application areas and storage reservoirs (which includes Henderson Reservoir), eventually discharging to Preston, which is in Ione. ARSA and the City of Ione are both named in the WRRs 93-240 and have entered into a formal agreement<sup>1</sup> to send effluent from Preston to the City of Ione Tertiary Treatment Plant (Tertiary Plant) for further treatment and reuse on Castle Oaks Golf Course (golf course).

It is Central Valley Water Board staff's understanding that the City is concerned the water coming out of Preston may be high in hydrogen sulfide, which could cause odor issues at the Tertiary Plant and on the golf course. In addition, the intake of Preston

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<sup>1</sup> The Board understands that the status of this agreement is in dispute.



water for delivery to the Tertiary Plant occurs at the bottom of the reservoir and has high turbidity which may be causing treatment difficulties. However, the Board has also been made aware that Preston and Henderson Reservoirs are at or near capacity, limiting the ability of the system to withstand higher flows that may occur during the upcoming rainy season. It is of utmost importance for these capacity issues to be resolved promptly to avert potential public health and water quality contamination issues that may occur if the system becomes unable to handle additional inflows.

One way to help alleviate the current situation is for the Board to allow the City to accept water from Preston, even though that may result in the creation of nuisance conditions, which would ordinarily be considered a violation of WRRs 93-240. With the understanding that the capacity issues at Preston are presenting an even greater risk to water quality and public health than potential nuisance concerns related to the treatment of wastewater from Preston at Lone's tertiary facility, the Central Valley Water Board's Compliance and Enforcement Unit will exercise its prosecutorial discretion to not pursue enforcement of odor nuisance conditions that may occur as a result of the City's acceptance of treated wastewater from Preston at the Tertiary Plant or golf course between 9 September 2022 and 1 January 2023.

The Board expects that all dischargers named in WRRs 93-240 will continue to work cooperatively to address both the capacity concerns at Preston and to take all reasonable and appropriate steps to address any odor concerns that may arise. It is also the expectation of the Central Valley Water Board that the City of Lone and ARSA provide the following information on a weekly basis while the Board is exercising its enforcement discretion:

1. Freeboard levels of Preston and Henderson Reservoirs;
2. Flow into Preston and Henderson Reservoirs;
3. Flow in gallons per day from Preston to the Tertiary Plant;
4. A description of any polymer added by added as pre-treatment to address the nuisance conditions.
5. All previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity. This shall be reported to [Kari.Holmes@waterboards.ca.gov](mailto:Kari.Holmes@waterboards.ca.gov); and
6. A weekly summary of any nuisance complaints received by the City and the golf course, along with an explanation of how the complaint(s) were resolved. This summary will include details of coordination efforts made between all dischargers to address areas of concern.

The Board is also committed to working with ARSA to resolve issues related to the operation of their facilities, which may include enhanced maintenance requirements such as the dredging of both Henderson and Preston on a regular basis to ensure that these concerns are adequately addressed in the future.


ARSA, Castle Oaks Golf Course, City of Lone

Amador County

- 3 -

9 September 2022

If you have questions, please contact me directly at [John.Baum@waterboards.ca.gov](mailto:John.Baum@waterboards.ca.gov) or (916) 464-4839.

 **John J.  
Baum**  
JOHN J. BAUM,  
Assistant Executive Officer

Digitally signed by  
John J. Baum  
Date: 2022.09.09  
17:38:20 -07'00'

Water Boards

cc: list on next page.

cc: Stacey Rhodes, City of Ione, Ione  
Diane Wratten, City of Ione, Ione  
Thomas Reed, City of Ione, Ione  
Dan Epperson, City of Ione, Ione  
Dominic Atlan, Castle Oaks Golf Course, Ione  
Robin Peters, ARSA, Sutter Creek  
Amy Gedney, ARSA, Sutter Creek  
Howard Hold, Central Valley Water Board, Rancho Cordova  
Kenny Croyle, Central Valley Water Board, Rancho Cordova  
Scott Armstrong, Central Valley Water Board, Rancho Cordova  
Lixin Fu, Central Valley Water Board, Rancho Cordova  
Amador County Dept. of Environmental Health, Jackson  
Grant Scavello, USEPA, San Francisco  
Jim Scully, Interested Person, Ione  
Jim Nevin, Interested Person, Ione  
Andrew Packard, Packard Law Offices, Petaluma  
Will Carlon, Packard Law Offices, Petaluma  
Erica Maharg, ATA Law Group, Oakland  
Jack Mitchell, Ledger Dispatch, Jackson  
Jennifer Buckman, Bartkiewicz, Kronick & Shanahan, APC, Sacramento  
Sally Baron, Interested Person, Rancho Cordova  
Virginia Silva, Interested Person, Ione  
David Anderson, Interested Person, Mokelumne Hill

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Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
EX PARTE APPLICATION FOR AN  
ORDER TO MODIFY THE OCTOBER 10,  
2022 ORDER AND PRELIMINARY  
INJUNCTION

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022



Defendant City of Ione (Ione) respectfully submits the following memorandum of points and authorities in support of Ex Parte Application for an order modifying the Court's October 10, 2022 Order and Preliminary Injunction (PI Order), attached to the Ex Parte Application as Exhibit A.

## I. INTRODUCTION

Ione comes before this Court *ex parte* seeking modification of the PI Order, which puts Ione in the immediate position of violating the Central Valley Regional Water Quality Control Board's (Regional Board) Waste Discharge Requirement Order 93-240 (WDR Order 93-240). Ione cannot comply with both the PI Order and the Regional Board's WDR Order 93-240. To provide immediate and necessary relief from Ione's impossibility of complying with two conflicting orders, Ione respectfully requests this Court to modify the PI Order to serve the ends of justice. (Code Civ. Proc., § 533.) Ione seeks that the PI Order be modified to reduce the requirement of 500,000 gallons per day for 30 days to a requirement of 200,000 gallons per day. Alternatively, Ione requests that the Court permit installation of a surface pump at Preston Reservoir, a necessary modification to the system for Ione to have the capacity to take 500,000 gallons per day without permit violations.

## II. BACKGROUND

### A. Pertinent History

Ione owns and operates the Castle Oaks Water Reclamation Plant, a tertiary treatment facility. (Declaration of Michael Rock (Rock Decl.), ¶ 2; Declaration of Brett Moroz (Moroz Decl.), ¶ 1.)<sup>1</sup> This facility operates under WDR Order 93-240, issued by the Regional Board. (Rock Decl., ¶ 2; Moroz Decl., ¶ 3.) WDR Order 93-240 includes and incorporates, in part, limits on coliform bacteria, hydrogen sulfide, and turbidity. (Rock Decl., ¶¶ 7-8; Moroz Decl., ¶ 4.)

Under a 2007 contract, Amador Regional Sanitation Authority (ARSA) transported secondarily treated wastewater to Preston Reservoir for discharge to Ione for tertiary treatment at Castle Oaks Water Reclamation Plant. (Rock Decl., ¶ 4.) Ione terminated the agreement with the

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<sup>1</sup> Declaration of Michael Rock and Declaration of Bret Moroz in Support of Ex Parte Application to Modify the Temporary Restraining Order, filed concurrently with Ex Parte Application and Supporting Documents.

1 requisite five-year notice and the agreement expired on July 31, 2022. (*Ibid.*) Ione and ARSA  
2 disagree as to whether that contractual arrangement is still in effect. (*Ibid.*) It is Ione's position  
3 that there is no agreement in place. (*Ibid.*) Ione has taken steps to negotiate a new agreement  
4 with ARSA, which has not yet been successful. (*Ibid.*)

5 Ione attempted to voluntarily take ARSA water while Ione and ARSA work toward  
6 executing a new agreement. (Rock Decl., ¶ 4.) However, the quality of water delivered from  
7 ARSA was so poor that the water was untreatable at Ione's wastewater facility. (Rock Decl.  
8 ¶¶ 7-9, 13; Moroz Decl., ¶¶ 4-6.) Efforts on behalf of ARSA to address the water quality issues  
9 to a level that could be treated by Ione's system were unsuccessful. (Rock Decl., ¶ 3.)

10 On October 10, 2022, following a hearing on ARSA's application for preliminary  
11 injunction, the Court issued the PI Order, which mandates that "Ione and its employees, agents,  
12 and any other persons acting with or on behalf of Ione, are required to accept from ARSA  
13 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for the next 30  
14 days, for a total of 15 million gallons of secondarily treated wastewater over the 30-day period,  
15 pending the trial of this action or further order of this Court." (PI Order, p. 2; Rock Decl., ¶ 5.)

16 **B. The Current Problems Impeding Ione's Ability to Comply with the Order**

17 Since the PI Order was issued, Ione's City Manager Michael Rock and the system  
18 operator Brett Moroz have worked together to address the logistics of operating the system to  
19 comply with the Court's PI Order. (Rock Decl., ¶ 2.) However, the water quality issues  
20 discussed at the October 10, 2022 hearing prevent Ione from taking the 500,000 gallons of water  
21 per day that the PI Order mandates. (Rock Decl., ¶¶ 3-9; Moroz Decl., ¶¶ 4-8.) The quality  
22 issues are a result of the fact that ARSA wastewater is delivered from the bottom of Preston  
23 Reservoir, which is covered in a thick sludge of material that has settled out of the water over  
24 time. (Rock Decl., ¶ 7; Moroz Decl., ¶ 9.) The wastewater has high turbidity and must be treated  
25 with a polymer. (Rock Decl., ¶ 7; Moroz Decl., ¶ 4.) The polymer is added to the wastewater to  
26 bind together dissolved organic matter. (*Ibid.*) The amount of polymer required to treat the high  
27 turbidity and the amount of organic material that must be filtered out of ARSA wastewater  
28 effectively limits the total amount of water that can be accepted and treated by Ione's tertiary

1 treatment system. (Rock Decl., ¶ 7; Moroz Decl., ¶ 6.)

2 ARSA's wastewater must also be treated with chlorine, which is a widely used  
3 disinfectant for municipal wastewater because it destroys harmful bacteria and other contaminants  
4 in municipal wastewater. (Rock Decl., ¶ 8; Moroz Decl., ¶ 4.) The cost of chlorine disinfection  
5 system is dependent on the characteristics of the wastewater to be disinfected. (Rock Decl., ¶ 8.)  
6 Coliform bacteria is present in ARSA's water at a high level that requires treatment with  
7 significantly high volumes of chlorine at Ione's expense. (Rock Decl., ¶ 8; Moroz Decl., ¶ 6.)  
8 Additionally, Ione's tertiary treatment plant has experienced ongoing issues with its chlorine  
9 disinfection system. (Rock Decl., ¶ 8; Moroz Decl., ¶ 5.) Ione has sought needed repairs, but  
10 currently, issues with a chlorine tank limit the amount of water that can be treated through the  
11 chlorine disinfection system. (*Ibid.*) The limitation of the chlorine disinfection system prevents  
12 Ione from effectively treating ARSA wastewater. (Rock Decl., ¶¶ 8-9; Moroz Decl., ¶ 6.)

13 Ione has reached out to the Regional Board on multiple occasions to seek assurances that  
14 the Regional Board will exercise its prosecutorial discretion not to pursue an enforcement action  
15 against Ione for permit violations while Ione and ARSA are trying to address and resolve these  
16 issues. (Rock Decl., ¶¶ 9-12.) On October 10, 2022, following this Court's issuance of the PI  
17 Order, Ione sent Regional Board staff a letter notifying the Regional Board of the PI Order and,  
18 again, reiterating its request for assurances that the Regional Board not exercise its prosecutorial  
19 discretion for permit violations resulting from Ione's treatment of ARSA water. (Rock Decl.,  
20 ¶ 12.) To date, no response has been received from the Regional Board. (*Ibid.*)

21 Thus, as it currently stands, to comply with the Court's PI Order, Ione and Ione's system  
22 operator are forced to violate WDR Order 93-240 permit limitations. (Rock Decl., ¶ 6; Moroz  
23 Decl., ¶ 7.) Civil administrative penalties enforced by the Regional Board for permit violations  
24 can be charged per gallon and can total millions of dollars. (Rock Decl., ¶ 6.)

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1     **C.     Ione’s Requested Modification to the PI Order**

2             To avoid violating the permits, Ione must take and treat less than 500,000 gallons per day.  
3     (Rock Decl., ¶ 9; Moroz Decl., ¶ 6.) Based on the system operator’s professional opinion of the  
4     capacity of Ione’s plant and the past and current quality of ARSA water, Ione cannot safely  
5     accept and treat more than 200,000 gallons of ARSA water per day for the remainder of the  
6     30-day term of the PI Order, which was issued on October 10, 2022. (Moroz Decl., ¶ 8.) The  
7     amount of water that Ione can treat is highly dependent on the day-to-day quality of ARSA water.  
8     (*Ibid.*)

9             Alternatively, there are steps available that would require relatively little time and expense  
10     on behalf of both ARSA and Ione staff that would allow Ione to accept and treat larger daily  
11     quantities of ARSA water. (Rock Decl., ¶ 13; Moroz Decl., ¶ 9.) This includes installing a pump  
12     with the suction line on floats hanging down into the upper level of Preston Reservoir and the  
13     discharge line connected to the reservoir discharge line, which would deliver significantly cleaner  
14     surface water to Ione. (*Ibid.*) It is the opinion of Ione’s tertiary treatment system operator that if  
15     the surface water pump were installed, Ione could accept up to 500,000 gallons per day without  
16     violating its permit limitations. (*Ibid.*) However, this is highly dependent on the amount of water  
17     that can be discharged to and accepted by Castle Oaks Golf Course. (*Ibid.*) The amount of  
18     recycled water that the golf course accepts decreases in October and November through the rainy  
19     season. (*Ibid.*) Thus, to the extent that the Court determines that the installation of the surface  
20     water pump at Preston Reservoir is the appropriate alternative remedy to address the issue, Ione  
21     respectfully requests that the Court craft a modified order that grants some flexibility to Ione in  
22     the event that the golf course is unable to accept the full 500,000 gallons a day of water.

23                             **III.     LEGAL STANDARD**

24             Code of Civil Procedure section 533 allows a court to modify an injunction or temporary  
25     restraining order upon a showing that “the ends of justice would be served by the  
26     modification . . . of the injunction or temporary restraining order.” The Supreme Court has  
27     further held that a court has inherent power, “determined by the facts and circumstances of each  
28     particular case, with a view to administering justice between the litigants,” that it has “the power

to modify or vacate its decree when the ends of justice will be served.” (*Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 94-95.) A court may modify or dissolve an injunction where its initial issuance was “contrary to statutory law.” (*New Tech Developments v. Bank of Nova Scotia* (1987) 191 Cal.App.3d 1065, 1073.) “The ends of justice are not served if the aggrieved part[y] cannot obtain relief from an improperly issued preliminary injunction.” (*Id.* at p. 1073.)

#### IV. ARGUMENT

##### A. IONE CANNOT SIMULTANEOUSLY COMPLY WITH THE PI ORDER AND THE REGIONAL BOARD PERMIT

“[C]oncurrent jurisdiction does not make the jurisdiction coequal.” (*In re William T.* (1985) 172 Cal.App.3d 790, 800.) Although this Court has jurisdiction to review and issue the PI Order, the Regional Board also has existing and ongoing jurisdiction over the discharges from Ione’s tertiary treatment plant. Ione cannot comply with both the PI Order and its permit obligations simultaneously. In effect, this Court’s grant the PI Order conflicts with the Regional Board’s exclusive authority to permit the operation of Ione’s treatment system under the Porter-Cologne Act.

The Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) authorized the State Water Resources Control Board (State Water Board) to develop a statewide policy for water quality control. (Wat. Code, § 13000 [declaring that “the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state”].) Accordingly, the State Water Board required the nine regional water quality control boards to establish regional-specific water quality standards and issue permits for the discharge of treated wastewater that specify permitted levels of pollutants and monitor discharges. (Wat. Code, § 13260 et seq.) Each publicly owned wastewater treatment plant must have an individual permit issued by the appropriate regional board with a detailed and complex set of operating conditions to discharge treated wastewater. (See *ibid.*) These operating conditions include maximum limitations on emissions of pollutants in treated wastewater before it can be discharged. (Wat. Code, § 13263.) Treated wastewater discharged by a treatment plant



1 must meet the limitations set for wastewater contaminants, or constituents, which are removed  
2 through the process of treatment. (See *ibid.*)

3 “When a regional board discovers a potential violation of Porter-Cologne or the Clean  
4 Water Act, it can pursue an enforcement action.” (*Sweeney v. California Regional Water Quality*  
5 *Control Bd.* (2021) 61 Cal.App.5th 1093, 1116.) The State Water Board adopted a “Water  
6 Quality Enforcement Policy” to define its enforcement process. (See Cal. Code Regs., tit. 23,  
7 § 2910 [summary of policy on water quality enforcement].) In pertinent part, the purpose of the  
8 policy is “to protect and enhance the quality of the waters of the State” and “deter harmful  
9 conduct, protect the public, and achieve maximum water quality benefits.” (*Ibid.*; see also *State*  
10 *Water Resources Control Bd. v. Baldwin & Sons, Inc.* (2020) 45 Cal.App.5th 40, 53 (*Baldwin &*  
11 *Sons*).) For water quality violations, “[c]ivil liability may be imposed administratively by the  
12 State Board or Regional Board through the issuance of an [administrative civil liability]  
13 complaint.” (*Baldwin & Sons*, *supra*, 45 Cal.App.5th at p. 52; see also Wat. Code, § 13323, subd.  
14 (a).) Notably, under Water Code section 13223, the regional boards are prohibited from  
15 delegating authority “that would result in issuing, modifying, or revoking a waste discharge  
16 requirement.” (*Malaga County Water Dist. v. Central Valley Regional Water Quality Control*  
17 *Bd.* (2020) 58 Cal.App.5th 396, 414.) The regional boards are, however, permitted to seek the  
18 support of the superior court to enforce waste discharge requirements. (Wat. Code, § 13262.)

19 Ione has sought relief from the Regional Board’s enforcement authority in an attempt to  
20 comply without conflict with the PI Order. (Rock Decl., ¶¶ 10-12.) In a series of written  
21 correspondence and phone calls, Ione has requested that the Regional Board exercise its  
22 prosecutorial discretion not to pursue enforcement of any violations of Ione’s WDR Order 93-240  
23 directly resulting from Ione’s acceptance and treatment of ARSA water for a limited period, in  
24 order to alleviate the potential of a spill at Preston Reservoir in the rainy season. (*Ibid.*) To date,  
25 Ione has not received the assurances from the Regional Board that it will not pursue enforcement  
26 of the coliform bacteria and turbidity permit limitations, or any other permitting requirements that  
27 may be violated based on the quality of ARSA water. (Rock Decl., ¶ 12.)

28 Absent immediate relief, Ione is in a position of potentially violating the WDR Order 93-

240 every day of the 30-day period under the PI Order. The PI Order effectively usurps the Regional Board's primary responsibility for matters affecting the quality of water within its region under the Porter-Cologne Act. The ends of justice are served if the PI Order is modified to allow Ione's tertiary treatment plant to operate in compliance with its permit.

**B. THE PROPOSED MODIFICATION BALANCES THE INTERESTS OF THE REGIONAL BOARD WHILE PROTECTING ARSA AGAINST THE POTENTIAL RISK OF A FUTURE SPILL**

Ione is currently faced with the impossible choice of violating this court's order or violating the Regional Board's permitting limits, which are in place expressly for the protection of public health and safety. Requiring Ione to accept ARSA water from Preston Reservoir has and will continue to result in violations of Ione's permit limitations established by the Regional Board. (Rock Decl., ¶¶ 3, 6; Moroz Decl., ¶¶ 6-7.)

Ione's proposed modification to the PI Order is intended to avoid violations of WDR Order 93-240 while maintaining an appropriate balance of harms. Ione's permitted treatment of domestic wastewater in accordance with the Regional Board's adopted water reclamation requirements ensures its compliance with established limitations intended "to protect the public health, safety, or welfare . . . ." (Wat. Code, § 13523, subd. (a).) ARSA's request relied on the potential threat of a 100-year flood. (ARSA Memorandum in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order (Sept. 28, 2022), p. 7.) Ione does not dismiss the need for ARSA to address the levels of its reservoir as we enter the rainy season; however, without modification of the PI Order, Ione cannot alleviate ARSA's concerns without violating WDR Order 93-240 issued by the Regional Board and, in effect, risking the health and welfare of its citizens. (Moroz Decl., ¶ 7.) Addressing Ione's potential permit violations allows compliance with the Regional Board permit without eliminating the benefits to ARSA by lowering Preston Reservoir levels. Accordingly, by modifying the PI Order as requested by Ione, the ends of justice are served for both parties.

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V. CONCLUSION

For the reasons set forth above, Ione respectfully requests that this Court modify the PI Order and reduce the amount of water Ione must accept from ARSA to 200,000 gallons of secondarily treated wastewater per day. Alternatively, Ione requests that the Court permit installation of a surface pump at Preston Reservoir, a necessary modification to the system for Ione to have the capacity to take 500,000 gallons per day without permit violations.

Respectfully submitted,

SOMACH SIMMONS & DUNN  
A Professional Corporation

DATED: October 17, 2022

By



Theresa C. Barfield  
Michelle E. Chester  
Attorneys for Defendant City of Ione

RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 17, 2022, I submitted a true and correct copy of the following document(s):

**DECLARATION OF BRETT MOROZ IN SUPPORT OF EX PARTE APPLICATION TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION**

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Fed Ex service, the document(s) listed above were served via fed ex to the addresses as set forth in the service list.

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 October 17, 2022, at Sacramento, California.

3   
4 \_\_\_\_\_

Corene E. Rodder



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Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

DECLARATION OF BRETT MOROZ IN  
SUPPORT OF EX PARTE APPLICATION  
TO MODIFY OCTOBER 10, 2022 ORDER  
AND PRELIMINARY INJUNCTION

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022

1 I, BRETT MOROZ, DO HEREBY DECLARE:

2 1. I am the operator of the City of Ione's (Ione) Wastewater Treatment Facility and  
3 Castle Oaks Water Reclamation Plant, which is the subject of this action. I am employed by PERC  
4 Water which is a water infrastructure company that contracts with Ione to operate the wastewater  
5 system into which Plaintiff Amador Regional Sanitation Authority (ARSA) delivers its  
6 wastewater discharges pursuant to this action. I make this declaration in support of the City of  
7 Ione's Ex Parte Application for Order to Modify Amador County Superior Court's October 10,  
8 2022 Order and Preliminary Injunction (PI Order). I am over the age of 18 years, have personal  
9 knowledge of the matters stated herein, except those matters set forth on information and belief,  
10 and if called upon to testify concerning the same, could do so competently.

11 2. I have been a certified wastewater operator in the state of California since 1977,  
12 and have had my Grade IV operator license since 1988. During that time, I have operated  
13 different types of tertiary wastewater treatment plants for over 25 years.

14 3. Ione's Wastewater Treatment Facility operates under Waste Discharge  
15 Requirements (WDRs) Order R5-2013-0022-001 and treats domestic wastewater. The Castle  
16 Oaks Water Reclamation Plant also owned and operated by Ione, is a tertiary treatment plant  
17 regulated under WDRs Order 93-240 for recycled water use. These permits were issued and are  
18 overseen by the Central Valley Regional Water Quality Board (Regional Board).

19 4. In accordance with WDRs Order 93-240, Ione is required to treat ARSA  
20 wastewater to reduce high levels of turbidity and coliform bacteria. Turbidity, which refers to the  
21 amount of suspended solids in the wastewater, requires treatment with the addition of a polymer.  
22 Contaminants in ARSA's wastewater, including hydrogen sulfide and coliform bacteria, must be  
23 treated by adding chlorine to the wastewater.

24 5. Ione's chlorine disinfection system needs repair. Ione has attempted to obtain the  
25 necessary repairs, but none have been completed to date. Ione staff at the tertiary treatment plant  
26 are not able to make the repairs. Ione has sought a contractor for the work. Unless and until those  
27 repairs are made, Ione's chlorine disinfection system is limited in its capacity. Attempting to treat  
28 more wastewater than the chlorine disinfection system can handle could result in operational

1 violations of the tertiary treatment plant.

2 6. The high volumes of polymer and chlorine that must be used to treat turbidity,  
3 hydrogen sulfide and coliform bacteria effectively limit the amount of wastewater that can be  
4 accepted and treated by Ione's tertiary treatment plant. The tertiary treatment plant cannot  
5 physically accept and treat 500,000 gallons of ARSA wastewater in a day. Because Ione's tertiary  
6 treatment system cannot treat the wastewater to the minimum levels required by WDRs Order 93-  
7 240, Ione is unable to discharge 500,000 gallons of wastewater in a day without violating the  
8 permit limitations.

9 7. If we were to accept and discharge 500,000 gallons of ARSA water each day, we  
10 would be in immediate violation of our permit requirements. Ione's tertiary treatment plant  
11 cannot reliably treat the ARSA water to meet the turbidity limits in our permit. Discharges from  
12 the are likely to exceed the permit limit on coliform bacteria daily maximum in taking ARSA  
13 water. ARSA water releases hydrogen sulfide above limits established by the U.S. Occupational  
14 Safety and Health Administration, which is a threat to public health and, at certain concentrations,  
15 is explosive. It remains too dangerous to public health and safety, and is in direct violation of our  
16 permit issued by the Regional Board, to continue to accept said input without major modifications  
17 to ARSA's delivery of the water from Preston Reservoir.

18 8. Given all the current circumstances addressed herein and in the Declaration of  
19 Michael Rock dated October 15, 2022, it is my opinion as the operator of the Ione tertiary  
20 treatment system that the maximum amount of ARSA wastewater that can be consistently  
21 accepted, treated, and discharged without violating WDRs Order 93-240 is 200,000 gallons per  
22 day. Although the system may be able to take more water on some days, this is highly dependent  
23 on the unpredictable day-to-day quality of ARSA water.

24 9. The reason for ARSA water's poor quality is that the outflow from Preston  
25 Reservoir (the location of ARSA wastewater) is from the bottom of the reservoir, which is  
26 covered in stagnate sludge that has settled out of the water over decades of use. If ARSA  
27 installed a pump with the suction line on floats hanging down into the upper level of the reservoir  
28 and the discharge line connected to the reservoir discharge line, it is my opinion that the Ione

1 tertiary treatment system could accept and treat up to 500,000 gallons per day. This is because the  
2 water quality at the surface level is much better than at the bottom of the reservoir.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct to the best of my knowledge and belief. Executed this 17th day of  
5 October 2022 in Ione, California.

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8 BRETT MOROZ  
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RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 17, 2022, I submitted a true and correct copy of the following document(s):

**DECLARATION OF BRETT MOROZ IN SUPPORT OF EX PARTE APPLICATION TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION**

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Fed Ex service, the document(s) listed above were served via fed ex to the addresses as set forth in the service list.

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

**SERVICE LIST**

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
October 17, 2022, at Sacramento, California.



Corene E. Rodder

SOMACH SIMMONS & DUNN  
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Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

DECLARATION OF MICHAEL ROCK IN  
SUPPORT OF EX PARTE APPLICATION  
TO MODIFY OCTOBER 10, 2022 ORDER  
AND PRELIMINARY INJUNCTION

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022

1 I, MICHAEL ROCK, DO HEREBY DECLARE:

2 1. I am the City Manager for the City of Ione, Defendant in the above-entitled action.  
3 I make this declaration in support of the City of Ione's Ex Parte Application for Order to Modify  
4 the Temporary Restraining Order. I am over the age of 18 years, have personal knowledge of the  
5 matters stated herein, except those matters set forth on information and belief, and if called upon  
6 to testify concerning the same, could do so competently.

7 2. As City Manager, I work closely with the contract operator of Ione's Wastewater  
8 Treatment Facility and Castle Oaks Water Reclamation Plant. Ione's Wastewater Treatment  
9 Facility operates under Waste Discharge Requirements (WDRs) Order R5-2013-0022-001 and  
10 treats domestic wastewater from Ione and secondary effluent from Preston Reservoir. The Castle  
11 Oaks Water Reclamation Plant, also owned and operated by Ione, is a tertiary treatment plant  
12 regulated under WDRs Order 93-240 for recycled water use. A true and correct copy of WDR 3-  
13 240 is attached hereto as **Exhibit 1**. These permits were issued and are overseen by the Central  
14 Valley Regional Water Quality Board (Regional Board).

15 3. I am fully aware of all the issues with the acceptance of wastewater from the  
16 Amador Regional Sanitation Authority (ARSA) outflow from Preston Reservoir. There is a  
17 significant issue with the quality of ARSA water, which presents difficulties for Ione to  
18 effectively treat the water and discharge it without violating the permit conditions governing  
19 Ione's treatment and discharge of wastewater. Any efforts or assurances by ARSA to sufficiently  
20 address water quality issues for continued treatment at Ione's plant were unsuccessful.

21 4. Since 2007, Ione has accepted ARSA wastewater in certain amounts and under  
22 certain conditions pursuant to a 2007 agreement. However, Ione sent a notice of termination on  
23 July 19, 2017, notifying ARSA that the agreement would be terminated effective July 31, 2022.  
24 Ione has taken steps to negotiate a new agreement, which has not yet been successful. Currently,  
25 there is no agreement in place. We have attempted to voluntarily take ARSA water while Ione  
26 and ARSA work toward executing a new agreement.

27 5. On October 11, following a hearing on ARSA's application for preliminary  
28 injunction, the Court issued a preliminary injunction requiring that Ione accept 500,000 gallons of

1 secondarily treated wastewater per day from Preston Reservoir each day for the next 30 days,  
2 totaling 15 million gallons. Since the order was issued, I have had various discussions with  
3 Ione's system operator Brett Moroz regarding the logistics of operating the system to comply  
4 with the Court's order.

5 6. The conveyance, storage, and treatment of wastewater at Castle Oaks Wastewater  
6 Treatment Facility (tertiary treatment), is permitted by the Central Valley Regional Water Quality  
7 Control Board (Regional Board). To comply with the court's October 11 Order, Ione and Ione's  
8 system operator are forced to violate the permit limitations. In my experience, civil  
9 administrative penalties enforced by the Regional Board for permit violations can be charged per  
10 gallon and can total millions of dollars.

11 7. Because ARSA's wastewater is delivered from the bottom of Preston Reservoir,  
12 which is covered in a thick sludge of material that has settled out of the water over time, the  
13 wastewater has high turbidity and must be treated with a polymer. The polymer is added to the  
14 wastewater to bind together dissolved organic matter. The amount of polymer required to treat  
15 the high turbidity and the amount of organic material that must be filtered out of ARSA  
16 wastewater effectively limits the total amount of water that can be accepted and treated by Ione's  
17 tertiary treatment system.

18 8. ARSA's wastewater must also be treated with chlorine, which is a widely used  
19 disinfectant for municipal wastewater because it destroys harmful bacteria and other contaminants  
20 in municipal wastewater. The cost of chlorine disinfection system is dependent on the  
21 characteristics of the wastewater to be disinfected. Coliform bacteria is present in ARSA's water  
22 at a high level that requires treatment with significantly high volumes of chlorine at Ione's  
23 expense. Additionally, Ione's tertiary treatment plant has experienced ongoing issues with its  
24 chlorine disinfection system. Ione has sought needed repairs, but currently, issues with a chlorine  
25 tank limit the amount of water that can be treated through the chlorine disinfection system. The  
26 limitation of the chlorine disinfection system prevents Ione from effectively treating ARSA  
27 wastewater.

28 9. Ione's tertiary treatment plant cannot accept wastewater from ARSA that cannot

1 be effectively treated and discharged. To avoid violating the permits, Ione must take and treat less  
2 than 500,000 gallons per day. We have reached out to the Regional Board on multiple occasions  
3 to seek assurances that the Regional Board will exercise its prosecutorial discretion not to pursue  
4 an enforcement action against Ione for permit violations while Ione and ARSA are trying to  
5 address and resolve these issues.

6 10. On September 22, 2022, Ione sent the Regional Board a letter with detailed  
7 information regarding the issues of water quality and treatment of Preston Reservoir water and  
8 requested additional assurances from the Regional Board. A true and correct copy of Ione's  
9 September 22, 2022 response letter is attached hereto as **Exhibit 2**. Specifically, Ione requested  
10 that the Regional Board also exercise its prosecutorial discretion to not pursue enforcement of any  
11 and all permit violations directly resulting from Ione's acceptance and treatment of ARSA water,  
12 including not only odor conditions, but also turbidity and organic compounds that cannot be  
13 mitigated despite Ione's best efforts.

14 11. As recently as October 3, 2022, on a phone call with representatives from the  
15 Regional Board, ARSA, and CDCR, Ione reiterated its request to the Regional Board for  
16 assurances that it will not exercise its prosecutorial discretion on the requested scope of potential  
17 permit violations resulting from Ione's temporary treatment of ARSA water under the exigent  
18 circumstances. It was my impression that Regional Board Executive Officer Patrick Pulupa was  
19 receptive to the option of providing assurances. To date, no such assurances have been confirmed  
20 orally or in writing.


21 12. On October 11, 2022, following the issuance of this court's order granting the  
22 temporary restraining order, Ione sent Regional Board staff a letter notifying the Regional Board  
23 of the order and, again, reiterating its request for assurances that the Regional Board not exercise  
24 its prosecutorial discretion for permit violations resulting from Ione's treatment of ARSA water.  
25 A true and correct copy of that letter is attached hereto as **Exhibit 3**. To date, no response has  
26 been received from the Regional Board.

27 13. When we have taken ARSA water, I have repeatedly spoken with ARSA  
28 representatives about the quality of water being unacceptable and untreatable based on Ione's



1 treatment capacity. I have advised ARSA representatives that there are steps available that would  
2 require relatively little time and expense on behalf of both ARSA and Ione staff that would allow  
3 Ione to accept and treat ARSA water. This includes installing a pump with the suction line on  
4 floats hanging down into the upper level of Preston Reservoir and the discharge line connected to  
5 the reservoir discharge line, which would deliver significantly cleaner surface water to Ione. It is  
6 my understanding that installation of the pump would take only a few days and, if the surface  
7 water pump were installed, Ione could accept up to 500,000 gallons per day without violating its  
8 permit limitations. However, this is highly dependent on the amount of water that Castle Oaks  
9 Golf Course can accept, which, in past years, decreases in October and November through the  
10 rainy season.

11 I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct. Executed this 15th day of October 2022 in Ione, California.

13  
14 

15 MICHAEL ROCK  
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# EXHIBIT 1

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

3443 Roubier Road, Suite A  
Sacramento, CA 95827-3098  
PHONE: (916) 255-3000  
FAX: (916) 255-3015

Bob, MARTY, MARK, "ARSA"  
ROGER DISCHARGE  
REQS

PETE WILSON, Governor



7 December 1993

Mr. Roderick E. Schuler  
Amador Regional Sanitation Authority  
108 Court Street  
Jackson, CA 95642

CERTIFIED MAIL  
P 430 798 037

RECEIVED  
PUBLIC WORKS AGENCY  
DEC 18 1993  
110 COURT STREET  
JACKSON, CA 95642-2338

Mr. Watson Clifford, City Engineer  
City of Ione  
P.O. Box 398  
Ione, CA 95640

CERTIFIED MAIL  
P 430 798 038

Mr. George S. Lee, Vice President  
Portlock International, Ltd.  
P.O. Box 1368  
Ione, CA 95640

CERTIFIED MAIL  
P 430 798 039

**TRANSMITTAL OF ADOPTED/AMENDED WASTE DISCHARGE REQUIREMENTS FOR  
AMADOR COUNTY REGIONAL OUTFALL AND CASTLE OAKS GOLF COURSE AND  
DEVELOPMENT, AMADOR REGIONAL SANITATION AUTHORITY, CITY OF IONE,  
PORTLOCK INTERNATIONAL, LTD.**

Enclosed is an official copy of Order No. 93-240 as amended by the California Regional Water Quality Control Board, Central Valley Region, at its last regular meeting.

JAMES B. MAUGHAN  
Area Engineer

JBW:dlk

Enclosures: Adopted Order, Standard Provisions (Discharger only)

cc+Encl: Office of Drinking Water, Department of Health Services, Sacramento  
Environmental Mgmt. Branch, Department of Health Services, Sacramento  
Department of Fish and Game, Rancho Cordova  
Department of Water Resources, Central District, Sacramento  
Mrs. Betsy Jennings, State Water Resources Control Board, Sacramento  
Mr. Archie Matthews, State Water Resources Control Board, Sacramento  
Amador County Health Department, Jackson  
Amador County Planning Department, Jackson  
Mr. Richard Stowell, Dewante & Stowell, Sacramento

1. The first part of the report

2. The second part of the report

3. The third part of the report

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER NO. 93-240

WATER RECLAMATION REQUIREMENTS  
FOR  
AMADOR COUNTY REGIONAL OUTFALL  
AND  
CASTLE OAKS GOLF COURSE AND DEVELOPMENT  
AMADOR REGIONAL SANITATION AUTHORITY  
CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds that:

1. Amador Regional Sanitation Authority (ARSA), the City of Ione, and Portlock International, Ltd. (hereafter Discharger) submitted a Report of Waste Discharge, dated 5 November 1993, for revised requirements for treatment and reclamation use of wastewater from the Amador County Regional Outfall.
2. ARSA is a special district which operates the Amador County Regional Outfall System. Effluent produced by the City of Sutter Creek wastewater treatment plant is stored in a series of reservoirs. ARSA provides water to a group of ranchers known as the Amador County Reclaimed Wastewater Users and to the Preston School of Industry in Ione. ARSA also augments this supply with water diverted from Sutter Creek.
3. The Board, on 24 June 1988, adopted Order No. 88-114 which prescribed requirements for Amador Regional Sanitation Authority, Amador County Regional Outfall, which included the discharge to 430 acres of State-owned and privately-owned property for pasture irrigation. This pasture area has been developed and is now the site of the Castle Oaks Golf Course and Development Project.
4. ARSA has several orders governing discharges from the Amador County Regional Outfall. Effluent from this system is delivered to the California Youth Authority, Preston School of Industry (Order No. 83-023) and Amador County Reclaimed Wastewater Users (Order No. 83-024) on a as needed basis. Preston filters and chlorinates the ARSA water and uses it for toilet flushing, landscaping irrigation, and fire protection.
5. In order to assure adequate disposal capacity for Amador County Regional Outfall effluent, ARSA has entered into a long-term agreement with the City of Ione to dispose of up to 900 acre-feet/year. The 18-hole Castle Oaks Golf Course is approximately 190 acres with 15 acres of ponds and is owned by the City of Ione.



**WATER RECLAMATION REQUIREMENTS  
AMADOR COUNTY REGIONAL OUTFALL AND  
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CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY**

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6. The City of Ione is proposing to construct a reclamation plant that will treat the secondary effluent in the ARSA outfall system to meet Title 22 requirements for unrestricted use. The treatment facility is owned and will be operated by the City of Ione, with Portlock International, Ltd. managing the irrigation system at the golf course. Until this facility is completed, the discharge will operate under interim effluent limitations. Exposure to golfers or residents will not be allowed during this interim period.
7. The wastewater treatment facilities will include a PVC-lined equalization lake, sand filters and a chlorine contact basin. Effluent will be reclaimed at the Castle Oaks Golf Course. Mostly irrigation will occur from April to November with limited irrigation demand during the winter.
8. The City of Ione will discharge an average of 1.2 million gallons per day (mgd) to holding ponds at the treatment plant and golf course followed by irrigation of the Castle Oaks Golf Course. ARSA will continue operations of Henderson and Preston Reservoirs for storage and regulation.
9. The Outfall System is in Sections 9-12, 16-18, T6N, R10E, MDB&M and Sections 22 and 23, T6N, R9E, MDB&M with surface water drainage to Mule and Sutter Creeks, tributary to Dry Creek, tributary to Mokelumne River as shown on Attachment A, which is attached hereto and a part of the Order by reference.
10. The City of Ione, ARSA and Portlock International, Ltd. on 30 November 1993 entered into an agreement as to the responsibilities each has concerning the treatment, conveyance and disposal of the wastewater.
11. The Board adopted a Water Quality Control Plan, Second Edition, for the Sacramento-San Joaquin Delta Basin (5B) (hereafter Basin Plan), which contains water quality objectives for all waters of the Basin. These requirements implement the Basin Plan.
12. The beneficial uses of Sutter and Mule Creeks and downstream waters are municipal, industrial and agricultural supply; recreation; esthetic enjoyment; navigation; ground water recharge; fresh water replenishment; and preservation and enhancement of fish, wildlife, and other aquatic resources.
13. The beneficial uses of the ground water are municipal, domestic, industrial, and agricultural supply.

WATER RECLAMATION REQUIREMENTS  
AMADOR COUNTY REGIONAL OUTFALL AND  
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14. City of Ione has certified a Final Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.) and the State CEQA Guidelines. The project as approved will not have a significant effect on water quality.
15. The Board has reviewed the EIR and concurs there are no significant impacts on water quality.
16. The Department of Health Services has established statewide reclamation criteria in Title 22, California Code of Regulations, Section 60301, et seq. (hereafter Title 22) for the use of reclaimed water.
17. The Board consulted with the Department of Health Services, Amador County Health Department and considered their recommendations regarding public health aspects for use of reclaimed water.
18. Section 2511(a), Title 23, of the California Code of Regulations (CCR), exempts this discharge from the requirements of Chapter 15.
19. The Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for this discharge and has provided them with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
20. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that Waste Discharge Requirements Order No. 88-114 is rescinded and the City of Ione, Amador County Regional Outfall System, Amador Regional Sanitation Authority, Portlock International, Ltd., its agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

**A. Interim Effluent Limitations - Golf Course Irrigation (Construction and Development Phase):**

1. The discharge of an effluent in excess of the following limits is prohibited:

WATER RECLAMATION REQUIREMENTS  
 AMADOR COUNTY REGIONAL OUTFALL AND  
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 PORTLOCK INTERNATIONAL, LTD.  
 AMADOR COUNTY

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<u>Constituent</u>	<u>Units</u>	<u>Weekly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	23	---	240
Flow	mgd	---	1.2	---
BOD <sub>5</sub>	mg/l	---	40	80

**B. Final Effluent Limitations:**

1. The irrigation of the golf course and green space areas which are accessible to the public with reclaimed wastewater in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	2.2	---	23
Flow	mgd	---	1.2	---
Settleable Matter	ml/l	---	0.2	0.5
BOD <sub>5</sub>	mg/l	---	10	30
Turbidity	NTU	2	---	5

2. The irrigation of dedicated disposal areas which are not accessible to golfer, residents or the public with reclaimed wastewater in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	23	---	240
BOD <sub>5</sub>	mg/l	---	40	80

WATER RECLAMATION REQUIREMENTS  
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**C. Discharge Prohibitions:**

1. Discharge of wastes to surface waters or surface water drainage courses is prohibited.
2. The by-pass or overflow of untreated or partially treated waste is prohibited.
3. Discharge of waste classified as 'hazardous' or 'designated,' as defined in Sections 2521(a) and 2522(a) of Chapter 15, is prohibited.

**D. Discharge Specifications:**

1. Neither the treatment nor the discharge shall cause a nuisance or condition of pollution as defined by the California Water Code, Section 13050.
2. The discharge shall not cause degradation of any water supply.
3. The discharge shall remain within the designated disposal area at all times.
4. Collected screenings, sludges, and other solids removed from liquid wastes shall be disposed of in a manner approved by the Executive Officer.
5. Wastewater shall be discharged to Castle Oaks Golf Course in accordance with a Wastewater Disposal Operations Plan which has been approved by the Executive Officer. Prior to irrigation of dedicated disposal areas pursuant to Effluent Limitation B.2., the Discharger shall submit to the Executive Officer a specific operation plan describing the irrigated area, rate of application, irrigated crops, and efforts to prevent public exposure.
6. A 2.0-foot freeboard shall be maintained in all treatment and storage ponds at all times or an operational plan shall be submitted which shows why a 2.0-foot freeboard is not needed to prevent overtopping of the berms.
7. Reclaimed wastewater shall meet the criteria contained in Title 22, Division 4, CCR (Section 60301, et seq.).
8. Reclaimed wastewater conveyance lines shall be clearly marked as such.

WATER RECLAMATION REQUIREMENTS  
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9. The dissolved oxygen content of holding ponds shall not be less than 1.0 mg/l for 16 hours in any 24-hour period.
10. Areas irrigated with reclaimed water shall be managed to prevent breeding of mosquitos. More specifically,
  - a. Tail water must be returned and all applied irrigation water must infiltrate completely within a 12-hour period.
  - b. Ditches not serving as wildlife habitat should be maintained free of emergent, marginal, and floating vegetation.
  - c. Low-pressure and unpressurized pipelines and ditches accessible to mosquitos shall not be used to store reclaimed water.
11. Reclaimed water for irrigation shall be managed to minimize erosion and runoff from the disposal area.
12. Direct or windblown spray shall be confined to the designated reclamation area and prevented from contacting drinking water facilities.
13. The Discharger may not spray irrigate effluent during periods of precipitation and for at least 24 hours after cessation of precipitation, or when winds exceed 30 mph.
14. A 100-foot buffer shall be maintained between any flowing watercourse and the wetted area produced during spray disposal.
15. Signs with proper wording of sufficient size shall be placed at areas of access and around the perimeter of all areas used for effluent disposal to alert the public of the use of reclaimed water.
16. Runoff from irrigated areas, within 24 hours of the last application of reclaimed water, shall not be discharged to any surface water drainage course.
17. There shall be no irrigation or impoundment of reclaimed water within 500 feet of any domestic water well or within 100 feet of any irrigation well unless it is demonstrated to the satisfaction of the Executive Officer that less distance is justified.



WATER RECLAMATION REQUIREMENTS  
AMADOR COUNTY REGIONAL OUTFALL AND  
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**E. Provisions:**

1. Reclaimed water controllers, valves, etc., shall be affixed with reclaimed water warning signs, and these and quick couplers and sprinkler heads shall be of a type, or secured in a manner, that permits operation by authorized personnel only.
2. The treatment facilities shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency.
3. The Discharger may be required to submit other technical reports as directed by the Executive Officer.
4. The Discharger shall submit a report by 1 September each year which describes how the Preston Reservoir is being maintained for the up-coming winter season. This report should contain current levels in reservoir and methods planned to dispose of wastewater so that winter storage levels are reached.
5. The Discharger shall comply with the Monitoring and Reporting Program No. 93-240, which is part of this Order, and any revisions thereto as ordered by the Executive Officer.
6. The Discharger shall comply with the "Standard Provisions and Reporting Requirements for Waste Discharge Requirements", dated 1 March 1991, which are attached hereto and by reference a part of this Order. This attachment and its individual paragraphs are commonly referenced as "Standard Provision(s)."
7. The Discharger shall report promptly to the Board any material change or proposed change in the character, location, or volume of the discharge.
8. In the event of any change in control or ownership of land or waste discharge facilities presently described herein, the Discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to this office.
9. The Board will review this Order periodically and will revise requirements when necessary.

WATER RECLAMATION REQUIREMENTS  
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AMADOR COUNTY

I, WILLIAM H. CROOKS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 3 December 1993.

  
\_\_\_\_\_  
WILLIAM H. CROOKS, Executive Officer

Attachments

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

MONITORING AND REPORTING PROGRAM NO. 93-240

FOR  
AMADOR COUNTY REGIONAL OUTFALL  
AND  
CASTLE OAKS GOLF COURSE AND DEVELOPMENT  
AMADOR REGIONAL SANITATION AUTHORITY  
CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY

**EFFLUENT MONITORING**

Effluent samples shall be collected just prior to discharge to the irrigation system. Effluent samples should be representative of the volume and nature of the discharge. Samples collected from the outlet structure of ponds will be considered adequately composited. Time of collection of a grab sample shall be recorded. The following shall constitute the effluent monitoring program:

<u>Constituents</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>
Total Coliform Organisms	MPN/100 ml	Grab	Daily
Flow	mgd	Cumulative	Daily
20°C BOD <sub>5</sub>	mg/l	Grab	Weekly
Settleable Matter	ml/l	Grab	Weekly
Turbidity	NTU	Grab	Weekly

**STORAGE PONDS MONITORING**

All dissolved oxygen samples shall be taken from the surface of the storage ponds.

<u>Constituents</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>
Dissolved Oxygen	mg/l	Grab	Weekly
Freeboard	feet	---	Weekly

MONITORING AND REPORTING PROGRAM  
AMADOR COUNTY REGIONAL OUTFALL AND  
CASTLE OAKS GOLF COURSE AND DEVELOPMENT  
AMADOR REGIONAL SANITATION AUTHORITY  
CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY

-2-

### GROUND WATER MONITORING

The following shall constitute the ground water monitoring program:

<u>Constituents</u>	<u>Units</u>	<u>Sampling Frequency</u>
Specific Conductivity	$\mu$ mhos/cm	Monthly
pH	pH Units	Monthly
Nitrate	mg/l	Monthly
Well Elevation	feet, USGS Datum	Monthly

The City of Ione will install at least one upgradient and two downgradient ground water monitoring wells by 1 June 1994 around the storage ponds at the Castle Oaks Golf Course.

### REPORTING

In reporting the monitoring data, the Discharger shall arrange the data in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly the compliance with waste discharge requirements.

Monthly monitoring reports shall be submitted to the Regional Board by the **20th day of the following month.**

The results of any monitoring done more frequently than required at the locations specified in the Monitoring and Reporting Program shall be reported to the Board.

Upon written request of the Board, the Discharger shall submit a report to the Board by **30 January** of each year. The report shall contain both tabular and graphical summaries of the monitoring data obtained during the previous year. In addition, the Discharger shall discuss the compliance record and the corrective actions taken or planned which may be needed to bring the discharge into full compliance with the waste discharge requirements.

MONITORING AND REPORTING PROGRAM  
AMADOR COUNTY REGIONAL OUTFALL AND  
CASTLE OAKS GOLF COURSE AND DEVELOPMENT  
AMADOR REGIONAL SANITATION AUTHORITY  
CITY OF IONE  
PORTLOCK INTERNATIONAL, LTD.  
AMADOR COUNTY

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The Discharger shall implement the above monitoring program as of the date of this Order.

Ordered by: William H. Crooks  
WILLIAM H. CROOKS, Executive Officer

3 December 1993

(date)

JBM





## INFORMATION SHEET

**AMADOR REGIONAL COUNTY OUTFALL AND CASTLE OAKS GOLF COURSE AND DEVELOPMENT, AMADOR REGIONAL SANITATION AUTHORITY, THE CITY OF IONE, PORTLOCK INTERNATIONAL, LTD., AMADOR COUNTY**

Year-round irrigation of the Castle Oaks Golf Course with tertiary treated wastewater will replace the existing April to October discharge of secondary effluent to farm land that Amador Regional Sanitation Authority has been using to dispose of its wastewater. The new treatment facility and golf course are off Highway 104, just west of the City of Ione in Amador County. The treatment plant is owned and operated by the City of Ione. Portlock International, Ltd. will manage the irrigation of the golf course.

The Board, on 24 June 1988, adopted Order No. 88-114 prescribing requirements for Amador Regional Sanitation Authority, Amador County Regional Outfall System included the discharge to 430 acres of State-owned and privately-owned property for pasture irrigation. This area is now the site of the Castle Oaks Golf Course and Development Project. The City owns the golf course and ARSA has an agreement with the city to supply wastewater for irrigation purposes up to 900 acre-feet/year.

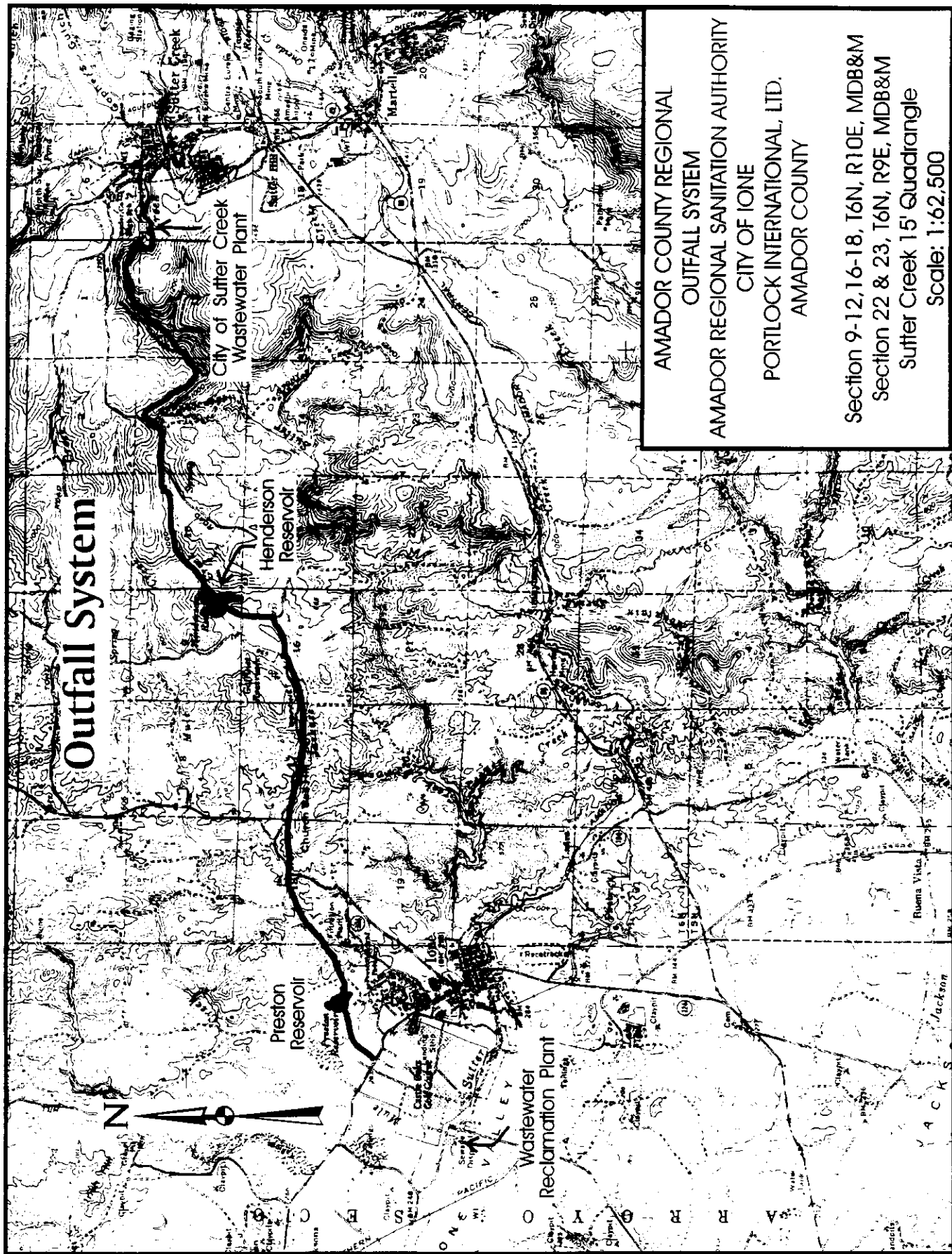
ARSA is a special district which operates the Amador County Regional Outfall System. Secondary effluent produced by the City of Sutter Creek wastewater treatment plant, mixed with water diverted from Sutter Creek is stored in Henderson and Preston reservoirs. ARSA provides water to ranchers from these reservoirs and to the Preston School of Industry in Ione. Preston filters and chlorinates the ARSA water and uses it for toilet flushing, landscaping irrigation, and fire protection.

ARSA also is under Order No. 83-024 governing discharges from the Amador County Regional Outfall to reclaimed wastewater users. Preston School, which receives wastewater from the outfall, is governed by Order No. 83-023.

The 18-hole Castle Oaks Golf Course has been constructed. However, the course is not open for use; the site will continue to use secondary treated wastewater during the construction phase of the treatment facilities. In the spring of 1994, the treatment facility is expected to be completed. The treatment facility will include a PVC-lined equalization lake, sand filters and a chlorine contact basin. Effluent will be used for irrigation and water hazards at the Castle Oaks Golf Course. The average flow of tertiary treated wastewater is expected to reach 1.2 mgd.

Golf course irrigation will occur mostly April to November. Surface water drainage is to Sutter and Mule Creeks, tributary to Dry Creek, and tributary to the Mokelumne River.









CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

STANDARD PROVISIONS AND REPORTING REQUIREMENTS  
FOR  
WASTE DISCHARGE REQUIREMENTS

1 March 1991

**A. General Provisions:**

1. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, or protect the discharger from liabilities under federal, state, or local laws. This Order does not convey any property rights or exclusive privileges.
2. The provisions of this Order are severable. If any provision of this Order is held invalid, the remainder of this Order shall not be affected.
3. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
  - a. Violation of any term or condition contained in this Order;
  - b. Obtaining this Order by misrepresentation, or failure to disclose fully all relevant facts;
  - c. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge;
  - d. A material change in the character, location, or volume of discharge.
4. Before making a material change in the character, location, or volume of discharge, the discharger shall file a new Report of Waste Discharge with the Regional Board. A material change includes, but is not limited to, the following:
  - a. An increase in area or depth to be used for solid waste disposal beyond that specified in waste discharge requirements
  - b. A significant change in disposal method, location or volume, e.g., change from land disposal to land treatment.
  - c. The addition of a major industrial, municipal or domestic waste discharge facility.
  - d. The addition of a major industrial waste discharge to a discharge of essentially domestic sewage, or the addition of a new process or product by an industrial facility resulting in a change in the character of the waste.

A. General Provisions (continued)

5. Except for material determined to be confidential in accordance with California law and regulations, all reports prepared in accordance with terms of this Order shall be available for public inspection at the offices of the Board. Data on waste discharges, water quality, geology, and hydrogeology shall not be considered confidential.
6. The discharger shall take all reasonable steps to minimize any adverse impact to the waters of the state resulting from noncompliance with this Order. Such steps shall include accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance.
7. The discharger shall maintain in good working order and operate as efficiently as possible any facility, control system, or monitoring device installed to achieve compliance with the waste discharge requirements.
8. The discharger shall permit representatives of the Regional Board (hereafter Board) and the State Water Resources Control Board, upon presentation of credentials, to:
  - a. Enter premises where wastes are treated, stored, or disposed of and facilities in which any records are kept,
  - b. Copy any records required to be kept under terms and conditions of this Order,
  - c. Inspect at reasonable hours, monitoring equipment required by this Order, and
  - d. Sample, photograph and video tape any discharge, waste, waste management unit or monitoring device.
9. For any electrically operated equipment at the site, the failure of which could cause loss of control or containment of waste materials, or violation of this Order, the discharger shall employ safeguards to prevent loss of control over wastes. Such safeguards may include alternate power sources, standby generators, retention capacity, operating procedures, or other means.
10. The fact that it would have been necessary to halt or reduce the permitted activity in Order to maintain compliance with this Order shall not be a defense for the discharger's violations of the Order.
11. Neither the treatment nor the discharge shall create a condition of nuisance or pollution as defined by the California Water Code, Section 13050.

**A. General Provisions (continued)**

12. The discharge shall remain within the designated disposal area at all times.

**B. General Reporting Requirements**

1. 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 by telephone at (916) 255-3000 as soon as it or its agents have knowledge of such noncompliance or potential for noncompliance, and shall confirm this notification in writing within two weeks. The written notification shall state the nature, time and cause of noncompliance, and shall describe the measures being taken to prevent recurrences and shall include a timetable for corrective actions.
2. The discharger shall have a plan for preventing and controlling accidental discharges, and for minimizing the effect of such events.

This plan shall:

- a. Identify the possible sources of accidental loss or leakage of wastes from each waste management, treatment, or disposal facility.
- b. Evaluate the effectiveness of present waste management/treatment units and operational procedures, and identify needed changes or contingency plans.
- c. Predict the effectiveness of the proposed changes in waste management/treatment facilities and procedures and provide an implementation schedule containing interim and final dates when changes will be implemented.

The Board, after review of the plan, may establish conditions that it deems necessary to control leakages and minimize their effects.

3. All reports shall be signed by persons identified below:
  - a. For a corporation: by a principal executive officer of at least the level of senior vice-president.
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
  - c. For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected or appointed official.

**B. General Reporting Requirements (continued)**

d. A duly authorized representative of a person designated in 3a, 3b or 3c of this requirement if;

(1) the authorization is made in writing by a person described in 3a, 3b, or 3c of this provision;

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a waste management unit, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) the written authorization is submitted to the Board

Any person signing a document under this Section shall make the following certification:

"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 and imprisonment."

4. Technical and monitoring reports specified in this Order are requested pursuant to Section 13267 of the Water Code. Failing to furnish the reports by the specified deadlines and falsifying information in the reports, are misdemeanors that may result in assessment of civil liabilities against the discharger.

5. The discharger shall mail a copy of each monitoring report and any other reports required by this Order to:

California Regional Water Quality Control Board  
Central Valley Region  
3443 Routier Road, Suite A  
Sacramento, CA 95827-3098

or the current address if the office relocates.

C. Provisions for Monitoring

1. All analyses shall be made in accordance with the latest edition of:  
(1) "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" (EPA 600 Series) and (2) "Test Methods for Evaluating Solid Waste" (SW 846-latest edition). The test method may be modified subject to application and approval of alternate test procedures under the Code of Federal Regulations (40 CFR 136).
2. Chemical, bacteriological, and bioassay analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. In the event a certified laboratory is not available to the discharger, analyses performed by a noncertified laboratory will be accepted provided a Quality Assurance-Quality Control Program is instituted by the laboratory. A manual containing the steps followed in this program must be kept in the laboratory and shall be available for inspection by Board staff. The Quality Assurance-Quality Control Program must conform to EPA guidelines or to procedures approved by the Board.

Unless otherwise specified, all metals shall be reported as Total Metals.

3. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings of continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of three years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Board Executive Officer.

Record of monitoring information shall include:

- a. the date, exact place, and time of sampling or measurements,
  - b. the individual(s) who performed the sampling or measurements,
  - c. the date(s) analyses were performed,
  - d. the individual(s) who performed the analyses,
  - e. the laboratory which performed the analysis,
  - f. the analytical techniques or methods used, and
  - g. the results of such analyses.
4. All monitoring instruments and devices used by the discharger to fulfill the prescribed monitoring program shall be properly maintained and calibrated at least yearly to ensure their continued accuracy.



**C. Provisions For Monitoring (continued)**

5. The discharger shall maintain a written sampling program sufficient to assure compliance with the terms of this Order. Anyone performing sampling on behalf of the discharger shall be familiar with the sampling plan.
6. The discharger shall construct all monitoring wells to meet or exceed the standards stated in the State Department of Water Resources Bulletin 74-81 and subsequent revisions, and shall comply with the reporting provisions for wells required by Water Code Sections 13750 through 13755.22

**D. Standard Conditions for Facilities Subject to California Code of Regulations, Title 23, Division 3, Chapter 15 (Chapter 15)**

1. All classified waste management units shall be designed under the direct supervision of a California registered civil engineer or a California certified engineering geologist. Designs shall include a Construction Quality Assurance Plan, the purpose of which is to:
  - a. demonstrate that the waste management unit has been constructed according to the specifications and plans as approved by the Board.
  - b. provide quality control on the materials and construction practices used to construct the waste management unit and prevent the use of inferior products and/or materials which do not meet the approved design plans or specifications.
2. Prior to the discharge of waste to any classified waste management unit, a California registered civil engineer or a California certified engineering geologist must certify that the waste management unit meets the construction or prescriptive standards and performance goals in Chapter 15, unless an engineered alternative has been approved by the Board. In the case of an engineered alternative, the registered civil engineer or certified engineering geologist must certify that the waste management unit has been constructed in accordance with Board-approved plans and specifications.
3. Materials used to construct liners shall have appropriate physical and chemical properties to ensure containment of discharged wastes over the operating life, closure, and post-closure maintenance period of the waste management units.
4. Closure of each waste management unit shall be performed under the direct supervision of a California registered civil engineer or California certified engineering geologist.

**E. Conditions Applicable to Discharge Facilities Exempted From Chapter 15 Under Section 2511**

1. If the discharger's wastewater treatment plant is publicly owned or regulated by the Public Utilities Commission, it shall be supervised and operated by persons possessing certificates of appropriate grade according to California Code of Regulations, Title 23, Division 4, Chapter 14.
2. By-pass (the intentional diversion of waste streams from any portion of a treatment facility, except diversions designed to meet variable effluent limits) is prohibited. The Board may take enforcement action against the discharger for by-pass unless:
  - a. (1) By-pass was unavoidable to prevent loss of life, personal injury, or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a by-pass. Severe property damage does not mean economic loss caused by delays in production); and
  - (2) There were no feasible alternatives to by-pass, such as the use of auxiliary treatment facilities or retention of untreated waste. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a by-pass that would otherwise occur during normal periods of equipment downtime or preventive maintenance; or
  - b. (1) by-pass is required for essential maintenance to assure efficient operation; and
  - (2) neither effluent nor receiving water limitations are exceeded; and
  - (3) the discharger notifies the Board ten days in advance.

The permittee shall submit notice of an unanticipated by-pass as required in paragraph B.1. above.

3. A discharger that wishes to establish the affirmative defense of an upset (see definition in E.6 below) in an action brought for noncompliance shall demonstrate, through properly signed, contemporaneous operating logs, or other evidence, that:
  - a. an upset occurred and the cause(s) can be identified;

**E. Dischargers Exempt from Chapter 15 (continued)**

- b. the permitted facility was being properly operated at the time of the upset;
- c. the discharger submitted notice of the upset as required in paragraph B.1., above; and
- d. the discharger complied with any remedial measures required by waste discharge requirements.

In any enforcement proceeding, the discharger seeking to establish the occurrence of an upset has the burden of proof.

- 4. A discharger whose waste flow has been increasing, or is projected to increase, shall estimate when flows will reach hydraulic and treatment capacities of its treatment, collection, and disposal facilities. The projections shall be made in January, based on the last three years' average dry weather flows, peak wet weather flows and total annual flows, as appropriate. When any projection shows that capacity of any part of the facilities may be exceeded in four years, the discharger shall notify the Board by **31 January**.
- 5. Effluent samples shall be taken downstream of the last addition of wastes to the treatment or discharge works where a representative sample may be obtained prior to disposal. Samples shall be collected at such a point and in such a manner to ensure a representative sample of the discharge.
- 6. Definitions
  - a. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper action.
  - b. The monthly average discharge is the total discharge by volume during a calendar month divided by the number of days in the month that the facility was discharging. This number is to be reported in gallons per day or million gallons per day.

Where less than daily sampling is required by this Order, the monthly average shall be determined by the summation of all the measured discharges by the number of days during the month when the measurements were made.

**E. Dischargers Exempt from Chapter 15 (continued)**

- c. The monthly average **concentration** is the arithmetic mean of measurements made during the month.
- d. The "daily maximum" **discharge** is the total discharge by volume during any day.
- e. The "daily maximum" **concentration** is the highest measurement made on any single discrete sample or composite sample.
- f. A "grab" sample is any sample collected in less than 15 minutes.
- g. Unless otherwise specified, a composite sample is a combination of individual samples collected over the specified sampling period;
  - (1) at equal time intervals, with a maximum interval of one hour
  - (2) at varying time intervals (average interval one hour or less) so that each sample represents an equal portion of the cumulative flow.

The duration of the sampling period shall be specified in the Monitoring and Reporting Program. The method of compositing shall be reported with the results.

**7. Annual Pretreatment Report Requirements:**

Applies to dischargers required to have a Pretreatment Program as stated in waste discharge requirements.)

The annual report shall be submitted **by 28 February** and include, but not be limited to, the following items:

- a. A summary of analytical results from representative, flow-proportioned, 24-hour composite sampling of the influent and effluent for those pollutants EPA has identified under Section 307(a) of the Clean Water Act which are known or suspected to be discharged by industrial users.

The discharger is not required to sample and analyze for asbestos until EPA promulgates an applicable analytical technique under 40 CFR (Code of Federal Regulations) Part 136. Sludge shall be sampled during the same 24-hour period and analyzed for the same pollutants as the influent and effluent sampling and analysis. The sludge analyzed shall be a composite sample of a minimum of 12 discrete samples taken at equal time intervals over the 24-hour period. Wastewater and sludge sampling and analysis shall be

**E. Dischargers Exempt from Chapter 15 (continued)**

performed at least annually. The discharger shall also provide any influent, effluent or sludge monitoring data for nonpriority pollutants which may be causing or contributing to Interference, Pass Through or adversely impacting sludge quality. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto.

- b. A discussion of Upset, Interference, or Pass Through incidents, if any, at the treatment plant which the discharger knows or suspects were caused by industrial users of the system. The discussion shall include the reasons why the incidents occurred, the corrective actions taken and, if known, the name and address of the industrial user(s) responsible. The discussion shall also include a review of the applicable pollutant limitations to determine whether any additional limitations, or changes to existing requirements, may be necessary to prevent Pass Through, Interference, or noncompliance with sludge disposal requirements.
- c. The cumulative number of industrial users that the discharger has notified regarding Baseline Monitoring Reports and the cumulative number of industrial user responses.
- d. An updated list of the discharger's industrial users including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The discharger shall provide a brief explanation for each deletion. The list shall identify the industrial users subject to federal categorical standards by specifying which set(s) of standards are applicable. The list shall indicate which categorical industries, or specific pollutants from each industry, are subject to local limitations that are more stringent than the federal categorical standards. The discharger shall also list the noncategorical industrial users that are subject only to local discharge limitations. The discharger shall characterize the compliance status through the year of record of each industrial user by employing the following descriptions:
  - (1) Complied with baseline monitoring report requirements (where applicable);
  - (2) Consistently achieved compliance;
  - (3) Inconsistently achieved compliance;
  - (4) Significantly violated applicable pretreatment requirements as defined by 40 CFR 403.8(f)(2)(vii);



**E. Dischargers Exempt from Chapter 15 (continued)**

- (5) Complied with schedule to achieve compliance (include the date final compliance is required);
- (6) Did not achieve compliance and not on a compliance schedule;
- (7) Compliance status unknown.

A report describing the compliance status of any industrial user characterized by the descriptions in items (d)(3) through (d)(7) above shall be **submitted quarterly from the annual report date** to EPA and the Board. The report shall identify the specific compliance status of each such industrial user. This quarterly reporting requirement shall commence upon issuance of this Order.

- e. A summary of the inspection and sampling activities conducted by the discharger during the past year to gather information and data regarding the industrial users. The summary shall include but not be limited to, a tabulation of categories of dischargers that were inspected and sampled; how many and how often; and incidents of noncompliance detected.
- f. A summary of the compliance and enforcement activities during the past year. The summary shall include the names and addresses of the industrial users affected by the following actions:
  - (1) Warning letters or notices of violation regarding the industrial user's apparent noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the apparent violation concerned the federal categorical standards or local discharge limitations;
  - (2) Administrative Orders regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations;
  - (3) Civil actions regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations;

**E. Dischargers Exempt from Chapter 15 (continued)**

- (4) Criminal actions regarding the industrial user's noncompliance with federal categorical standards or local discharge limitations. For each industrial user, identify whether the violation concerned the federal categorical standards or local discharge limitations.
  - (5) Assessment of monetary penalties. For each industrial user identify the amount of the penalties;
  - (6) Restriction of flow to the treatment plant; or
  - (7) Disconnection from discharge to the treatment plant.
- 
- g. A description of any significant changes in operating the pretreatment program which differ from the discharger's approved Pretreatment Program, including, but not limited to, changes concerning: the program's administrative structure; local industrial discharge limitations; monitoring program or monitoring frequencies; legal authority or enforcement policy; funding mechanisms; resource requirements; and staffing levels.
  - h. A summary of the annual pretreatment budget, including the cost of pretreatment program functions and equipment purchases.
  - i. A summary of public participation activities to involve and inform the public.
  - j. A description of any changes in sludge disposal methods and a discussion of any concerns not described elsewhere in the report.

Duplicate signed copies of these reports shall be submitted to the Board and:

Regional Administrator  
U.S. Environmental Protection Agency W-5  
75 Hawthorne Street  
San Francisco, CA 94105

and

State Water Resources Control Board  
Division of Water Quality  
P.O. Box 944213  
Sacramento, CA 94244-2130

Revised March 1993 to update phone number of Central Valley Regional Board.

# **EXHIBIT 2**



1001 Galaxy Way  
Suite 310  
Concord CA 94520

925.949.5800 phone  
530.756.5991 fax  
westyost.com

September 22, 2022

Project No.: 988-50-22-02  
SENT VIA: EMAIL

Mr. John Baum  
Assistant Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, No. 200  
Rancho Cordova, CA 95670  
John.Baum@waterboards.ca.gov

**SUBJECT: City of Lone Acceptance of Secondary Effluent from Preston Reservoir into the City of Lone Tertiary Plant**

Dear Mr. Baum:

This letter has been developed by West Yost on behalf of the City of Lone (City). The City received the Central Valley Regional Water Quality Control Board's (Regional Board's) September 9, 2022, letter, Subject: *Preston Reservoir Capacity and Tertiary Plant Nuisance Conditions, City of Lone, Amador County Regional Outfall and Castle Oaks Golf Course and Development, Amador County*. The City appreciates the Regional Board's consideration of the complex situation between the City and the Amador Regional Sanitation Authority (ARSA) that is outlined in this letter and the Regional Board's agreement to suspend any enforcement related to nuisance odors. However, the City has several concerns related to the acceptance of wastewater from the ARSA's Preston Reservoir into the City of Lone Tertiary Plant (Tertiary Plant) that are not adequately addressed by this letter<sup>1</sup>. These issues are as follows:

- The letter understates the potential impacts to the City resulting from acceptance of ARSA flows,
- The letter does not adequately acknowledge actions that must be taken by ARSA to address the regional discharge capacity issues both in the near and long-term, and
- The letter provides reporting expectations that require additional clarification from the Regional Board to ensure the City can satisfy the Regional Board's request.

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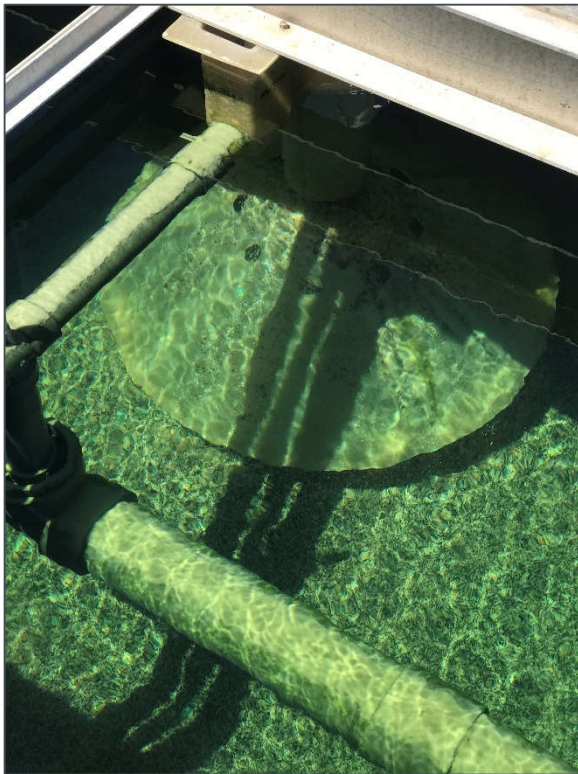
<sup>1</sup> This letter is not intended to address any contractual dispute between the City and ARSA. Rather, the City seeks the Board's support in addressing the immediate water quality issues arising from ARSA sending its effluent from Preston to the Tertiary Plant.

## IMPACTS OF ACCEPTING ARSA FLOW

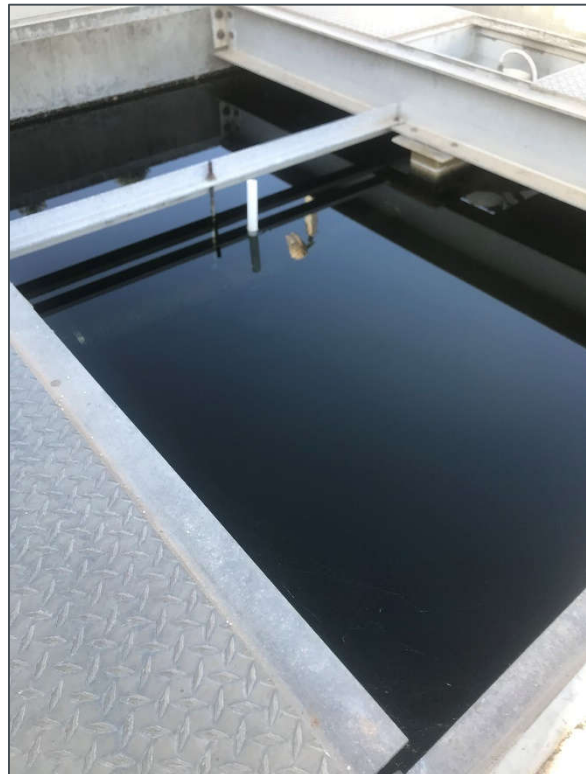
The City has identified several impacts of accepting ARSA flows that extend beyond the odor/nuisance issues addressed in the Regional Board's letter. These include potential for exceedances of the limitations outlined in Water Reclamation Requirement Order No. 93-240 (WRRs 93-240), cost implications for the City, impacts to staff and exposure to regulatory actions. These issues are discussed in detail in the following sections.

### Elevated Turbidity Could Lead to Exceedances of Effluent Limitations

The City receives flows from both ARSA and the California Department of Corrections and Rehabilitation's (CDCR's) Mule Creek State Prison wastewater treatment plant. The two pictures on the following page show the quality of water received from these two sources in August 2022.



Picture 1. Flow Received at the Tertiary Plant  
From CDCR



Picture 2. Flow Received at the Tertiary Plant  
From ARSA

As shown in the pictures above, the turbidity of the water received from ARSA is noticeably higher than the water received from CDCR, where the flow from CDCR is typical of what would be sent to the tertiary facilities at any water recycling treatment plant. WRRs 93-240 requires that the final effluent turbidity remain between 2 NTU (monthly median) and 5 NTU (daily maximum). Based on information provided by the Tertiary Plant operations staff, the City was unable to meet these turbidity limitations when the ARSA flow treated exceed between 300,000 to 600,000 gallons per day (gpd) in June and August 2022. The exact maximum flow that can be reliably treated is unknown and is being evaluated through testing. ***At this time, the Tertiary Plant operations staff believe that the maximum flow that can be reliably treated without exceeding the turbidity limits is approximately 500,000 gpd. However, the flow that can be treated in any given day will depend on the water quality received.***



Even with limiting the flow to less than 500,000 gpd, the City is concerned that there will be violations of the recycled water turbidity limits. Moreover, because water recycling permits include turbidity limits as a measure to help to ensure reliable disinfection, exceeding the turbidity limits could also result in violation of the coliform limits – and potentially worse, result in inadequately disinfected flow being spray irrigated on a public golf course that is adjacent to homes.

## Potentially Unable to Meet Golf Course Irrigation Demands when Preston Reservoir is the Source of Flow

The golf course irrigation demands typically exceed the 300,000 and 500,000 gpd of flow that can be reliably treated from Preston Reservoir without risking violation of the turbidity limitations of WRRs 93-240. Moreover, the water delivery system from CDCR and Preston Reservoir to the Tertiary Plant only allows for flow either from ARSA or from CDCR to be delivered but not both sources of flow at the same time. Because there are no water quality issues with the CDCR flow, the City can readily meet the golf course irrigation demands when irrigating with CDCR flow. However, the City may be unable to meet the golf course irrigation demands when Preston Reservoir is the source of irrigation flow.

Table 1 shows the historical average daily demands for the golf course and the historical number of days where the demands were 500,000 gpd or less and 400,000 gpd or less. As shown, the demands for the golf course typically exceed the amount of ARSA water that can be treated daily in September and can at times exceed this amount in October. Moreover, depending on the flow that can ultimately be reliably treated each day, there may be very few days remaining when the golf course demands are within the range that can match the ARSA treatment rate.

<b>Table 1. Castle Oaks Golf Course Irrigation Demands</b>						
Month	20117	2018	2019	2020	2021 <sup>(a)</sup>	2017 – 2020 Average
Average Monthly Castle Oaks Golf Course Irrigation Demands						
September	770,000	800,000	800,000	540,000	330,000	728,000
October	570,000	270,000	600,000	470,000	370,000	478,000
November	-	180,000	550,000	360,000	-	273,000
December	-	-	-	-	-	-
Number of Days Castle Oaks Golf Course Irrigation Demands Were 500,000 gpd or Less						
September	-	-	-	21	27	5
October	6	28	4	31	22	17
November	-	18	2	17	-	9
December	-	-	-	-	-	-
<b>Total</b>	<b>6</b>	<b>46</b>	<b>6</b>	<b>69</b>	<b>49</b>	<b>32</b>
Number of Days Castle Oaks Golf Course Irrigation Demands Were 400,000 gpd or Less						
September	-	-	-	4	21	1
October	4	28	2	-	13	9
November	-	18	1	12	-	8
December	-	-	-	4	21	-
<b>Total</b>	<b>4</b>	<b>46</b>	<b>3</b>	<b>16</b>	<b>34</b>	<b>17</b>
(a) In 2021, ARSA elected not to discharge to the Tertiary Plant after May citing there was no water available. This action resulted in lower-than-normal flows being directed to the golf course. Therefore, 2021 is not included in the long-term average. The City was also required to credit the golf course financially for not providing adequate supplies in 2021.						

Given the information presented in Table 1, the City has two options for treating ARSA flows over the next few months:

- a) Treat ARSA flows more than 500,000 gpd and thus risk violation of the effluent turbidity and coliform limitations (discussed in the previous section), or
- b) Supply only 500,000 gpd day (or less) to the golf course.

With the decreased temperatures and rainfall over the weekend of September 17, the City started accepting ARSA flow on September 19 at a rate of approximately 200,000 gpd and this rate has since been increased to approximately 400,000 gpd. The City plans to make every effort to maintain treatment of the ARSA flows through the end of the irrigation season. However, the City cannot guarantee that the golf course demands will not increase again in late September and/or October.

It should also be noted that the City cannot quickly switch back and forth between treating ARSA flow and CDCR flow as a means of addressing the supply issue. Because these two sources of water have such different water qualities, staff must test and change polymer dosing regimens when the water supplies are changed to ensure reliable treatment. This process typically takes 12 to 24 hours.

It is unclear why the quality of water received at the Tertiary Plant from the ARSA system is so poor. It is understood that the water being directed to the Tertiary Plant is pulled from near the bottom of Preston Reservoir. Therefore, ARSA may be able to implement a temporary pumping strategy that would eliminate the odor and turbidity issues with the current supply. For example, a temporary pumping system could potentially be used to draw water from the top of Preston Reservoir instead of the existing system that pulls water from the bottom of the reservoir. ***If ARSA is successful in implementing a temporary pumping strategy that improves water quality in the near term, the City could likely accept flows from Preston Reservoir at a higher rate. Finally, even if the water quality issues cannot be resolved within this irrigation season, ARSA must develop a strategy that improves the water quality directed to the City of Lone's WWTP prior to the City acceptance of flow in 2023.***

## Added Cost of Treatment

The elevated levels of turbidity and organic compounds in the ARSA flow requires a significant amount of chemical addition (i.e., polymer and hypochlorite) to meet the WRRs 93-240 effluent limitations. The demands for polymer and hypochlorite for the ARSA flow as compared to the CDCR flow based on the two attempts the City has made to treat ARSA flow between June 13 and August 31 is shown in Table 2. As shown, the polymer dose is approximately twice what would typically be needed, and the hypochlorite dose is approximately fifty percent higher.

Table 2. Average Monthly Castle Oaks Golf Course Irrigation Demands June 12 through August 31		
Source of Flow	Polymer Dose, mg/L	Hypochlorite Dose, mg/L
ARSA	68	7.2
CDCR	32	5.0

To develop an estimate of how much these dosages will add to the total cost of treatment, an estimate of the total flow that could potentially be treated by the end of the irrigation season has been developed. Table 3 shows the total historical number of days that remain in the irrigation season and the estimated volume of water that can be applied to the golf course assuming a 400,000 gpd application rate. As shown, it is estimated that the City could be able to treat up to 22.3 million gallons of ARSA flow by the end of the irrigation season if a rate of 400,000 gpd can be maintained without causing damage to the golf course or a violation of WRR 93-240.

<b>Table 3. Average Monthly Castle Oaks Golf Course Irrigation Demands</b>						
Month	20117	2018	2019	2020	2021 <sup>(a)</sup>	2017 – 2020 Average
<b>Total Remaining Days in Irrigation Season</b>						
September	11	11	11	11	11	11
October	29	31	28	31	22	30
November	-	18	25	17	-	15
December	-	-	-	-	-	-
<b>Total Flow Treated at 400,000 gpd</b>						
September	4.4	4.4	4.4	4.4	4.4	4.4
October	11.6	12.4	11.2	12.4	8.8	11.9
November	-	7.2	10.0	6.8	-	6.0
December	-	-	-	-	-	-
<b>Total</b>	<b>16.0</b>	<b>24.0</b>	<b>25.6</b>	<b>23.6</b>	<b>12.8</b>	<b>22.3<sup>(b)</sup></b>
(a) In 2021, ARSA elected not to discharge to the Tertiary Plant after May citing there was no water available. This action resulted in lower-than-normal flows being directed to the golf course. Therefore, 2021 is not included in the long-term average. The City was also required to credit the golf course financially for not providing adequate supplies in 2021.						
(b) The average 2017 to 2020 treatment volume between September 19 and December 31 was 26.8 million gallons.						

Table 4 establishes the chemical costs associated with treatment of the remaining flow based on the average chemical dosages observed between June 13 and August 31. As shown, if the chemical doses remain the same as they have been, the City may incur costs as much as \$72,000 beyond what the costs would be for a typical secondary treated wastewater received from CDCR.

Table 4. Average Monthly Castle Oaks Golf Course Irrigation Demands							
Source of Flow	Total Estimated Flow Treated, million gallons	Polymer Requirements		Hypochlorite Requirements		Total Cost, dollars	Cost per Million Gallon Treated, dollars
		Average Dose, mg/L	Cost of Chemical, dollars <sup>(a)</sup>	Average Dose, mg/L	Cost of Chemical, dollars <sup>(a)</sup>		
ARSA	22.3	68	135,000	7.2	2,700	137,700	6,200
CDCR		32	64,000	5.0	1,900	65,900	3,000
Cost Difference						\$71,800	\$3,200
(a) Based on a cost of \$10.68 per pound delivered.							
(b) Based on a 12.5 percent solution at a cost of \$2.09 per gallon delivered.							

Under the *Agreement to Regulate Use of Henderson / Preston Wastewater Disposal System* (2007 Agreement) and the subsequent *First Implementation and Mediation Settlement Agreement* (2016 Settlement) ARSA was only required to pay the City a portion of what the estimated operating costs of the Tertiary Plant were in 2016 to cover their portion of plant operation costs. In 2021, ARSA paid total of \$68,000. As shown in Table 4, assuming payments are made by ARSA consistent with those received in 2021, ARSA would likely be approximately \$70,000 less than the City's chemical costs. The shortfall is even greater once operations staff time or other treatment facility related expenses are considered.

It should also be noted that in 2021 ARSA elected not to direct flow to the CORWP facility after May of 2021 – citing there was not any water available. This action by ARSA resulted in lower-than-normal flows being directed to the golf course. Unfortunately, this lower flow to the golf course resulted in damage to the course, which resulted in the City having to credit the golf course approximately \$21,000. Therefore, if impacts to the golf course were to occur again in 2022 due to the lower flows that can be treated by ARSA, the costs to the City associated with handling the ARSA flows could be even higher than just the operating costs.

The analysis presented above is further substantiated by the City's operating data from 2021. In this year, the City treated a total flow of approximately 132 million gallons. The expenses associated with CORWP operation were approximately \$233,000, which equates to a cost of approximately \$1,770 per gallon treated<sup>2</sup>. However, the City only received an income of approximately \$165,000. Although this differential is due, in part, to the \$21,000 credit provided to the golf course, the data demonstrates that the City regularly does not receive adequate income from the parties that benefit from the operation of the Tertiary Plant to cover the cost of operations. ***Given that there is not a current agreement with ARSA and the history of underpayments as compared to operating costs, the City requests that some guarantee from ARSA be made regarding covering the cost of treatment in 2022.***

## Potential for Impacts to Staff

While the WRR 93-240 nuisance conditions requirements are understood to be principally designed to protect the public from the Tertiary Plant and golf course irrigation operations, prohibition of nuisance conditions also protects the staff operating the Tertiary Plant and golf course. Foregoing enforcement does not ensure that the Tertiary Plant and golf course operations staff will be adequately protected from noxious odors while completing their work. If injury were to occur, the City would potentially be liable.

## Potential for Regulatory Action

While the City appreciates that the Board would forego enforcement of the nuisance prohibition, the City may still be subject to regulatory action for permit violations. This could include liabilities from regulatory bodies such as the Amador County Air Pollution Control District. In addition, the Tertiary Plant operations staff could be subject to liability related to their individual operator licenses.

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<sup>2</sup> Note that there was a 32 percent increase in polymer costs between 2021 and 2022.

## ACTIONS TO BE TAKEN BY ARSA

As discussed above, the City is taking on considerable risk by agreeing to accept the poor-quality flow from ARSA's Preston Reservoir into the Tertiary Plant. The City is concerned that the Regional Board's stated commitment to working with ARSA to resolve issues related to the operation of their facilities will not be adequate to address the many issues at hand. ARSA must also take some actions to help ensure the issues faced in the near term do not persist in the future. These suggested actions are outlined in the sections below.

### ARSA Must Seek Other Options for Short-Term Disposal

The City's facilities do not have the disposal capacity available to receive and/or reuse the total volume of concern from ARSA's Preston Reservoir. The City understands that ARSA would like to discharge at least about 38 million gallons from Preston Reservoir to the Tertiary Plant to lower Preston Reservoir to acceptable levels. As noted in Table 3 above, it is estimated that the total flow that can be received is, at best, about 22 million gallons (unless modifications that improve water quality are made by ARSA). This leaves a shortfall of approximately 16 million gallons that must be discharged in some other way.

The City currently treats the flow generated within the City at its Wastewater Treatment Plant (WWTP), which is a pond-based treatment system that provides for disposal via land application on agricultural properties and percolation disposal. The City can direct ARSA flows from the Tertiary Plant to the WWTP's Storage Pond 5. However, the City cannot accept this flow if it risks the City's ability to maintain adequate disposal capacity for the City's wastewater. Storage Pond 5, which is the primary storage pond at the WWTP, is currently nearly full. The farmer that manages the one of the City's land application areas (i.e., the City Field) plans to plant the field in alfalfa in the next few weeks. This will result in some water use from Pond 5. At the end of the golf course irrigation season, the City will assess the potential for Pond 5 to accept some flow from ARSA. However, it is anticipated that this flow would, at best, could be another 3 to 5 million gallons<sup>3</sup>.

Given the limitations discussed above, it is unlikely that the City can accept all the flow needed to return Preston Reservoir to safe water levels. Therefore, ARSA should begin evaluating other options for short-term disposal. ***Specifically, ARSA should be required to begin hauling flow from Preston Reservoir to a facility that can accept the flow as soon as possible.*** It is critical that the City initiate this hauling process now, as it will take time for ARSA to get a permit and contracts in place to facilitate this effort. Moreover, the City will not know until later in the year how much flow could be accepted and waiting until this is known will be too late.

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<sup>3</sup> If the City were to allow ARSA flow to be sent to Pond 5, there would be a concern with causing nuisance conditions at the WWTP. Waste Discharge Requirements Order R5-2013-0022-001, which governs WWTP operations and discharge, includes a parallel prohibition against causing nuisance (i.e., noxious odors). The City would therefore need assurance that the nuisance prohibition on the WWTP (Discharge Specification E.2) would also not be enforced during the period specified in the letter. The City would nevertheless still have the concerns with respect to third parties – both private parties and other governmental agencies – and operator safety noted above for the Tertiary Plant and golf course.



## **ARSA Must Commit to Improving Water Quality Directed to the Tertiary Plant**

To allow for continued discharge beyond 2022, ARSA must take actions to improve the water quality directed to the Tertiary Plant. Such actions may include but are not limited to dredging/removing the accumulated solids from the reservoir and relocating the outfall structure.

## **ARSA Discharge to the Tertiary Plant Must Cease in the Long-Term**

The City owns, and is responsible for operation of, the Tertiary Plant. The City has historically discharged the secondary effluent generated at the City's WWTP two percolation basins. However, these basins do not provide adequate capacity to meet the City's long-term disposal need.

Moreover, the City is currently operating under a Cease-and-Desist Order (CDO) from the Regional Board that includes a requirement to eliminate the percolation basins if groundwater quality does not improve. The City has recently spent over \$5 million dollars to line the treatment ponds and improve treatment at the WWTP to address the groundwater quality issues identified in the CDO. The City has demonstrated that they are good stewards of the environment, and that they want to meet their permit obligations and the requirements of the CDO. One of the final steps needed to help the City meet the compliance requirements of the CDO (as well as provide adequate disposal capacity for the City's wastewater) is connecting the WWTP to the Tertiary Plant so the City can reduce usage of the percolation basins.

The City is concerned that the position of the Regional Board in this process is leading to a situation where the City is required to accept ARSA flow indefinitely – which then will put the City's treatment facilities in danger of overflowing and/or violation. Regardless of what short-term allowances are made for the City to receive ARSA flow at the Tertiary Plant (and WWTP), the Board must acknowledge and address the long-term capacity limitations for the City to continue receiving ARSA flows.

## **REGIONAL BOARD REPORTING EXPECTATIONS**

Finally, in addition to the issues discussed above, the City has the following concerns regarding the Regional Board reporting expectations described in the subject letter:

- The letter indicates that information should be provided on a weekly basis. However, it is not clear where or to whom this information should be submitted (absent the water quality data described below).
- The letter indicates that this data submission should address "how the complaint(s) [nuisance complaints received by the City and the golf course] were resolved". The City is unclear what resolution can be made regarding odor complaints given the Regional Board's direction regarding the City's acceptance of the ARSA flow. Additional direction from the Regional Board is needed to understand how the City is to handle any complaints received.
- The data request indicates that "all previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity" shall be provided to Kari Holmes of the Regional Board. For the most part, these samples have been collected using online monitoring equipment (filter effluent turbidity), in-house benchtop equipment (other turbidity grab samples), or handheld devices (hydrogen sulfide). The City's filter effluent turbidity meter measures data continuously, but only records daily average values in accordance with the WRR requirements. Other data collected by the City using handheld and/or benchtop devices has only been recorded to date in the daily operations logs.

It is not clear whether the Regional Board is seeking submission of the City's operations data or only data that has been analyzed by a laboratory. It is also not clear whether the Regional Board is requesting that the City implement a data collection strategy that includes water quality samples that are sent to a laboratory for analysis.

To date the City has only collected the following samples that were sent to a laboratory:

- One sample of the Tertiary Plant influent was collected when ARSA was discharging on June 17, 2022. This sample was analyzed for sulfide and tannins by Alpha laboratories.
- Two samples were collected from the Preston Reservoir effluent when ARSA was discharging on August 30, 2022. These samples were analyzed for sulfide by Alpha laboratories.
- Two samples from the Tertiary Plant influent when ARSA was discharging on August 30, 2022. These samples were analyzed for sulfide by Alpha laboratories

The City plans to submit this sampling data per the request.

- The City is concerned that the monitoring data request combines information that can only be provided by ARSA (i.e., Preston Reservoir data) and information that can only be provided by the City (i.e., Tertiary Plan operations data). By combining the reporting expectations as they are stated in the letter, it is not clear who is responsible for the submissions.

Given these concerns, the City would like an opportunity to discuss further the reporting expectations presented in the letter and work together with the Regional Board to develop a reporting plan that is practical and implementable.

## PROPOSED NEXT STEPS

The City respectfully requests that the Board consider the concerns documented above and prepare a revised letter that addresses the following specific issues:

- ARSA must make immediate improvements to the Preston Reservoir withdraw system to improve water quality discharged to the Tertiary Plant, otherwise the City will be limited in the amount of flow that can be received.
- ARSA must make permanent changes to the Preston Reservoir withdraw and pumping system to improve water quality delivered to the City of Lone.
- The Board should establish a timeline for ARSA to complete the activities described above, with a final compliance date that is prior to discharging any flow to the Tertiary Plant in 2023.
- ARSA must implement a strategy to discharge some of the water stored in Preston Reservoir at an alternative location. At a minimum, this strategy should include pumping and hauling stored water to a facility that can accommodate the flow.
- ARSA must agree to pay for cost of treatment of all Preston Reservoir flow that is received.
- ARSA must agree to pay for any regulatory penalties incurred by the City related to accepting the Preston Reservoir flow.
- ARSA should agree to assume on behalf of the City any and all legal liability resulting from the poor water quality of the Preston Reservoir flow delivered to the City, including odor conditions and elevated levels of turbidity and organic compounds that cannot be fully mitigated despite the City's best efforts.

- The Regional Board should acknowledge the potential liabilities for the Tertiary Plant operators resulting from ARSA's delivery of Preston Reservoir flow that may result in a violation of WRRs 93-240. The Regional Board should also coordinate with the State Water Resources Control Board (State Water Board) to issue a letter providing assurance that the State Water Board will not pursue administrative civil liability or disciplinary action against Tertiary Plant operators who do not act willfully, negligently, or unreasonably in carrying out the Regional Board's request that the City accept water from Preston Reservoir.
- The Board should acknowledge that the City does not have the capacity to accept ARSA flow in the long-term.
- The Board should acknowledge the improvements made by the City related to groundwater quality and agree to work with the City to identify the steps necessary to rescind the CDO issued for the City's WWTP.
- The Board should rescind the reporting expectations described in the September 9 letter and provide new reporting expectations, as appropriate, following discussions with the City.

Thank you for your attention to these concerns. The City appreciates the complexity of the regional wastewater disposal capacity issues and has demonstrated they are willing to work with the Regional Board and ARSA to find mutually agreeable solutions. However, the regional partners also need to share the cost for developing these solutions based on equitable cost of service allocations, so the customers of each entity are paying their fair share of the capital and operation and maintenance costs. The City looks forward to working together with the Regional Board to address these important issues during the discussion scheduled for October 3.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kathryn Gies', with a stylized flourish at the end.

Kathryn Gies, P.E.  
Engineering Manager

c.c. Dan Epperson, City of Lone Mayor  
Michael Rock, City Manager  
Carolyn Walker, City of Lone City Attorney  
Robin Peters, ARSA Board Chairman  
Amy Gedney, ARSA General Manager, City of Sutter Creek City Manager  
Dominic Atlan, Castle Oaks Golf Course Manager

# **EXHIBIT 3**

October 11, 2022



Ms. Kari Holmes  
Supervising Water Resources Control Engineer  
Compliance & Enforcement Program  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Dear Ms. Holmes:

On October 10, 2022, the City of Ione (City) was ordered by a Superior Court of the State of California to accept 500,000 gallons per day of ARSA's secondary effluent from the Preston Reservoir for the next 30 days, for a total of 15 million gallons received. The City is taking every available measure to comply with the court's order. The Court has not yet served a signed copy of the order on the parties. We will forward a copy for your records upon receipt.

Importantly, the City is now required to accept ARSA flow regardless of whether we can treat it reliably to meet the limitations of the Tertiary Plant's Permit, whether it is raining, or whether the golf course is saturated. As noted in our October 7, 2022 letter to you, the City estimates that the average total volume discharged to the Castle Oaks Golf Course from October 1 through the end of November has been, on average, approximately 20 million gallons. However, the ability for the golf course to accept this much flow is contingent on rainfall. Indeed, in 2016 and 2017 when there was some significant rainfall in October and November, the volume of water taken by the golf course was closer to 10 to 15 million gallons.

Compliance with the court order puts the City and our operations staff at great risk for noncompliance with the applicable permitting conditions. Because the City will likely need to direct some of the ARSA flow to the City's secondary Wastewater Treatment Plant (WWTP) – particularly if rainfall is to occur – we are now very concerned that we will be at risk of violation of the permit for the secondary facility.

Due to the evolving situation, it is critical that the City have the assurances that we will be protected from penalty associated with the acceptance of ARSA flow at either of our facilities. We respectfully reiterate our request that the Regional Board issue a letter as soon as possible that addresses the four issues summarized in our October 7, 2022 letter. For reference, we specifically request that the letter address the following:

1. The City needs reassurance that the Regional Board will exercise its prosecutorial discretion not to pursue enforcement of any violations of our permit conditions that result from the City's continued acceptance and treatment of ARSA flows from Preston Reservoir in the Tertiary Plant.
2. With the injunction now in place and the increased likelihood that the City will need to accept some ARSA flows at the secondary WWTP, the City also needs reassurance that the Regional Board will exercise its prosecutorial discretion not to pursue



enforcement of violations of any permit requirements that result from the City's acceptance and treatment of ARSA flows from Preston Reservoir in the secondary WWTP.

3. The City needs reassurance that the Regional Board will coordinate with the State Water Resources Control Board not pursue administrative civil liability or disciplinary action against the City's contract plant operators.
4. The City requests that the Regional Board require, or at least acknowledge, ARSA's agreement to pay the City's costs of treatment of flows from Preston Reservoir.

With such a letter in place, the Tertiary Plant operations staff will have increased comfort to direct as much flow to the Castle Oaks golf course as possible – thus preserving the storage and disposal capacity provided at the secondary WWTP for the City's flows to the extent feasible and supporting the City's efforts to comply with the court order.

We appreciate your timely consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Rock", is written over a horizontal line.

Michael Rock, City Manager

RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 17, 2022, I submitted a true and correct copy of the following document(s):

**DECLARATION OF MICHAEL ROCK IN SUPPORT OF EX PARTE APPLICATION  
TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION**

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Fed Ex service, the document(s) listed above were served via fed ex to the addresses as set forth in the service list.

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

**SERVICE LIST**

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*Attorneys for Plaintiff*

**Via Email**

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
October 17, 2022, at Sacramento, California.



Corene E. Rodder

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Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

SUPPLEMENTAL DECLARATION OF  
MICHELLE E. CHESTER IN SUPPORT  
OF EX PARTE APPLICATION FOR  
ORDER TO MODIFY OCTOBER 10, 2022  
ORDER AND PRELIMINARY  
INJUNCTION

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022

1 I, Michelle E. Chester, hereby declare:

2 1. I am an attorney licensed to practice in the State of California. I am counsel for  
3 Defendant City of Ione (Ione) in the above-referenced titled matter. I submit this declaration in  
4 support of the Ex Parte Application for Order to Modify October 10, 2022 Order and Preliminary  
5 Injunction. I have personal knowledge of the facts contained herein, and if called upon to do so,  
6 could and would testify competently thereto.

7 2. On the afternoon of October 18, 2022, my client informed me that the Castle Oaks  
8 Water Reclamation Plant (Plant), owned and operated by Ione, had temporarily shut down  
9 because of high levels of hydrogen sulfide gas in the Plant. Attached hereto as Exhibit 1 is a true  
10 and correct copy of the report prepared by the Ione Fire Department for Incident No. 22-29880.  
11 As stated in the report, two fire department crews were dispatched to the Plant to review and  
12 confirm high hydrogen sulfide gas readings. Monitor alarms are activated when the hydrogen  
13 sulfide gas readings exceed 10 percent, the combustible/explosive limit for the Plant. The  
14 readings observed at 1:00 P.M. on October 18, 2022 were within the range of 13 to 14 percent.

15 3. As stated in Exhibit 1, employees inside the building experienced headache  
16 symptoms. The employees did not require emergency medical assistance. I was informed by my  
17 client that no Ione employees or system operator personnel are currently inside the Plant.

18 4. As further stated in Exhibit 1, the gas readings will be re-checked at 6:45 A.M. on  
19 October 19, 2022. I do not have further information from my client at this time as to whether or  
20 how soon the Plant will be operational based on the re-check of the gas readings.

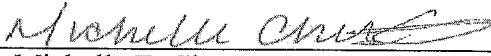
21 3. System operators of the Plant were unavailable due to the emergency  
22 circumstances during the afternoon of October 18, 2022 and were, therefore, unavailable to  
23 provide declarations of the facts of the chemical exposure at the Plant. Ione's City Manager was  
24 also unavailable during the afternoon of October 18, 2022 due to a previously scheduled medical  
25 procedure.

26 4. The purpose of this declaration is to provide this Court with all current information  
27 regarding Ione's immediate inability to comply with the October 10, 2022 Order and Preliminary  
28 Injunction due to the above-described emergency circumstances.



1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed this 18th day of October 2022 in Sacramento, California.

3  
4 DATED: October 18, 2022

By   
Michelle E. Chester  
Attorney for Defendant City of Ione

RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 18, 2022, I submitted a true and correct copy of the following document(s):

**SUPPLEMENTAL DECLARATION OF MICHELLE E. CHESTER IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION**

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Overnight mail service, the document(s) listed above were served via overnight mail to the addresses as set forth in the service list

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

**SERVICE LIST**

**Via Overnight Mail and Email**

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*Attorneys for Plaintiff*

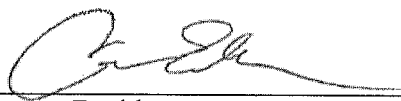
*Attorneys for Plaintiff*

**Via Email Only**

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SUPPLEMENTAL DECLARATION OF MICHELLE E. CHESTER IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 October 18, 2022, at Sacramento, California.

3   
4 \_\_\_\_\_  
5 Corene Rodder  
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# EXHIBIT A

# **CITY OF IONE FIRE DEPARTMENT**

**Incident # 22-29880**

**Incident Name  
“Treatment”**

**10-18-2022**

**1243 hrs**



<b>A</b>		MM DD YYYY		162		22-0029880		000		<input type="checkbox"/> Delete <input type="checkbox"/> Change <input type="checkbox"/> No Activity		NFIRS -1 Basic			
FDID *		State *		Incident Date *		Station		Incident Number *		Exposure *					
03010		CA		10 18 2022											
<b>B Location*</b> <input type="checkbox"/> Check this box to indicate that the address for this incident is provided on the Wildland Fire Census Tract Module in Section A "Alternative Location Specification". Use only for Wildland fires. <input checked="" type="checkbox"/> Street address <input type="checkbox"/> Intersection <input type="checkbox"/> In front of <input type="checkbox"/> Rear of <input type="checkbox"/> Adjacent to <input type="checkbox"/> Directions 10100 Five Mile Number/Milepost Prefix Street or Highway DR Street Type Suffix Apt./Suite/Room City CA 95640 State Zip Code Cross street or directions, as applicable															
<b>C Incident Type *</b> 400 Hazardous condition, Other: Incident Type				<b>E1 Date &amp; Times</b> Midnight is 0000 Check boxes if dates are the same as Alarm Date. ALARM always required Month Day Year Hr Min Sec Alarm * 10 18 2022 12:43:00 ARRIVAL required, unless canceled or did not arrive <input checked="" type="checkbox"/> Arrival * 10 18 2022 12:51:00 CONTROLLED Optional, Except for wildland fires <input type="checkbox"/> Controlled LAST UNIT CLEARED, required except for wildland fires <input checked="" type="checkbox"/> Last Unit Cleared 10 18 2022 13:15:00				<b>E2 Shift &amp; Alarms</b> Local Option B 02 Shift or Alarms District Platoon							
<b>D Aid Given or Received*</b> 1 <input type="checkbox"/> Mutual aid received 2 <input checked="" type="checkbox"/> Automatic aid recvd. 3 <input type="checkbox"/> Mutual aid given 4 <input type="checkbox"/> Automatic aid given 5 <input type="checkbox"/> Other aid given N <input type="checkbox"/> None Their FDID Their State Their Incident Number				<b>E3 Special Studies</b> Local Option Special Study ID# Special Study Value											
<b>F Actions Taken *</b> 86 Investigate Primary Action Taken (1) Additional Action Taken (2) Additional Action Taken (3)				<b>G1 Resources *</b> <input type="checkbox"/> Check this box and skip this section if an Apparatus or Personnel form is used. Apparatus Personnel Suppression EMS Other 0003 0003 <input type="checkbox"/> Check box if resource counts include aid received resources.				<b>G2 Estimated Dollar Losses &amp; Values</b> LOSSES: Required for all fires if known. Optional for non fires. None Property \$ 000 000 Contents \$ 000 000 PRE-INCIDENT VALUE: Optional Property \$ 000 000 Contents \$ 000 000							
<b>Completed Modules</b> <input type="checkbox"/> Fire-2 <input type="checkbox"/> Structure-3 <input type="checkbox"/> Civil Fire Cas.-4 <input type="checkbox"/> Fire Serv. Cas.-5 <input type="checkbox"/> EMS-6 <input type="checkbox"/> HazMat-7 <input type="checkbox"/> Wildland Fire-8 <input checked="" type="checkbox"/> Apparatus-9 <input checked="" type="checkbox"/> Personnel-10 <input type="checkbox"/> Arson-11				<b>H1* Casualties</b> Deaths Injuries Fire Service Civilian <b>H2 Detector</b> Required for Confined Fires. 1 <input type="checkbox"/> Detector alerted occupants 2 <input type="checkbox"/> Detector did not alert them U <input type="checkbox"/> Unknown				<b>H3 Hazardous Materials Release</b> N <input type="checkbox"/> None 1 <input type="checkbox"/> Natural Gas: slow leak, no evacuation or HazMat actions 2 <input type="checkbox"/> Propane gas: <21 lb. tank (as in home BBQ grill) 3 <input type="checkbox"/> Gasoline: vehicle fuel tank or portable container 4 <input type="checkbox"/> Kerosene: fuel burning equipment or portable storage 5 <input type="checkbox"/> Diesel fuel/fuel oil: vehicle fuel tank or portable 6 <input type="checkbox"/> Household solvents: home/office spill, cleanup only 7 <input type="checkbox"/> Motor oil: from engine or portable container 8 <input type="checkbox"/> Paint: from paint cans totaling < 55 gallons 0 <input type="checkbox"/> Other: Special HazMat actions required or spill > 55gal., Please complete the HazMat form				<b>I Mixed Use Property</b> NN <input type="checkbox"/> Not Mixed 10 <input type="checkbox"/> Assembly use 20 <input type="checkbox"/> Education use 33 <input type="checkbox"/> Medical use 40 <input type="checkbox"/> Residential use 51 <input type="checkbox"/> Row of stores 53 <input type="checkbox"/> Enclosed mall 58 <input type="checkbox"/> Bus. & Residential 59 <input type="checkbox"/> Office use 60 <input type="checkbox"/> Industrial use 63 <input type="checkbox"/> Military use 65 <input type="checkbox"/> Farm use 00 <input type="checkbox"/> Other mixed use			
<b>J Property Use* Structures</b> 131 <input type="checkbox"/> Church, place of worship 161 <input type="checkbox"/> Restaurant or cafeteria 162 <input type="checkbox"/> Bar/Tavern or nightclub 213 <input type="checkbox"/> Elementary school or kindergarten 215 <input type="checkbox"/> High school or junior high 241 <input type="checkbox"/> College, adult education 311 <input type="checkbox"/> Care facility for the aged 331 <input type="checkbox"/> Hospital Outside 124 <input type="checkbox"/> Playground or park 655 <input type="checkbox"/> Crops or orchard 669 <input type="checkbox"/> Forest (timberland) 807 <input type="checkbox"/> Outdoor storage area 919 <input type="checkbox"/> Dump or sanitary landfill 931 <input type="checkbox"/> Open land or field				341 <input type="checkbox"/> Clinic, clinic type infirmary 342 <input type="checkbox"/> Doctor/dentist office 361 <input type="checkbox"/> Prison or jail, not juvenile 419 <input type="checkbox"/> 1-or 2-family dwelling 429 <input type="checkbox"/> Multi-family dwelling 439 <input type="checkbox"/> Rooming/boarding house 449 <input type="checkbox"/> Commercial hotel or motel 459 <input type="checkbox"/> Residential, board and care 464 <input type="checkbox"/> Dormitory/barracks 519 <input type="checkbox"/> Food and beverage sales 936 <input type="checkbox"/> Vacant lot 938 <input type="checkbox"/> Graded/care for plot of land 946 <input type="checkbox"/> Lake, river, stream 951 <input type="checkbox"/> Railroad right of way 960 <input type="checkbox"/> Other street 961 <input type="checkbox"/> Highway/divided highway 962 <input type="checkbox"/> Residential street/driveway				539 <input type="checkbox"/> Household goods, sales, repairs 579 <input type="checkbox"/> Motor vehicle/boat sales/repair 571 <input type="checkbox"/> Gas or service station 599 <input type="checkbox"/> Business office 615 <input type="checkbox"/> Electric generating plant 629 <input type="checkbox"/> Laboratory/science lab 700 <input type="checkbox"/> Manufacturing plant 819 <input type="checkbox"/> Livestock/poultry storage (barn) 882 <input type="checkbox"/> Non-residential parking garage 891 <input type="checkbox"/> Warehouse 981 <input type="checkbox"/> Construction site 984 <input type="checkbox"/> Industrial plant yard Lookup and enter a Property Use code only if you have NOT checked a Property Use box: Property Use 900 Outside or special property,							

NFIRS-1 Revision 03/11/99



03010

FDID

\*

CA

State \*

MM

DD

YYYY

10

18

2022

Incident Date \*

162

Station

22-0029880

Incident Number \*

000

Exposure \*

Complete  
Narrative

## Narrative:

A walk in request from Pub Works superintendent Waklee for the fire department to use our Multi Gas monitors to check gas readings from the water at the treatment facility, due to their units reading high numbers in the Head works area and needed to confirm.

Chief 6200 contacted on duty crews and also Mule Creek Fire to respond with their monitors and double check the readings at the location.

Both Engine companies arrived and took readings from the two top vent pipes and the following readings were observed at 1300 hours

Gas Meters at the top of the head works

H2S = 1 %

Combustible/Explosive range 13-14 % our monitor alarms activated for explosive range at 10%

O2 20.8 %

The crews advised Superintendent Waklee of their findings and confirmed that the PERC employees that were inside the building did not require any medical assistance or medic unit due to their head ache symptoms, none of the employees denied assistance.

The units will return on 10-19-2022 for a re check at 0645 hrs

Weather Conditions on scene: 80 degrees 33 % Humidity winds 3-6 MPH

<b>A</b>		FDID <b>03010</b> *		State <b>CA</b> *		Incident Date <b>10/18/2022</b> *		Station <b>162</b>		Incident Number <b>22-0029880</b> *		Exposure <b>000</b> *		<input type="checkbox"/> Delete <input type="checkbox"/> Change		NFIRS - 9 Apparatus or Resources	
<b>B</b>		Apparatus or * Resource		Date and Times <small>Check if same as alarm date</small>						Sent <input checked="" type="checkbox"/>		Number of * People		Use <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>		Actions Taken	
				Month Day Year Hour Min Dispatch <input checked="" type="checkbox"/> 10/18/2022 12:43 Arrival <input checked="" type="checkbox"/> 10/18/2022 12:51 Clear <input checked="" type="checkbox"/> 10/18/2022 13:15													
1		ID <b>E5610</b>									1		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other				
		Type <b>11</b>															
2		ID <b>E6234</b>									1		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other				
		Type <b>11</b>															
3		ID <b>E6235</b>									1		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other				
		Type <b>11</b>															
4		ID <b></b>											<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other				
		Type <b></b>															
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		Type <b></b>															
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		Type <b></b>															
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		Type <b></b>															
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		Type <b></b>															
9		ID <b></b>											<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other				
		Type <b></b>															

**Type of Apparatus or Resources**

<p><b>Ground Fire Suppression</b></p> <p>11 Engine</p> <p>12 Truck or aerial</p> <p>13 Quint</p> <p>14 Tanker &amp; pumper combination</p> <p>16 Brush truck</p> <p>17 ARF (Aircraft Rescue and Firefighting)</p> <p>10 Ground fire suppression, other</p> <p><b>Heavy Ground Equipment</b></p> <p>21 Dozer or plow</p> <p>22 Tractor</p> <p>24 Tanker or tender</p> <p>20 Heavy equipment, other</p> <p><b>Aircraft</b></p> <p>41 Aircraft: fixed wing tanker</p> <p>42 Helitanker</p> <p>43 Helicopter</p> <p>40 Aircraft, other</p>	<p><b>Marine Equipment</b></p> <p>51 Fire boat with pump</p> <p>52 Boat, no pump</p> <p>50 Marine apparatus, other</p> <p><b>Support Equipment</b></p> <p>61 Breathing apparatus support</p> <p>62 Light and air unit</p> <p>60 Support apparatus, other</p> <p><b>Medical &amp; Rescue</b></p> <p>71 Rescue unit</p> <p>72 Urban Search &amp; rescue unit</p> <p>73 High angle rescue unit</p> <p>75 BLS unit</p> <p>76 ALS unit</p> <p>70 Medical and rescue unit, other</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>More Apparatus?</b> Use Additional Sheets</p> </div> <p><b>Other</b></p> <p>91 Mobile command post</p> <p>92 Chief officer car</p> <p>93 HazMat unit</p> <p>94 Type 1 hand crew</p> <p>95 Type 2 hand crew</p> <p>99 Privately owned vehicle</p> <p>00 Other apparatus/resource</p> <p>NN None</p> <p>UU Undetermined</p>
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NFIRS-9 Revision 11/17/98

<b>A</b> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div>FDID * 03010</div> <div>State * CA</div> <div>Incident Date * MM DD YYYY 10 18 2022</div> <div>Station 162</div> <div>Incident Number * 22-0029880</div> <div>Exposure * 000</div> <div> <input type="checkbox"/> Delete  <input type="checkbox"/> Change </div> <div style="border: 1px solid black; padding: 2px;">NFIRS - 10 Personnel</div> </div>	
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B Apparatus or Resource	Date and Times	Sent	Number of People	Use	Actions Taken
Use codes listed below	Check if same as alarm date Month Day Year Hours/mins	<input checked="" type="checkbox"/>		Check ONE box for each apparatus to indicate its main use at the incident.	List up to 4 actions for each apparatus and each personnel.
<div>1 ID E5610</div> <div>Type 11</div>	Dispatch <input checked="" type="checkbox"/> 10 18 2022 12:43 Arrival <input checked="" type="checkbox"/> 10 18 2022 12:51 Clear <input checked="" type="checkbox"/> 10 18 2022 13:15	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other	<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>

Personnel ID	Name	Rank or Grade	Attend	Action Taken	Action Taken	Action Taken	Action Taken
6600A	Mule Creek Engine Crew 4, Personnel		<input checked="" type="checkbox"/>				

<div>2 ID E6234</div> <div>Type 11</div>	Dispatch <input checked="" type="checkbox"/> 10 18 2022 12:43 Arrival <input checked="" type="checkbox"/> 10 18 2022 12:51 Clear <input checked="" type="checkbox"/> 10 18 2022 13:15	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other	<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>
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Personnel ID	Name	Rank or Grade	Attend	Action Taken	Action Taken	Action Taken	Action Taken
8101	Mackey, Ken	FC	<input checked="" type="checkbox"/>				

<div>3 ID E6235</div> <div>Type 11</div>	Dispatch <input checked="" type="checkbox"/> 10 18 2022 12:43 Arrival <input checked="" type="checkbox"/> 10 18 2022 12:51 Clear <input checked="" type="checkbox"/> 10 18 2022 13:15	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other	<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>
--	---	-------------------------------------	---	---	---

Personnel ID	Name	Rank or Grade	Attend	Action Taken	Action Taken	Action Taken	Action Taken
0703	Bennett, James	FAE	<input checked="" type="checkbox"/>				

SOMACH SIMMONS & DUNN  
A Professional Corporation  
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Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

[PROPOSED] ORDER GRANTING  
DEFENDANTS' EX PARTE  
APPLICATION TO MODIFY THE  
TEMPORARY RESTRAINING ORDER

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022



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Based upon Ione's ex parte application for a modification of the temporary restraining order, and on the documents filed therewith, the October 10, 2022 Order and Preliminary Injunction is modified as follows:

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Dated: \_\_\_\_\_

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 17, 2022, I submitted a true and correct copy of the following document(s):

**PROPOSED ORDER GRANTING DEFENDANTS' EX PARTE APPLICATION TO  
MODIFY THE TEMPORARY RESTRAINING ORDER**

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Fed Ex service, the document(s) listed above were served via fed ex to the addresses as set forth in the service list.

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

**SERVICE LIST**

**Via Fed Ex and Via Email**

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*Attorneys for Plaintiff*

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*Attorneys for Plaintiff*

**Via Email**

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[carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 October 17, 2022, at Sacramento, California.

3  
4 

Corene E. Rodder

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[carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)

Attorneys for Defendant  
City of Ione

EXEMPT FROM FILING FEES  
PER GOV. CODE § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, a  
California state agency; and DOES 1 through 20,  
inclusive,

Defendants,

Case No. 22-CV-12824

NOTICE OF ASSOCIATION OF  
COUNSEL

Judge: Hon. J.S. Hermanson

Date:

Time:

Dept: 1

Complaint Filed: September 20, 2022

1 TO THE CLERK OF THE SUPERIOR COURT, AND TO PLAINTIFF AND COUNSEL  
2 OF RECORD:

3 PLEASE TAKE NOTICE THAT Carolyn Walker, attorney of record for Defendant City  
4 of Ione, hereby associates Somach Simmons & Dunn and attorneys Theresa C. Barfield and  
5 Michelle E. Chester as co-counsel for the city of Ione in this matter. We respectfully request that  
6 all pleadings and other documents be served to Theresa C. Barfield and Michelle E. Chester as  
7 follows:


8 Theresa C. Barfield, Esq.  
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11 Sacramento, CA 95814  
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13 Facsimile No. (916) 446-8199  
14 Email [tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)

12 Michelle E. Chester, Esq.  
13 Somach Simmons & Dunn  
14 500 Capitol Mall, Suite 1000  
15 Sacramento, CA 95814  
16 Telephone No. (916) 446-7979  
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18 Email: [mchester@somachlaw.com](mailto:mchester@somachlaw.com)

17 Attorney Carolyn Walker hereby approves in the filing of the Notice of Association of  
18 Counsel.

20 Dated: October 17, 2022

Respectfully submitted,

By:   
Carolyn Walker  
Attorney for Defendant City of Ione

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Somach Simmons & Dunn and attorneys Theresa C. Barfield and Michelle E. Chester  
2 hereby accept the above association.

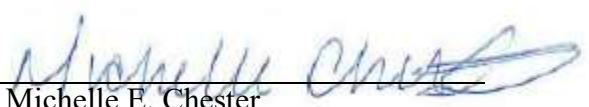
3  
4 Respectfully submitted,

5 SOMACH SIMMONS & DUNN  
6 A Professional Corporation

7 Dated: October 17, 2022

8 By:   
9 Theresa C. Barfield  
10 Attorney for Petitioner City of Ione

11 Dated: October 17, 2022

12 By:   
13 Michelle E. Chester  
14 Attorney for Petitioner City of Ione



RE: *Amador Regional Sanitation Authority v. City of Ione*  
Amador County Superior Court Case No.: 22CV12824

### PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; my electronic service address is: [crodder@somachlaw.com](mailto:crodder@somachlaw.com); and I am over the age of 18 years and not a party to the foregoing action.

I hereby certify that on October 17, 2022, I submitted a true and correct copy of the following document(s):

### NOTICE OF ASSOCIATION OF COUNSEL

X Via electronic/email service, the document(s) listed above were served via email to the email addresses as set forth in the service list.

X Via Fed Ex service, the document(s) listed above were served via fed ex to the addresses as set forth in the service list.

\_\_\_\_\_ on the parties in said action, by placing a true copy thereof in a sealed envelope with postage fully prepaid thereon and placing said envelope in the area designated for outgoing daily mail address per the service list.

### SERVICE LIST

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
October 17, 2022, at Sacramento, California.



Corene E. Rodder

# **ATTACHMENT 9**

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10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
17 agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

MEMORANDUM IN OPPOSITION TO EX  
PARTE APPLICATION FOR ORDER TO  
MODIFY OCTOBER 10, 2022 ORDER AND  
PRELIMINARY INJUNCTION

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 Plaintiff Amador Regional Sanitation Authority (“ARSA”) respectfully submits the  
2 following memorandum in opposition to Defendant City of Ione’s (“Ione”) ex parte application to  
3 modify the Court’s October 10, 2022, order and preliminary injunction.

4 **I.**

5 **INTRODUCTION**

6 In order to alleviate the serious risk of wastewater overflowing from Preston Reservoir and  
7 the public health and water quality contamination crises that would ensue, the Court appropriately  
8 issued a preliminary injunction on October 10, 2022, requiring Ione to immediately accept 500,000  
9 gallons of wastewater per day from Preston Reservoir for 30 days, a copy of which was personally  
10 served on Ione on October 11, 2022, at 12:44 p.m. (Green Decl., Exs. A, B.) Since that time,  
11 however, Ione has chosen a perilous path of willfully disobeying the Court’s order. (See Stone  
12 Decl., ¶ 4.) Ione has instead unsuccessfully sought relief from the Court of Appeal, delayed  
13 compliance in order to obtain assurances from the Central Valley Regional Water Quality Control  
14 Board (“Regional Board”) that were already provided, and created excuse after excuse for why it  
15 cannot accept wastewater from Preston Reservoir, the latest of which is high levels of hydrogen  
16 sulfide that is the result of Ione’s own doing.

17 Now before the Court is Ione’s ex parte application to modify the preliminary injunction to  
18 reduce the total gallons per day to 200,000, or to condition Ione’s acceptance of 500,000 gallons  
19 per day on ARSA’s installation of a surface pump at Preston Reservoir. (Ex Parte App., at  
20 p. 2:11-16.) The sole basis of Ione’s application is that compliance with the preliminary injunction  
21 will result in Ione violating its permit from the Regional Board. (*Id.*, at pp. 2:17-3:14.)

22 While Ione claims modification is necessary to serve the “ends of justice,” the risk of permit  
23 violations is the precise argument Ione made in its opposition to the preliminary injunction. (See  
24 Opp’n to ARSA’s Ex Parte App. for TRO, at pp. 12:1-16:2.) Ione’s purported fear of violating its  
25 Regional Board permit is also baseless. In early September 2022, the Regional Board specifically  
26 informed Ione that, given the “capacity issues at Preston are presenting an even greater risk to water  
27 quality and public health than potential nuisance concerns related to the treatment of wastewater  
28 from Preston at Ione’s tertiary facility,” the Regional Board will “not pursue enforcement of odor

1 nuisance conditions that may occur as a result of the City’s acceptance of treated wastewater from  
2 Preston at the Tertiary Plant or golf course” for the rest of the year. (Green Decl., Ex. G, Ex. D  
3 thereto.) The Court should therefore deny Ione’s request to modify the preliminary injunction and  
4 remind Ione that it remains subject to a binding court order.

5 **II.**

6 **LEGAL STANDARD**

7 Code of Civil Procedure section 533 permits courts to modify an injunction “upon a  
8 showing that there has been a material change in the facts upon which the injunction ... was granted,  
9 that the law upon which the injunction ... was granted has changed, or that the ends of justice would  
10 be served by the modification or dissolution of the injunction ....” The party seeking to modify an  
11 injunction bears “the burden ... to show by a preponderance of the evidence that one of the  
12 circumstances set forth in Code of Civil Procedure section 533 is present and justifies a  
13 [modification] of the [injunction].” (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504.)

14 **III.**

15 **ARGUMENT**

16 **A. IONE HAS NOT MET ITS BURDEN OF JUSTIFYING MODIFICATION OF**  
17 **THE PRELIMINARY INJUNCTION**

18 Cognizant of the absence of a material change in the facts or the law, Ione purports to rely  
19 on the “ends of justice” prong to support modification of the preliminary injunction. Rehashing  
20 prior, unsuccessful arguments made in opposition to the preliminary injunction is woefully  
21 insufficient to support modification of the injunction. (See Opp’n to ARSA’s Ex Parte App. for  
22 TRO, at pp. 12:1-16:2.)

23 Ione’s principal argument in opposition to the preliminary injunction was that the treatment  
24 of wastewater from Preston Reservoir will violate its Regional Board permit because the turbidity  
25 and coliform bacteria in the water exceed the permit limits. (Moroz Decl. in Opp’n to ARSA’s Ex  
26 Parte App. for TRO, ¶¶ 3-4.) Ione also claimed that Preston Reservoir’s wastewater poses public  
27 health issues because it contains odor-causing hydrogen sulfide, and that the water is difficult to  
28 treat because of sedimentation caused by the water being delivered from the bottom of Preston



1 Reservoir. (*Id.*, ¶¶ 5-7.) These arguments were thus already considered and rejected by the Court  
2 when the preliminary injunction was issued.

3 Ione's ongoing concerns with violating its Regional Board permit are also entirely specious.  
4 To justify Ione's refusal to accept water from Preston Reservoir, Ione complained to the Regional  
5 Board about hydrogen sulfide and turbidity in the wastewater from Preston Reservoir before ARSA  
6 was forced to file this action. The Regional Board responded as follows:

7 With the understanding that capacity issues at Preston are presenting  
8 an even greater risk to water quality and public health than potential  
9 nuisance concerns related to the treatment of wastewater from  
10 Preston at Ione's tertiary facility, the [Regional] Board's Compliance  
11 and Enforcement Unit will exercise its prosecutorial discretion to not  
pursue enforcement of odor nuisance conditions that may occur as a  
result of the City's acceptance of treated wastewater from Preston at  
the Tertiary Plant or golf course between 9 September 2022 and 1  
January 2023. (Green Decl., Ex. G, Ex. D thereto.)

12 Ione's continuing concerns regarding compliance with its Regional Board permit are thus  
13 insufficient to support modification of the preliminary injunction.

14 **B. IONE CONTINUES TO WILLFULLY DISOBEY THE COURT'S ORDER**

15 As previously noted, Ione was personally served with the preliminary injunction midday on  
16 October 11, 2022. (Green Decl., Ex. B.) At that time, Ione was immediately required to accept  
17 500,000 gallons of wastewater per day for 30 days, for a total of 15 million gallons. (Green Decl.,  
18 Ex. A.) Rather than comply with a binding court order, (see Stone Decl., ¶ 4), Ione has requested  
19 assurances from the Regional Board, sought relief in the Court of Appeal, and raised excuse after  
20 excuse to justify its refusal to comply with the preliminary injunction. Each of these matters is  
21 addressed in turn.

22 1. Ione's Request For Assurances That The Regional Board Already Provided.

23 On October 11, 2022, the same day it was served with the injunction, Ione wrote to the  
24 Regional Board to request assurances that the Board would exercise its prosecutorial discretion not  
25 to pursue enforcement of any wastewater permit violations as a result of accepting water from  
26 Preston Reservoir. (Rock Decl., Ex. 3.) Ione's request is bewildering because such assurances were  
27 already provided by the Regional Board. As noted above, in its September 9, 2022, correspondence,  
28 the Regional Board advised Ione that, given the "capacity issues at Preston are presenting an even

1 greater risk to water quality and public health than potential nuisance concerns related to the  
2 treatment of wastewater from Preston at Ione's tertiary facility," the Regional Board will "not  
3 pursue enforcement of odor nuisance conditions that may occur as a result of the City's acceptance  
4 of treated wastewater from Preston at the Tertiary Plant or golf course" for the rest of the year.  
5 (Green Decl., Ex. G, Ex. D thereto.)

6 2. Ione's Unsuccessful Attempt To Obtain Relief From The Court of Appeal.

7 On October 11, 2022, Ione also wrote to the Court of Appeal to ask for leave to amend its  
8 writ petition challenging the prior temporary restraining order so that it could redirect its attack to  
9 the preliminary injunction. (Green Decl., Ex. C.) On October 13, 2022, the Court of Appeal denied  
10 the writ petition as moot. (Green Decl., Ex. D.) Undeterred, Ione filed another writ petition  
11 challenging the preliminary injunction on October 14, 2022, which included a request for an  
12 immediate stay. (Green Decl., Ex. E.) On October 18, 2022, the Court of Appeal denied Ione's  
13 second writ petition. (Green Decl., Ex. F.)

14 3. The High Hydrogen Sulfide Levels Are Ione's Own Doing And Do Not  
15 Excuse Ione's Noncompliance With The Preliminary Injunction.

16 After filing its ex parte application, Ione's counsel submitted a supplemental declaration to  
17 inform the Court of high levels of hydrogen sulfide at its Castle Oaks Water Reclamation Plant on  
18 October 18, 2022. According to an incident report, Ione's fire department took gas readings at two  
19 top vent pipes to test the amount of hydrogen sulfide (H<sub>2</sub>S). (Supp. Chester Decl., Ex. A.) These  
20 readings showed H<sub>2</sub>S at only 1 part per million (PPM), but detected a combustible/explosive range  
21 above the lower explosion limit (LEL) of 10% at 13-14%. (*Ibid.*) While Ione's fire department  
22 readings showed similar results on October 19, 2022, the combustible/explosive range dropped  
23 below the LEL to only 3% on October 20, 2022. (Brown Decl., Exs. A, B.) The amount of H<sub>2</sub>S,  
24 however, increased to at least 200 PPM at that time. (Brown Decl., Ex. B.) The oxygen levels from  
25 October 18 to 20, 2022, nevertheless remained constant, at 20.8%, 20.2%, and 20.8%. (Brown  
26 Decl., Exs. A, B.)

27 Hydrogen sulfide is a common condition that exists in sewer and wastewater systems.  
28 (Brown Decl., ¶ 5.) It is a combustible and toxic gas that forms within sewer collection systems

1 when the organic matter in the raw sewage decomposes and is caused by the lack of oxygen in the  
2 water over longer periods of time. (*Ibid.*) The likely cause of hydrogen sulfide at the Castle Oaks  
3 Water Reclamation Plant arises from Ione's decision to stop deliveries of wastewater from Preston  
4 Reservoir. (*Ibid.*) By doing so, stagnant water remained in the closed pipeline between the reservoir  
5 discharge valve and the tertiary treatment plant, which likely allowed the remaining oxygen to be  
6 consumed, anaerobic bacteria to be formed, and hydrogen sulfide to generate. (*Ibid.*)

7         Setting aside the cause of the hydrogen sulfide, hydrogen sulfide does not generally pose a  
8 health hazard when it is properly monitored and mitigated. (*Id.*, ¶ 6.) To address the presence of  
9 hydrogen sulfide, including at the levels detected by Ione's fire department between October 18  
10 and 20, 2022, ventilation blowers are typically used to force air into the confined space at high  
11 enough volumes to exchange the air to dilute the concentration to a nonhazardous level. (*Ibid.*)  
12 Indeed, in most cases, simply ventilating the utility access hole can reduce the levels of the gas  
13 present to a safe level for entry. (*Ibid.*) Hydrogen sulfide may also be treated through the use of  
14 chemicals, including chlorine, sodium hypochlorite, or other products such as hydrogen peroxide-  
15 based oxidants. (*Ibid.*)

16         To date, Ione has provided no evidence whatsoever reflecting any attempts to treat the  
17 hydrogen sulfide. (See *id.*, ¶ 9.) Ione has instead simply shut down the system after detecting  
18 conditions that are common in wastewater systems and has elected to take no steps to treat the  
19 hydrogen sulfide. (See *ibid.*) ARSA has tested the area around the Preston Reservoir for H<sub>2</sub>S, and  
20 no H<sub>2</sub>S has been detected. (*Ibid.*) The hydrogen sulfide issues identified by Ione thus relate solely  
21 to tertiary effluent requirements. They are part of the costs of providing tertiary treatment and  
22 therefore must be resolved by Ione as the operator of the tertiary treatment plant. (*Ibid.*)

23         The H<sub>2</sub>S and LEL readings provided by Ione are also questionable at best. (*Id.*, ¶ 7.) The  
24 H<sub>2</sub>S level was apparently measured at a level below grade in a vent line; the gas level above the  
25 confined space was not measured. (*Ibid.*) H<sub>2</sub>S is heavier than air, which means it will collect and  
26 concentrate in confined spaces below grade. (*Ibid.*) When mixed with the air outside of the confined  
27 space, however, it will typically produce a decreased level of concentration. (*Ibid.*) While the odor  
28 may be detectable near the vent, it could be easily mitigated through aeration. (*Ibid.*)

1 Finally, while Ione has provided no data since October 20, 2022, regarding the latest data  
2 provided by Ione on that day, it does not make sense for the LEL to go down and the H2S level to  
3 increase. (*Id.*, ¶ 8.) H2S is considered combustible, which means the H2S level and LEL should  
4 rise and fall together. (*Ibid.*) The diverging H2S and LEL readings are also suspect given the  
5 amount of oxygen remained constant from October 18 to October 20, 2020. (*Ibid.*) Indeed, without  
6 calibration logs, the accuracy of the testing instruments cannot be assumed. (*Ibid.*)


7 IV.

8 **CONCLUSION**

9 For the reasons set forth above, the Court should deny Ione's ex parte application to modify  
10 the preliminary injunction.

11 Dated: October 25, 2022

BEST BEST & KRIEGER LLP

12  
13 By:   
14 SHAWN D. HAGERTY  
15 MATTHEW L. GREEN  
16 FRANK A. SPLENDORIO  
17 Attorneys for Plaintiff  
18 AMADOR REGIONAL SANITATION  
19 AUTHORITY  
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28

**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 25, 2022, I served a copy of the within document(s):

MEMORANDUM IN OPPOSITION TO EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION;

DECLARATION OF DONALD BROWN IN OPPOSITION TO EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION;

DECLARATION OF MATTHEW L. GREEN IN OPPOSITION TO EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION;

DECLARATION OF STEVEN COREY STONE IN OPPOSITION TO EX PARTE APPLICATION FOR ORDER TO MODIFY OCTOBER 10, 2022 ORDER AND PRELIMINARY INJUNCTION

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below. I placed, or caused to be placed, the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Margaret Long, Esq.  
David Prentice, Esq.  
Prentice Long, PC  
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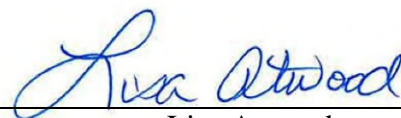
Attn: Patrick Covello

Tel: (916) 324-7308

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 25, 2022, at San Diego, California.



Lisa Atwood



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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF DONALD BROWN IN  
OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER TO MODIFY  
OCTOBER 10, 2022 ORDER AND  
PRELIMINARY INJUNCTION

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 I, Donald Brown, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am the President of Aquality Water Management (“Aquality”) and have more than  
5 35 years of experience in the operations of wastewater treatment plants in California. Throughout  
6 my career, my positions have ranged from wastewater treatment plant operator to wastewater  
7 treatment facilities manager to operations consultant. I have been responsible for planning,  
8 organizing, and directing the operation and maintenance of wastewater treatment plants up to 30  
9 million gallons per day. Through Aquality, I have provided operational assistance and consulting  
10 services to the Amador Regional Sanitation Authority (“ARSA”) for several years.

11 3. I have been provided and have reviewed the supplemental declaration of Michelle  
12 E. Chester dated October 18, 2022, along with the City of Ione (“Ione”) Fire Department’s incident  
13 report attached thereto. I have also been provided and have reviewed subsequent correspondence  
14 between Ione and the Central Valley Regional Water Quality Control Board (“Regional Board”) dated October 19, 2022, and October 20-21, 2022, copies of which are attached hereto as Exhibits  
15 “A” and “B,” respectively.

16 4. According to the October 18, 2022, incident report, gas readings were taken at two  
17 top vent pipes to test the amount of hydrogen sulfide (H<sub>2</sub>S) . These readings showed H<sub>2</sub>S at only  
18 1 part per million (PPM), but detected a combustible/explosive range above the lower explosion  
19 limit (LEL) of 10% at 13-14%. While Ione’s fire department readings showed similar results on  
20 October 19, 2022, the combustible/explosive range dropped below the LEL to only 3% on October  
21 20, 2022. The amount of H<sub>2</sub>S, however, increased to at least 200 PPM at that time. The oxygen  
22 levels from October 18 to 20, 2022, nevertheless remained constant, at 20.8%, 20.2%, and 20.8%.

23 5. Hydrogen sulfide is a common condition that exists in sewer and wastewater  
24 systems. It is a combustible and toxic gas that forms within sewer collection systems when the  
25 organic matter in the raw sewage decomposes and is caused by the lack of oxygen in the water over  
26 longer periods of time. As detailed in my October 6, 2022, declaration, the likely cause of hydrogen  
27 sulfide at the Castle Oaks Water Reclamation Plant arises from Ione’s decision to stop deliveries  
28

1 of wastewater from Preston Reservoir. By doing so, stagnant water remained in the closed pipeline  
2 between the reservoir discharge valve and the tertiary treatment plant, which likely allowed the  
3 remaining oxygen to be consumed, anaerobic bacteria to be formed, and hydrogen sulfide to  
4 generate.

5         6. When properly monitored and mitigated, hydrogen sulfide does not generally pose  
6 a health hazard. To address the presence of hydrogen sulfide, including at the levels detected by  
7 Ione's fire department, ventilation blowers are typically used to force air into the confined space at  
8 high enough volumes to exchange the air to dilute the concentration to a nonhazardous level.  
9 Indeed, in most cases, simply ventilating the utility access hole can reduce the levels of the gas  
10 present to a safe level for entry. Hydrogen sulfide may also be treated through the use of chemicals,  
11 including chlorine, sodium hypochlorite, or other products such as hydrogen peroxide-based  
12 oxidants.

13         7. The H2S and LEL readings provided by Ione are also questionable at best. First, the  
14 H2S level was apparently measured at a level below grade in a vent line; the gas level above the  
15 confined space was not measured. H2S is heavier than air, which means it will collect and  
16 concentrate in confined spaces below grade. When mixed with the air outside of the confined space,  
17 however, it will typically produce a decreased level of concentration. While the odor may be  
18 detectable near the vent, it could be easily mitigated through aeration.

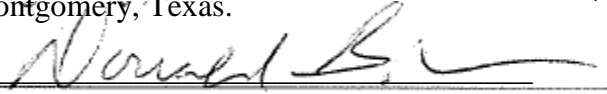
19         8. Moreover, regarding the latest data provided by Ione on October 20, 2022, it does  
20 not make sense for the LEL to go down and the H2S level to increase. H2S is considered  
21 combustible, which means the H2S level and LEL should rise and fall together. The diverging H2S  
22 and LEL readings are also suspect given the amount of oxygen remained constant from October 18  
23 to October 20, 2020. Indeed, without calibration logs, the accuracy of the testing instruments cannot  
24 be assumed.

25         9. To date, I have seen no evidence from Ione reflecting any attempts to treat the  
26 hydrogen sulfide. Ione has instead simply shut down the system after detecting conditions that are  
27 common in wastewater systems and has apparently elected to take no steps to treat the hydrogen  
28 sulfide. ARSA has tested the area around the Preston Reservoir for H2S, and no H2S has been

1 detected. The hydrogen sulfide issues identified by Ione thus relate solely to tertiary effluent  
2 requirements. They are part of the costs of providing tertiary treatment and therefore must be  
3 resolved by Ione as the operator of the tertiary treatment plant.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct.

6 Executed this 24<sup>th</sup> day of October 2022, at Montgomery, Texas.

7 

8 DONALD BROWN  
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# EXHIBIT A

---

**From:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>  
**Sent:** Wednesday, October 19, 2022 3:46 PM  
**To:** Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; Baum, John@Waterboards <[john.baum@waterboards.ca.gov](mailto:john.baum@waterboards.ca.gov)>  
**Cc:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>  
**Subject:** Ione Tertiary Plant: Lower Explosion Limits (LEL) still in violation  
**Importance:** High

Dear Kari:

The Ione Fire Department and Mule Creek State Prison Fire Department conducted another reading this morning regarding the Lower Explosion Limits (LEL) at the Tertiary Plant and the conditions are not better. The LEL is still over the limit of 10% at an average reading of 13.5% today. See attached report from this morning. The Fire Department has declared the site a hazardous condition for combustion/explosion.

Under these conditions it is not possible to operate the Tertiary Plant accepting influent from ARSA. The City has contacted the Amador Superior Court regarding this issue. I have also spoken with Mr. Baum and data (calcium nitrate, polymers and chlorine that is being used right now) will be sent to the Regional Board for analysis on how to lower the LEL and still be able to treat for the high turbidity and odorous conditions.

Sincerely,

Michael Rock  
City Manager  
City of Ione, CA  
(209) 273-7712



# **CITY OF IONE FIRE DEPARTMENT**

**Incident # 22-29880**

**Incident Name  
“Treatment”**

**10-18-2022**

**1243 hrs**

<b>A</b> FDID <u>03010</u> * State <u>CA</u> * Incident Date <u>10</u> <u>18</u> <u>2022</u> * Station <u>162</u> Incident Number <u>22-0029880</u> * Exposure <u>000</u> * <div style="float:right;"><input type="checkbox"/> Delete <input type="checkbox"/> Change <input type="checkbox"/> No Activity</div>		NFIRS -1 Basic	
<b>B Location*</b> <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Check this box to indicate that the address for this incident is provided on the Wildland Fire Module in Section B "Alternative Location Specification". Use only for Wildland fires.</div><div>Census Tract <u>0015</u> - <u>00</u></div></div> <div style="display: flex; justify-content: space-between;"><div><input checked="" type="checkbox"/> Street address <input type="checkbox"/> Intersection <input type="checkbox"/> In front of <input type="checkbox"/> Rear of <input type="checkbox"/> Adjacent to <input type="checkbox"/> Directions</div><div><u>10100</u> <u>Five Mile</u> Number/Milepost Prefix Street or Highway <u>IONE</u> Apt./Suite/Room City Cross street or directions, as applicable</div><div><u>DR</u> Street Type <u>CA</u> <u>95640</u> - <u></u> State Zip Code</div></div>			
<b>C Incident Type *</b> <u>400</u> <u>Hazardous condition, Other</u> Incident Type		<b>E1 Date &amp; Times</b> Midnight is 0000 Check boxes if dates are the same as Alarm Date. ALARM always required Alarm * <u>10</u> <u>18</u> <u>2022</u> <u>12:43:00</u> ARRIVAL required, unless canceled or did not arrive <input checked="" type="checkbox"/> Arrival * <u>10</u> <u>18</u> <u>2022</u> <u>12:51:00</u> CONTROLLED Optional, Except for wildland fires <input type="checkbox"/> Controlled LAST UNIT CLEARED, required except for wildland fires <input type="checkbox"/> Last Unit <input type="checkbox"/> Cleared <u>10</u> <u>19</u> <u>2022</u> <u>07:30:00</u>	
<b>D Aid Given or Received*</b> <div style="display: flex; justify-content: space-between;"><div>1 <input type="checkbox"/> Mutual aid received 2 <input checked="" type="checkbox"/> Automatic aid recv. 3 <input type="checkbox"/> Mutual aid given 4 <input type="checkbox"/> Automatic aid given 5 <input type="checkbox"/> Other aid given N <input type="checkbox"/> None</div><div><div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">Their FDID Their State</div><div style="border: 1px solid black; padding: 2px;">Their Incident Number</div></div></div>		<b>E2 Shift &amp; Alarms</b> Local Option <u>B</u> <u></u> <u>02</u> Shift or Alarms District Platoon	
<b>F Actions Taken *</b> <div style="display: flex; justify-content: space-between;"><div><u>86</u> <u>Investigate</u> Primary Action Taken (1) <u>42</u> <u>HazMat detection,</u> Additional Action Taken (2) <u></u> <u></u> Additional Action Taken (3)</div><div><b>G1 Resources *</b><div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Check this box and skip this section if an Apparatus or Personnel form is used.</div><div>Apparatus Personnel Suppression <u></u> <u></u> EMS <u></u> <u></u> Other <u>0003</u> <u>0003</u></div></div><input type="checkbox"/> Check box if resource counts include aid received resources.</div></div>		<b>G2 Estimated Dollar Losses &amp; Values</b> LOSSES: Required for all fires if known. Optional for non fires. None Property \$ <u></u> , <u>000</u> , <u>000</u> <input type="checkbox"/> Contents \$ <u></u> , <u>000</u> , <u>000</u> <input type="checkbox"/> PRE-INCIDENT VALUE: Optional Property \$ <u></u> , <u>000</u> , <u>000</u> <input type="checkbox"/> Contents \$ <u></u> , <u>000</u> , <u>000</u> <input type="checkbox"/>	
<b>Completed Modules</b> <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Fire-2 <input type="checkbox"/> Structure-3 <input type="checkbox"/> Civil Fire Cas.-4 <input type="checkbox"/> Fire Serv. Cas.-5 <input type="checkbox"/> EMS-6 <input type="checkbox"/> HazMat-7 <input type="checkbox"/> Wildland Fire-8 <input checked="" type="checkbox"/> Apparatus-9 <input checked="" type="checkbox"/> Personnel-10 <input type="checkbox"/> Arson-11</div><div><b>H1* Casualties</b> <input type="checkbox"/> None Deaths Injuries Fire Service <u></u> <u></u> Civilian <u></u> <u></u> <b>H2 Detector</b> Required for Confined Fires. 1 <input type="checkbox"/> Detector alerted occupants 2 <input type="checkbox"/> Detector did not alert them U <input type="checkbox"/> Unknown</div></div>		<b>H3 Hazardous Materials Release</b> <div style="display: flex; justify-content: space-between;"><div>N <input type="checkbox"/> None 1 <input type="checkbox"/> Natural Gas: slow leak, no evaluation or HazMat actions 2 <input type="checkbox"/> Propane gas: &lt;21 lb. tank (as in home BBQ grill) 3 <input type="checkbox"/> Gasoline: vehicle fuel tank or portable container 4 <input type="checkbox"/> Kerosene: fuel burning equipment or portable storage 5 <input type="checkbox"/> Diesel fuel/fuel oil: vehicle fuel tank or portable 6 <input type="checkbox"/> Household solvents: home/office spill, cleanup only 7 <input type="checkbox"/> Motor oil: from engine or portable container 8 <input type="checkbox"/> Paint: from paint cans totaling &lt; 55 gallons 0 <input type="checkbox"/> Other: Special HazMat actions required or spill &gt; 55gal., Please complete the HazMat form</div><div><b>I Mixed Use Property</b><div style="display: flex; justify-content: space-between;"><div>NN <input type="checkbox"/> Not Mixed 10 <input type="checkbox"/> Assembly use 20 <input type="checkbox"/> Education use 30 <input type="checkbox"/> Medical use 40 <input type="checkbox"/> Residential use 51 <input type="checkbox"/> Row of stores 53 <input type="checkbox"/> Enclosed mall 58 <input type="checkbox"/> Bus. &amp; Residential 59 <input type="checkbox"/> Office use 60 <input type="checkbox"/> Industrial use 63 <input type="checkbox"/> Military use 65 <input type="checkbox"/> Farm use 00 <input type="checkbox"/> Other mixed use</div></div></div></div>	
<b>J Property Use* Structures</b> <div style="display: flex; justify-content: space-between;"><div>131 <input type="checkbox"/> Church, place of worship 161 <input type="checkbox"/> Restaurant or cafeteria 162 <input type="checkbox"/> Bar/Tavern or nightclub 213 <input type="checkbox"/> Elementary school or kindergarten 215 <input type="checkbox"/> High school or junior high 241 <input type="checkbox"/> College, adult education 311 <input type="checkbox"/> Care facility for the aged 331 <input type="checkbox"/> Hospital  Outside 124 <input type="checkbox"/> Playground or park 655 <input type="checkbox"/> Crops or orchard 669 <input type="checkbox"/> Forest (timberland) 807 <input type="checkbox"/> Outdoor storage area 919 <input type="checkbox"/> Dump or sanitary landfill 931 <input type="checkbox"/> Open land or field</div><div>341 <input type="checkbox"/> Clinic, clinic type infirmary 342 <input type="checkbox"/> Doctor/dentist office 361 <input type="checkbox"/> Prison or jail, not juvenile 419 <input type="checkbox"/> 1-or 2-family dwelling 429 <input type="checkbox"/> Multi-family dwelling 439 <input type="checkbox"/> Rooming/boarding house 449 <input type="checkbox"/> Commercial hotel or motel 459 <input type="checkbox"/> Residential, board and care 464 <input type="checkbox"/> Dormitory/barracks 519 <input type="checkbox"/> Food and beverage sales  936 <input type="checkbox"/> Vacant lot 938 <input type="checkbox"/> Graded/care for plot of land 946 <input type="checkbox"/> Lake, river, stream 951 <input type="checkbox"/> Railroad right of way 960 <input type="checkbox"/> Other street 961 <input type="checkbox"/> Highway/divided highway 962 <input type="checkbox"/> Residential street/driveway</div><div>539 <input type="checkbox"/> Household goods, sales, repairs 579 <input type="checkbox"/> Motor vehicle/boat sales/repair 571 <input type="checkbox"/> Gas or service station 599 <input type="checkbox"/> Business office 615 <input type="checkbox"/> Electric generating plant 629 <input type="checkbox"/> Laboratory/science lab 700 <input type="checkbox"/> Manufacturing plant 819 <input type="checkbox"/> Livestock/poultry storage (barn) 882 <input type="checkbox"/> Non-residential parking garage 891 <input type="checkbox"/> Warehouse  981 <input type="checkbox"/> Construction site 984 <input type="checkbox"/> Industrial plant yard  Lookup and enter a Property Use code only if you have NOT checked a Property Use box: Property Use <u>900</u> <u>Outside or special property,</u></div></div>			

NFIRS-1 Revision 03/11/99



**K1 Person/Entity Involved** ☐ Local Option ☐ Business name (if applicable) PERC WATER      -      -      Area Code Phone Number

☐ Check This Box if same address as incident location. Then skip the three duplicate address lines.

     Public works      City of Ione       
Mr., Ms., Mrs. First Name MI Last Name Suffix

10100      Five Mile      DR       
Number Prefix Street or Highway Street Type Suffix

     Head IONE  
Post Office Box Apt./Suite/Room City

CA 95640 -       
State Zip Code

☐ More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary

**K2 Owner** ☐ Same as person involved? Then check this box and skip the rest of this section.

☐ Check this box if same address as incident location. Then skip the three duplicate address lines.

                                                   
Mr., Ms., Mrs. First Name MI Last Name Suffix

                                                   
Number Prefix Street or Highway Street Type Suffix

                                                   
Post Office Box Apt./Suite/Room City

          -       
State Zip Code

**L Remarks** ☐ Local Option

A walk in request from Pub Works superintendent Waklee for the fire department to use our Multi Gas monitors to check gas readings from the water at the treatment facility, due to their units reading high numbers in the Head works area and needed to confirm.

Chief 6200 contacted on duty crews and also Mule Creek Fire to respond with their monitors and double check the readings at the location.

Both Engine companies arrived and took readings from the two top vent pipes and the following readings were observed at 1300 hours

Gas Meters at the top of the head works

H2S = 1 PPM

Combustible/Explosive range 13-14 % our monitor alarms activated for explosive range at 10%

O2 - 20.8 %

The crews advised Superintendent Waklee of their findings and confirmed that the PERC employees that were inside the building did not require any medical assistance or medic unit due to their head ache symptoms, none of the employees denied assistance.

The units will return on 10-19-2022 for a re check at 0645 hrs

**L Authorization**

0703 Bennett, James FAE      10 18 2022  
Officer in charge ID Signature Position or rank Assignment Month Day Year

☐ Check Box if same as Officer making report ID in charge. 8101 Mackey, Ken FC      10 18 2022  
Signature Position or rank Assignment Month Day Year

03010  
FDID \*

CA  
State \*

MM DD  
10 18  
Incident Date \*

YYYY  
2022

162  
Station

22-0029880  
Incident Number \*

000  
Exposure \*

Complete  
Narrative

**Narrative:**

A walk in request from Pub Works superintendent Waklee for the fire department to use our Multi Gas monitors to check gas readings from the water at the treatment facility, due to their units reading high numbers in the Head works area and needed to confirm.

Chief 6200 contacted on duty crews and also Mule Creek Fire to respond with their monitors and double check the readings at the location.

Both Engine companies arrived and took readings from the two top vent pipes and the following readings were observed at 1300 hours

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The crews advised Superintendent Waklee of their findings and confirmed that the PERC employees that were inside the building did not require any medical assistance or medic unit due to their head ache symptoms, none of the employees denied assistance.

The units will return on 10-19-2022 for a re check at 0645 hrs

Weather Conditions on scene: 80 degrees 33 % Humidity winds 3-6 MPH

SUPPLEMENTAL REPORT - 10-19-2022

10-19-2022 follow up readings with Engine 6235 & Engine 5610

Time: 0652 hrs

Readings using the MSA ALTAIR 4X multi gas monitor

H2 S 20 PPM

Combustible / Explosive Level : 11 %

O2 levels 20.2 %

\* Alarms activated immediately

Weather Conditions:

Temp: 61 degrees

Humidity : 43 %

Winds: SSE at 1 MPH



03010  
FDID \*

CA  
State \*

MM DD YYYY  
10 18 2022  
Incident Date \*

162  
Station

22-0029880  
Incident Number \*

000  
Exposure \*

Complete  
Narrative

**Narrative:**

Dew Point: 39

Elevation: 270 ft

\*\*\* Per Public works Superintendent Waklee , the entire system was shut down and the supply side of the water pipe valve was completely closed , and all ignition sources removed or secured in the area, also the access was flagged off to prevent access, and employees advised to not enter.

Amador Health Department officer contacted and report made with Dr. Kerr at 1232 hrs, she will be making contact with Amador County Environmental health due to no reporting officer currently working at the county, with information.

per Dr Kerr's question it was confirmed that all PERC employees affected on site did not want medical attention and were advised of the workers comp and medical process if they do require at a later date.

Also it was confirmed with Dr Kerr that the city had contract staff from PERC operating the facility and were qualified state certified Operators Level 2- 3 -4 's and they were on site.

Received phone call from State of California Water Resource Board at 1350 hrs from Kenny Croyle (916) 464-4676 doing a follow up on today's findings, he was advised of our findings and explained that the area was secured from any employees and the water system shut down, no environmental or human risk at this time.

The facility will remain shut down until further notice until the incoming water has been stabilized by the staff or the supply source.

Attached is the copy of the Mule Creek Fire Department - Mutual Aid Incident report - 2-  
pages

Photo # 1 - Head works

Photo # 2 Head works

Photo # 3 Head works

<b>A</b>		FDID <b>03010</b> *		State <b>CA</b> *		Incident Date <b>MM DD YYYY</b> <b>10 18 2022</b>		Station <b>162</b>		Incident Number <b>22-0029880</b> *		Exposure <b>000</b> *		<input type="checkbox"/> Delete <input type="checkbox"/> Change		NFIRS - 9 Apparatus or Resources	
		<b>B Apparatus or * Resource</b>		<b>Date and Times</b> <small>Check if same as alarm date</small> Month Day Year Hour Min						Sent <input checked="" type="checkbox"/>		Number of * People		Use <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>		Actions Taken	
1		ID <b>E5610</b>	Dispatch	<input checked="" type="checkbox"/>	10	18	2022	12:43	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>		Arrival	<input checked="" type="checkbox"/>	10	18	2022	12:51										
		Clear	<input checked="" type="checkbox"/>	10	18	2022	13:15										
2		ID <b>E6234</b>	Dispatch	<input checked="" type="checkbox"/>	10	18	2022	12:43	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>		Arrival	<input checked="" type="checkbox"/>	10	18	2022	12:51										
		Clear	<input checked="" type="checkbox"/>	10	18	2022	13:15										
3		ID <b>E6235</b>	Dispatch	<input checked="" type="checkbox"/>	10	18	2022	12:43	<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>		Arrival	<input checked="" type="checkbox"/>	10	18	2022	12:51										
		Clear	<input checked="" type="checkbox"/>	10	18	2022	13:15										
4		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														
5		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														
6		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														
7		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														
8		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														
9		ID <b></b>	Dispatch	<input type="checkbox"/>					<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>		Arrival	<input type="checkbox"/>														
		Clear	<input type="checkbox"/>														

#### Type of Apparatus or Resources

##### Ground Fire Suppression

- 11 Engine
- 12 Truck or aerial
- 13 Quint
- 14 Tanker & pumper combination
- 16 Brush truck
- 17 ARF (Aircraft Rescue and Firefighting)
- 10 Ground fire suppression, other

##### Heavy Ground Equipment

- 21 Dozer or plow
- 22 Tractor
- 24 Tanker or tender
- 20 Heavy equipment, other

##### Aircraft

- 41 Aircraft: fixed wing tanker
- 42 Helitanker
- 43 Helicopter
- 40 Aircraft, other

##### Marine Equipment

- 51 Fire boat with pump
- 52 Boat, no pump
- 50 Marine apparatus, other

##### Support Equipment

- 61 Breathing apparatus support
- 62 Light and air unit
- 60 Support apparatus, other

##### Medical & Rescue

- 71 Rescue unit
- 72 Urban Search & rescue unit
- 73 High angle rescue unit
- 75 BLS unit
- 76 ALS unit
- 70 Medical and rescue unit, other

More Apparatus?  
 Use Additional  
 Sheets

##### Other

- 91 Mobile command post
- 92 Chief officer car
- 93 HazMat unit
- 94 Type 1 hand crew
- 95 Type 2 hand crew
- 99 Privately owned vehicle
- 00 Other apparatus/resource

NN None

UU Undetermined

NFIRS-9 Revision 11/17/98



<b>A</b>		FDID <b>03010</b> *		State <b>CA</b> *		Incident Date <b>10/18/2022</b> *		Station <b>162</b>		Incident Number <b>22-0029880</b> *		Exposure <b>000</b> *		<input type="checkbox"/> Delete <input type="checkbox"/> Change		NFIRS - 10 Personnel	
<b>B Apparatus or Resource *</b>		<b>Date and Times</b> <small>Check if same as alarm date</small> Month Day Year Hours/mins						<b>Sent</b> <input checked="" type="checkbox"/>		<b>Number of * People</b>		<b>Use</b> <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>		<b>Actions Taken</b> <small>List up to 4 actions for each apparatus and each personnel.</small>			
Use codes listed below <b>1</b> ID <b>E5610</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
6600A		Mule Creek Engine Crew 4, Personnel				X											
<b>2</b> ID <b>E6234</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
8101		Mackey, Ken		FC		X											
<b>3</b> ID <b>E6235</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
0703		Bennett, James		FAE		X											





(CDCR) Mule Creek  
State Prison

Station: **ST1**  
Shifts Or Platoon: **A Shift**

Location: <b>10100 Five Mile DR Ione CA 95640</b>	Incident Type: <b>400 - Hazardous condition, other</b>
Lat/Long: <b>N 38° 21' 27.44" W 120° 57' 51.87"</b>	FDID: <b>03410</b> Incident #: <b>2022-362</b> Exposure ID: <b>69295537</b> Exposure #: <b>0</b> Incident Date: <b>10/18/2022</b> Dispatch Run #: <b>caaeu029880</b>
Location Type: <b>1 - Street address</b>	

Report Completed by:	Deaton, Justin	ID:	Date: 10/19/2022
Report Reviewed by:	Sackett, Kevin	ID:	Date: 10/19/2022
Report Printed by:	Sackett, Kevin	ID:	Date: 10/19/2022 Time: 12:54

Structure Type:	Property Use: <b>647 - Water utility</b>		
Automatic Extinguishment System Present: <input type="checkbox"/>	Detectors Present: <input type="checkbox"/>	Cause of Ignition:	
Aid Given or Received:	<b>Mutual aid given</b>	Primary action taken: <b>86 - Investigate</b>	
<b>Mutual AID</b>	Their FDID: <b>3010</b>	Their State: <b>CA</b>	Their Incident #: <b>029880</b>
<b>Losses</b>	<b>Pre-Incident Values</b>		
Property:	Property:	Civilian Injuries: <b>0</b>	Fire Service Injuries: <b>0</b>
Contents:	Contents:	Civilian Fatalities: <b>0</b>	Fire Service Fatalities: <b>0</b>
Total:	Total:	Total Casualties: <b>0</b>	Total Fire Service Casualties: <b>0</b>
Total # of apparatus on call:	<b>1</b>	Total # of personnel on call:	<b>3</b>

<b>Special Studies</b>	
COVID 19 was a factor in this incident.	No, COVID 19 was not a factor.

<b>Neighboring Agencies</b>
Agency Name: City Of Ione Fire Department
Agency ID: ION
Agency Type: Fire

<b>NARRATIVE (1)</b>
<b>Narrative Title:</b> Haz/Gas Incident
<b>Narrative Author:</b> Deaton, Justin
<b>Narrative Date:</b> 10/19/2022 09:59:05
<b>Narrative Apparatus ID:</b> 5610
<b>Narrative:</b> <p>On October 18, 2022 @ approximately 1243 hrs. while performing my duties as, Institutional Fire Captain, I J. Deaton, was dispatched by ECC Camino for a Hazardous Condition / Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in E-5610 with staffing of Three. Upon arrival I reported to the I.C. for assignment and simultaneously had a face to face with Reporting Party. I was assigned to utilize a MSA Altair 4x multi gas detector in the affected area, (Findings: Comb/Ex 14, O2 20.4%, CO 0, H2S 1) triggering the detectors alarm. Upon completion of the investigation, findings, and communication with the RP, the I.C. released all units and terminated the incident @ approximately 1318 Hrs. I returned to quarters without incident. Upon arrival at institution I notifying ECC Camino and Main Control that E-5610 was back on grounds with three, in quarters, and available.</p> <p>Per RP, I was requested to return to the incident location the following morning @ 0645 hrs. for further investigation and to note any situation changes.</p>



**NARRATIVE (2)****Narrative Title:** Follow Up**Narrative Author:** Deaton, Justin**Narrative Date:** 10/19/2022 10:04:48**Narrative Apparatus ID:** 5610**Narrative:**

On October 19, 2022 @ approximately 0645 hrs. while performing my duties as, Institutional Fire Captain, I J. Deaton, as requested by RP from yesterdays incident returned to Hazardous Condition/ Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in E-5610 with staffing of Three. Upon arrival, I had a face to face with the Reporting Party, who stated, that they had turned the affected areas equipment off yesterday after findings and recently turned the equipment back on this morning for further investigation. At this time, (weather conditions: Temp 61, Humidity 43%, Winds SSE 1, DP 39), I utilize a MSA Altair 4x multi gas detector in the affected area, (Findings: Comb/Ex 16, O2 20.8%, CO 0, H2S 18) triggering detectors alarm and showing increases from yesterdays findings. Upon completion of the investigation, findings, and communication with the RP, I exited the premises and returned to quarters without incident. Upon arrival at institution, I notified Main Control that E-5610 was back on grounds with three, returning to quarters and available.

**NARRATIVE (3)****Narrative Title:** Haz/GAS Incident**Narrative Author:** Sackett, Kevin**Narrative Date:** 10/19/2022 12:52:34**Narrative Apparatus ID:** C5600**Narrative:**

On October 18, 2022 @ approximately 1243 hrs. while performing my duties as, Institutional Fire Chief, I K Sackett, was dispatched by ECC Camino for a Hazardous Condition / Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in C-5600 with staffing of one. Upon arrival I reported to the I.C. and simultaneously had a face to face with Reporting Party ( Todd Waklee) that stated that he used his gas monitor and found high readings of H2S gas. Fire Captain Deaton was assigned to utilize a MSA Altair 4x multi gas detector in the affected area, When he returned he reported reading of Comb/Ex 14, O2 20.4%, CO 0, H2S 1 the reading triggered the detectors alarm for high Combustibles/ Explosives. Upon completion of the investigation, findings, and communication with the RP, the scene was turned over to Todd Waklee Public Works Manager. The I.C. released all units and terminated the incident.

**APPARATUS**

<b>Unit</b>	5610
<b>Type:</b>	Engine
<b>Use:</b>	Suppression
<b>Response Mode:</b>	No Lights or Sirens
<b># of People</b>	3
<b>Alarm</b>	10 /18/2022 12:42:00
<b>Dispatched</b>	10 /18/2022 12:43:00
<b>Enroute</b>	-- / -- / -- -- : -- : --
<b>Arrived</b>	10 /18/2022 12:47:00
<b>Cancelled</b>	-- / -- / -- -- : -- : --
<b>Cleared Scene</b>	10 /18/2022 13:18:00
<b>In Quarters</b>	-- / -- / -- -- : -- : --
<b>In Service</b>	-- / -- / -- -- : -- : --
<b>Number Of People not on apparatus:</b> 0	

Member Making Report (Captain Justin Deaton): \_\_\_\_\_

Incident Reviewer (Chief Kevin Sackett): \_\_\_\_\_



Treatment  
Incident  
Photo # 1











Photo # 3



# EXHIBIT B

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**From:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>  
**Sent:** Friday, October 21, 2022 11:09 AM  
**To:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>  
**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org); Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>  
**Subject:** RE: Lone Tertiary Plant - H2S over 200 ppm

Mr. Epperson, thank you for your email.

As you are aware the Regional Water Board oversees the permitting of wastewater plants throughout the region. As part of our responsibility, we inspect various facilities for compliance. One area we look at if there are compliance concerns, like the City of Lone is facing today, are the Standard Operating Procedures that a plant follows when there is an upset. Those SOPs provide a step-by-step procedures the facility can follow during times of upset. Yesterday I sent Mr. Rock two requests for those documents. The operator should have those available at moment's notice. If the Regional Board had those SOPs, we could easily review and understand the city's process to resolve the issue.

The design of Preston Reservoir and the CDCR reservoirs piping are identical. The inlet to the draft pipe is at the bottom of the reservoirs. Both reservoirs store secondary treated effluent. Where in the process is hydrogen sulfide produced? Is the high hydrogen sulfide event the result of delayed extraction from Preston? Would this same condition occurred if Preston was drained first prior to CDCR sending water? The Regional Board is just trying to better understand the problems with the wastewater using laboratory samples from a certified laboratory. The city requested a comfort letter because of the expectation of hydrogen sulfide in the wastewater. The comfort letter was issued on 9 September 2022. The city knew the expectation of the Board with respect to monitoring the plant during "high hydrogen sulfide" events. Does the city have a contract in place with Perc or an environmental consulting firm to collect these samples? Please provide a date when data can be collected and results available.

It is responsible that you have concerns about an explosion and your workers having health effects. Has the city reached out to OSHA to report this incident? To help you, here is the list of CalOSHA sites with their phone numbers: [https://www.dir.ca.gov/dosh/ca\\_map\\_counties2.pdf](https://www.dir.ca.gov/dosh/ca_map_counties2.pdf). They can be a resource. With your concerns about explosion, is the fire department onsite monitoring it until the threat has abated? Has the city notified the nearby residents of Castle Oaks Golf Course, or those along Five Mile Road. Isn't there a home that sits just across the creek from the wastewater plant. Have these people been notified of the situation? If so, when? Are they receiving updates on the situation? That information should be in your emergency plan/SOP.

We all heard during the 3 October 2022 meeting with all the parties that ARSA was willing to provide pretreatment (i.e., dosing) to eliminate the problem. What is the status of that effort. ARSA seemed more than willing to do their part. Why isn't the city receptive to their offer? With that said CDCR understood the statements made by the Executive Officer and together with ARSA they have begun to deploy water cannons to aid in the evaporation. Your point about the sludge is one that will be addressed when the water levels reach the appropriate levels. You should be aware that the City of Ione, ARSA, and the Castle Oaks Golf Course are named in the Regional Board's permit, as well as the revised MRP. Therefore, there is a shared responsibility for compliance. All parties need to work together to find a solution. Cooperation during the plant upset is something the Regional Board will take into consideration with any future compliance action.

Looking forward to receiving the requested information. Until the situation is resolved, please have Mr. Rock provide daily updates by email. Perfect Regards,

Howard Hold, PG #7466  
Senior Engineering Geologist  
Title 27 and WDR Compliance and Enforcement Unit  
Central Valley, Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Our office is currently teleworking. Please submit all contact by email. Thank you

[hhold@waterboards.ca.gov](mailto:hhold@waterboards.ca.gov)

---

**From:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>

**Sent:** Friday, October 21, 2022 8:56 AM

**To:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>

**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)

**Subject:** Re: Ione Tertiary Plant - H2S over 200 ppm

Mr. Hold,

Pardon my ignorance in the matters of meters and science. If our warning meters are maxing out, is the City of Ione supposed to ignore the dangers indicated? I am deeply concerned for the health and safety of our staff and operators.

We have every intention to fully comply with The Boards demands but risking the health and safety of our staff due to the negligence of our partner agencies is terrifying. The board demanded ARSA clean out the ponds in 2017. ARSA's inaction is a major factor as to how situation has arisen to the level it has. By their own admission ARSA's contracted ponds are 30% full of sludge currently.

Sorry for my bluntness but I am worried about an explosion or other injuries from toxic gases that our systems alarms have indicated at our head works. I will check with staff ASAP regarding the lab tests and chain of custody issues. Thank you hearing my concerns.

Sincerely,

Dan Epperson

Mayor of the City of Ione

Dan Epperson

Mayor of Ione

---

**From:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>

**Sent:** Thursday, October 20, 2022 4:50:50 PM

**To:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>; Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>

**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org) <[smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)>

**Subject:** RE: Ione Tertiary Plant - H2S over 200 ppm

Mr. Rock, et. al thank you for your update that you sent to comply with the comfort letter (see attached) that was issued by our assistant executive officer on 9 September 2022. As I read your email, it appears the samples are only results from a field meter. A field meter is appropriate as a screening tool, to evaluate the situation. However, the Assistant Executive Officer required in the comfort letter a certified laboratory analyze the gas samples, using proper chain of custody procedures, when high gas levels exist.

Item 5 states: *"All previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity. This shall be reported to [Kari.Holmes@waterboards.ca.gov](mailto:Kari.Holmes@waterboards.ca.gov);"*

Again, the Regional Board appreciates the notifications and the updates, but when will we receive the required data from a certified laboratory using the proper chain of custody?

This morning I reached out to you and request a copy of the facilities SOPs, which still have not been received. When should I expect to see those document?

Finally, anytime there is a hazardous substance released to the air, ground or water the Office of Emergency Services must be notified. Has your operator filed a report with OES. I have not seen a copy of the report come across my desk yet.

Compliance is a challenge at times, thank you for your attention to these issues.

Howard Hold, PG #7466

Senior Engineering Geologist  
Title 27 and WDR Compliance and Enforcement Unit  
Central Valley, Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Our office is currently teleworking. Please submit all contact by email. Thank you

[hhold@waterboards.ca.gov](mailto:hhold@waterboards.ca.gov)

---

**From:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>

**Sent:** Thursday, October 20, 2022 3:59 PM

**To:** Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)

**Cc:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>

**Subject:** lone Tertiary Plant - H2S over 200 ppm

EXTERNAL:

Kari:

Today's readings from Lone Fire Department indicate the LEL is 3% which is in compliance. However, the H2S (Hydrogen Sulfide) reading at the top of the stairs at the Headworks was 200+ ppm. The MSA ALTAIR 4X Multigas (Canary) device for reading the LEL levels only goes up to 200 ppm and the needle was maxed out. Mule Creek Fire Department data is identical to Lone Fire Department Report that is attached. I will have the Mule Creek data sent tomorrow.

Even at the bottom of the stairs of the Headworks the H2S was 134 ppm. Maximum general industry peak levels for H2S is 50 ppm. Maximum general industry ceiling limits is 20 ppm. PERC and West Yost both believe there is methane gas present.

The odor for staff at the Tertiary Plant is overwhelming and thus we cannot operate today either.

We have now received 7 formal written or phone call complaints from residents in Castle Oaks regarding the odor. Most of the residents submitting a complaint live on Shakeley Lane near the Tertiary Plant. A direct phone call I received at 8:45 am today was from Michael Politi who lives on Shakeley Lane. He said the odor was quite strong and he was not able to be in his backyard.

Michael

SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
MATTHEW L. GREEN, Bar No. 227904  
matthew.green@bbklaw.com  
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655 West Broadway, 15th Floor  
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BEST BEST & KRIEGER LLP  
500 Capitol Mall, Suite 1700  
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Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF MATTHEW L. GREEN  
IN OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER TO MODIFY  
OCTOBER 10, 2022 ORDER AND  
PRELIMINARY INJUNCTION

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022



1 I, Matthew L. Green, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am an attorney at law duly licensed to practice before all of the courts of the State  
5 of California. I am Of Counsel at Best Best & Krieger LLP, attorneys of record for Plaintiff Amador  
6 Regional Sanitation Authority ("ARSA"). As one of the attorneys for ARSA, I am familiar with  
7 the proceedings in the above-entitled action.

8 3. Attached as Exhibit "A" hereto is a true and correct copy of the Order and  
9 Preliminary Injunction issued by the Court on October 10, 2022.

10 4. Attached as Exhibit "B" hereto is a true and correct copy of the Proof of Service  
11 filed in this Court on October 13, 2022, reflecting personal service of the Order and Preliminary  
12 Injunction on Defendant City of Ione ("Ione") on October 11, 2022, at 12:44 p.m.

13 5. Attached as Exhibit "C" hereto is a true and correct copy of Ione's supplemental  
14 letter brief to the Court of Appeal, Third Appellate District filed October 11, 2022, with the  
15 attachments omitted therefrom.

16 6. Attached as Exhibit "D" hereto is a true and correct copy of the Court of Appeal,  
17 Third Appellate District's order filed October 13, 2022, dismissing Ione's first petition for writ of  
18 mandate as moot.

19 7. Attached as Exhibit "E" hereto is a true and correct copy of Ione's second petition  
20 for writ of mandate filed in the Court of Appeal, Third Appellate District on October 14, 2022, with  
21 the exhibits omitted therefrom.

22 8. Attached as Exhibit "F" hereto is a true and correct copy of the Court of Appeal,  
23 Third Appellate District's order filed October 18, 2022, dismissing Ione's second petition for writ  
24 of mandate.

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1           9.       Attached as Exhibit "G" hereto is a true and correct copy of the Declaration of Gary  
2 Ghio in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining  
3 Order filed in this Court on September 29, 2022, with Exhibits A through C omitted therefrom.

4           I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct.

6           Executed this 25th day of October 2022, at San Diego, California.

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8 \_\_\_\_\_  
9 MATTHEW L. GREEN  
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# EXHIBIT A

1 SHAWN D. HAGERTY, Bar No. 182435  
shaw.hagerty@bbkklaw.com  
2 MATTHEW L. GREEN, Bar No. 227904  
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3 BEST BEST & KRIEGER LLP  
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4 15th Floor  
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6

7 FRANK A. SPLENDORIO, Bar No. 272601  
frank.splendorio@bbkklaw.com  
8 BEST BEST & KRIEGER LLP  
500 Capitol Mall  
Suite 1700  
9 Sacramento, California 95814  
Telephone: (916) 551-2086  
10 Facsimile: (916) 325-4010

11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
21 corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
22 REHABILITATION, a California state agency;  
and DOES 1 through 20, inclusive,

23 Defendants.  
24  
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26  
27  
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Case No. 22-CV-12824  
Judge: Hon. Renee C. Day

**ORDER AND  
PRELIMINARY INJUNCTION**

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 2

Action Filed: September 20, 2022  
Trial Date: Not Set

By *Flu*

**FILED**  
Superior Court of California,  
County of Amador  
**10/10/2022 at 03:40:55 PM**  
By: B. MORRIS, Deputy Clerk

OCT 10 2022

CLERK OF THE SUPERIOR COURT

1 The order to show cause why a preliminary injunction should not ~~issue in favor of Plaintiff~~  
2 Amador Regional Sanitation Authority ("ARSA") came on for hearing in Department 2 of this  
3 Court on October 10, 2022. Matthew L. Green and Frank A. Splendorio of Best Best & Krieger  
4 LLP appeared on behalf of ARSA. Margaret Long and Carolyn Walker of Prentice Long, PC and  
5 Theresa C. Barfield of Somach Simmons & Dunn appeared on behalf of Defendant City of Ione  
6 ("Ione"). Having read ARSA's ex parte application for a temporary restraining order and for an  
7 order to show cause why a preliminary injunction should not issue, the memoranda and declarations  
8 filed by the parties, and having heard argument of counsel, and satisfactory evidence having been  
9 presented,

10 IT IS ORDERED THAT a preliminary injunction shall issue in favor of ARSA. Ione and  
11 its employees and agents, and any other persons acting with or on behalf of Ione, are required to  
12 accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston  
13 Reservoir for the next 30 days, for a total of 15 million gallons of secondarily treated wastewater  
14 over the 30-day period, pending the trial of this action or further order of this Court.

15  
16 Dated: October FE, 2022

By: 

JUDGE OF THE SUPERIOR COURT

**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 10, 2022, I served a copy of the within document(s):

**[PROPOSED] ORDER AND PRELIMINARY INJUNCTION**

- ☐ **By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.
- ☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



1 Margaret Long, Esq.  
2 David Prentice, Esq.  
3 Prentice Long, PC  
4 2240 Court Street  
5 Redding, CA 96001

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OF IONE

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ATTORNEY OF IONE

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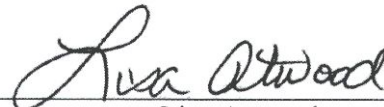
11 California Department of Corrections and  
12 Rehabilitation  
13 1515 S Street, Suite 314 South  
14 Sacramento, CA 95811

Attn: Patrick Covello

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

15 I declare under penalty of perjury under the laws of the State of California that the above  
16 is true and correct.

17 Executed on October 10, 2022, at San Diego, California.

18 

19 Lisa Atwood  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT B

Attorney or Party without Attorney: Shawn D. Hagerty, Esq. (SBN 182435) BEST BEST & KRIEGER LLP 655 West Broadway, 15th Floor San Diego, CA 92101 Telephone No: 619-525-1300 Attorney For: Plaintiff				For Court Use Only  <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> AMADOR SUPERIOR COURT  OCT 13 2022  Clerk of the Superior Court By: <u>B. MORRIS</u>	
Ref. No. or File No.: 82456.000002/MLG					
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF AMADOR					
Plaintiff: AMADOR REGIONAL SANITATION AUTHORITY, a California joint powers agency Defendant: CITY OF IONE, a California municipal corporation; et al.					
<b>PROOF OF SERVICE</b>		Hearing Date:	Time:	Dept/Div:	Case Number: 22-cv-12824

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the ORDER AND PRELIMINARY INJUNCTION
3.
  - a. Party served: City of Ione, a California municipal corporation
  - b. Person served: Kenna Brosz, Administrative Assistant
4. Address where the party was served: 1 E Main Street, Ione, CA 95640
5. I served the party:
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Oct 11 2022 (2) at: 12:44 PM
6. Person Who Served Papers:
 

- a. Peter Campbell (Amador County #19-006) ()
  - b. c/o FIRST LEGAL  
530 B Street, Suite 1050  
SAN DIEGO, CA 92101
  - c. (619) 231-9111

- d. The Fee for Service was: \$176.26
  - e. I am: A Registered California Process Server
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/12/22  
(Date)

  
(Signature)



Judicial Council Form  
Rule 2.150.(a)&(b) Rev January 1, 2007

PROOF OF  
SERVICE

7787342  
(15059646)

By fax

# EXHIBIT C



500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814  
OFFICE: 916-446-7979 FAX: 916-446-8199  
SOMACHLAW.COM

October 11, 2022

The Honorable Justice Ronald B. Robie  
Acting Administrative Presiding Justice  
California Court of Appeal, Third Appellate District  
914 Capitol Mall, 4th Floor  
Sacramento, CA 95814

Re: *City of Ione v. The Superior Court of Amador County, Respondent; Amador Regional Sanitation Authority, Real Party in Interest*  
C097044 (Amador County Super. Ct. No. 22CV12824)  
PETITIONERS' STATUS UPDATE AND SUPPLEMENTAL LETTER  
BRIEF

To the Honorable Justice Robie and the California Court of Appeal, Third Appellate District:

Pursuant to this Court's October 4, 2022 Order, the City of Ione (Ione) respectfully submits this status update following the October 10, 2022 hearing before the Amador County Superior Court (Superior Court), accompanied by a supplemental letter brief to address whether the above-referenced matter is moot.

Please note the law firm of Somach Simmons and Dunn, LLC was recently retained to represent Ione in the above-referenced matter. To that end, a notice of appearance by attorneys Theresa C. Barfield and Michelle E. Chester with Somach Simmons and Dunn, LLC, on behalf of Petitioner Ione, is filed concurrently herewith.

**I. Status Update**

Ione's September 30, 2022 Petition for Extraordinary Writ of Mandate (Petition) arises from the Superior Court's September 29, 2022 order issuing a temporary restraining order (TRO) requiring Ione to accept secondarily treated wastewater from real party in interest Amador Regional Sanitation Authority (ARSA). Ione's Petition sought, in pertinent part, an immediate stay of the TRO and the issuance of a peremptory or alternative writ of mandate, directing the Superior Court to deny the TRO. This Court stayed the TRO on October 4, 2022, pending the order to show cause hearing set before the Superior Court on October 10, 2022.

At the October 10, 2022 hearing, the Superior Court granted a preliminary injunction in favor of ARSA, requiring Ione to "accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for the next 30 days, for a total of 15

October 11, 2022

Page 2

million gallons of secondarily treated wastewater over the 30-day period, pending the trial of this action or further order of this Court.” (See October 10, 2022 Order of the Superior Court, attached hereto as Attachment 1 (PI Order).) A copy of the Superior Court’s October 10, 2022 Minute Order (Minute Order) is also attached hereto for the Court’s reference (Attachment 2).

## **II. Supplemental Brief**

### **A. Summary of Argument**

It is Ione’s position that the Petition is not moot.

Writ relief remains necessary because the Superior Court, in issuing the PI Order, abused its discretion by failing to reasonably consider the irreparable harm to the citizens of Ione and the surrounding areas, related to the immediate health and safety concerns at issue.

The Superior Court further abused its discretion in finding that ARSA satisfied the legal standard to support issuance of a preliminary injunction, including that ARSA is likely to prevail on the underlying merits of its complaint. ARSA’s complaint, as it relates to injunctive relief, remains deficient on its face and, as pled, must fail as a matter of law.

The Superior Court failed to address its reasoning to support the issuance of the PI Order at the hearing, or by way of expressing its findings in its Minute Order, or in the final PI Order. Ione understands that a transcript of the proceeding will not be available for several weeks.

### **B. Irreparable Harm to Ione Citizens Is Imminent Without Judicial Relief**

The primary issue in the Petition before this Court is Ione’s interest in protecting the health and safety of the citizens of Ione and the surrounding area. (See Petition at Section II.A., pp. 9-11.) Immediate relief is necessary from the Superior Court’s PI Order because it presents an imminent risk of irreparable harm to those individuals. Ione has no legal recourse at the Superior Court to address these immediate concerns. (*Corona Unified Hospital Dist. v. Superior Court of Riverside County* (1964) 61 Cal.2d 846, 850 [issuing a writ where there appeared to be “no other plain, speedy, and adequate remedy in the ordinary course of law”] emphasis omitted.) This Court’s review is necessary because “the issues presented are of great public importance and must be resolved promptly.” (*County of Sacramento v. Hickman*, (1967) 66 Cal.2d 841, 845.)

Unfortunately, the quality of water delivered by ARSA for treatment by Ione poses serious and ongoing threats to the health and safety of local residents. Requiring Ione to accept ARSA water from Preston Reservoir has and will continue to result in violations of Ione’s permit limitations established by the Central Valley Regional Water Quality Control Board (Regional Board). The Regional Board has a statutory obligation in prescribing



requirements applicable to Ione's treatment of wastewater. (Wat. Code, § 13523.) Ione's permitted treatment of domestic wastewater in accordance with the Regional Board's adopted water reclamation requirements ensures its compliance with established limitations intended "to protect the public health, safety, or welfare . . . ." (*Ibid.*)

The Superior Court's PI Order does not reflect any consideration of the public safety concerns Ione presented. Ione has no assurances from ARSA that the water delivered from Preston Reservoir will not result in exceedances of coliform bacteria and hydrogen sulfide in addition to resulting nuisance smells that threaten the health and safety of Ione's residents. Accordingly, since the primary and overarching issue in Ione's Petition has not been resolved, and is now even more critical given the Superior Court's issuance of the PI Order, it is Ione's position that the Petition is not moot.

**C. The Superior Court Abused Its Discretion In Finding that ARSA Satisfied the Standard for a Preliminary Injunction**

A trial court must evaluate two factors when deciding whether or not to issue a restraining order: (1) "the likelihood that the plaintiff will prevail on the merits at trial"; and (2) "the interim harm that the plaintiff is likely to sustain if the [restraining order] were denied as compared to the harm that defendant is likely to suffer if the [order] were issued." (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251, quoting *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

Regarding the first factor, the Superior Court was required to address the "likelihood that the plaintiff will prevail on the merits at trial." (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at pp. 69-70.) ARSA's complaint, however, is legally deficient on its face in that ARSA fails to plead a cause of action for breach of contract to support a request for injunctive relief.<sup>1</sup> Instead, ARSA relies solely on a cause of action for injunctive relief, which is not legally sustainable. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356, quoting *Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168 ["Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted."]) Moreover, even if breach of contract is adequately pled, Ione contests that a valid contract exists in the first instance. In either scenario, the Superior Court abused its discretion by issuing the PI Order in a conclusory fashion, without any reference to its reasoning or specific findings of fact to support the assumption that ARSA met its burden to support the issuance of a preliminary injunction.

Moreover, regarding the second factor, the balancing of immediate harms weighs so heavily in favor of Ione, that the Superior Court's granting of the PI Order exceeds the bounds of reason. (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251, citing *IT Corp. v. County of Imperial, supra* 35 Cal.3d at pp. 69-70.) [a trial court

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<sup>1</sup> For reference, a copy of the Summons and Complaint filed by ARSA with the superior court is attached hereto as Attachment 3.

The Honorable Justice Robie and the California Court of Appeal, Third Appellate District  
Re: City of Ione v. The Superior Court of Amador County  
C097044 (Amador County Super. Ct. No. 22CV12824)  
PETITIONERS' STATUS UPDATE AND SUPPLEMENTAL LETTER BRIEF  
October 11, 2022  
Page 4

abuses its discretion when it exceeds the bounds of reason or contravenes uncontradicted evidence[.]) ARSA claims that the mere possibility of a 100-year storm supersedes the actual and current public health crisis that it is creating for the residents of Ione. This is untenable.

### **III. Conclusion & Short Term Requested Relief**

As set forth hereinabove, the primary issue in the Petition before this Court is Ione's interest in protecting the health and safety of the citizens of Ione and the surrounding area. That issue remains unresolved and, on that basis, it is Ione's position that the matter is not moot. However, Ione is now faced with the PI Order, instead of the temporary restraining order addressed in the pending Petition, and the PI Order raises additional concerns and new arguments specific to the Superior Court's actions, as generally outlined herein.

Accordingly, Petitioner respectfully requests leave to file an Amended Petition in the currently pending matter (C097044) in lieu of initiating a new petition for writ of mandate matter tethered solely to the PI Order. An Amended Petition would serve to align the facts and legal arguments with the current state of events after the October 10, 2022 hearing and issuance of the PI Order. Upon the Court's leave, Ione proposes to file an Amended Petition on or before October 14, 2022.

To that extent the Court determines that dismissing the current Petition (C097044) as moot is the preferred course of action, Petitioner will promptly proceed with filing a new petition for writ of mandate arising from the PI Order.

In the interim, Petitioner respectfully requests that this Court issue an immediate stay of the PI Order pending disposition of this matter by this Court.

Respectfully submitted,

SOMACH, SIMMONS AND DUNN, P.C.



Theresa C. Barfield  
Michelle E. Chester  
Attorneys for Petitioner City of Ione

[Enclosures]

Document received by the CA 3rd District Court of Appeal.

# EXHIBIT D

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

CITY OF IONE,  
Petitioner,  
v.  
THE SUPERIOR COURT  
OF AMADOR COUNTY,  
Respondent;  
AMADOR REGIONAL  
SANITATION AUTHORITY,  
Real Party in Interest.

C097044  
Amador County  
No. 22CV12824

BY THE COURT:

The petition for writ of mandate is denied as moot. The stay previously issued by this court on October 4, 2022, is vacated.

  
ROBIE, Acting P.J.

-----  
  
cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: City of Ione v. The Superior Court of Amador County  
C097044  
Amador County Super. Ct. No. 22CV12824

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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Prentice Long, PC  
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Amador Superior Court  
500 Argonaut Lane  
Jackson, CA 95642

# EXHIBIT E



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

CITY OF IONE, a California municipal  
corporation,

Petitioner,

v.

THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA FOR THE  
COUNTY OF AMADOR,

Respondent,

AMADOR REGIONAL SANITATION  
AUTHORITY, A California joint powers  
agency,

Real Party in Interest.

Case No.

Amador County Superior Court No. 22CV12824  
Honorable Renee C. Day, Judge (209) 257-2603

**PETITION FOR EXTRAORDINARY WRIT OF MANDATE; APPLICATION  
FOR TEMPORARY STAY; MEMORANDUM OF POINTS AND  
AUTHORITIES, EXHIBITS AND DECLARATION OF THERESA C.  
BARFIELD IN SUPPORT THEREOF**

**IMMEDIATE STAY REQUESTED:  
OCTOBER 11, 2022 ORDER AND PRELIMINARY INJUNCTION**

THERESA C. BARFIELD (SBN 185568)

MICHELLE E. CHESTER (SBN 300632)

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*Attorneys for Petitioner City of Ione*

Document received by the CA 3rd District Court of Appeal.


## **CERTIFICATE OF INTERESTED PARTIES**

Pursuant to rules 8.208 and 8.488 of the California Rules of Court, Petitioner City of Ione hereby certifies, through its undersigned counsel, that there are no interested entities or persons that must be listed in this certificate.

Respectfully submitted,

SOMACH SIMMONS & DUNN  
A Professional Corporation

Dated: October 14, 2022

By:   
Theresa C. Barfield  
Michelle E. Chester  
Attorneys for Petitioner City of Ione

Document received by the CA 3rd District Court of Appeal.

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## PETITION

### INTRODUCTION

On October 10, 2022 the Amador County Superior Court (Superior Court) granted a preliminary injunction against the City of Ione (Ione) and in favor of Amador Regional Sanitation Authority (ARSA). (PI Order). In doing so, the Superior Court mandates that Ione “accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for the next 30 days, for a total of 15 million gallons of secondarily treated wastewater over the 30-day period, pending the trial of this action or further order of this Court.” Exhibits P (Minute Order)-Q (Formal Order).

Petitioner files this Petition for Extraordinary Writ of Mandate (Petition) because a post-judgment appeal of the Superior Court’s PI Order would not provide effective relief. The PI Order presents an imminent risk of irreparable harm to Ione and its citizens. The requested relief is based upon the following, discussed in more detail hereinbelow:

1. The Superior Court, in issuing the PI Order, abused its discretion by failing to reasonably consider the irreparable harm to the citizens of Ione and the surrounding areas, related to the immediate health and safety concerns at issue, including its failure to adequately consider reasonable alternatives that would serve to protect the health and safety of the citizens while also addressing the concerns raised by ARSA. The Superior Court’s PI Order,

however, unreasonably favors the alleged harms to ARSA over those of Ione, in the face of a proposed solution that would protect both parties.

2. The Superior Court, in issuing the PI Order, abused its discretion by issuing an order that will operate to violate existing permits issued by the Regional Water Quality Control Board (Regional Board) to both Ione and its wastewater system operator. As such, and absent immediate relief, Ione is in a position of immediately complying with the PI Order, which will violate the Regional Board permits, and leave Ione at risk of facing a potential enforcement action with associated fines and penalties by another state entity. If Ione complies with the Regional Board permits, it must necessarily violate the PI Order which would likely subject Ione to potential sanctions by the Superior Court. It was an abuse of discretion to construct an injunction that requires Ione to violate the Regional Board permits in order to be in compliance with the PI Order.
3. The Superior Court further abused its discretion in finding that ARSA satisfied the legal standard to support issuance of a preliminary injunction, including that ARSA is likely to prevail on the underlying merits of its complaint. ARSA's complaint, as it relates to injunctive relief, remains deficient on its face and, as pled, must fail as a matter of law.

The Superior Court failed to address its reasoning to support the issuance of the PI Order at the hearing, or by way of expressing its findings in its Minute Order, or in the final PI Order, further exacerbating the concerns at issue herein. Exhibits P-Q.<sup>1</sup>

### **PETITION FOR WRIT OF MANDATE JURISDICTION**

This Court has jurisdiction. (Cal. Const. Art. VI section 10; Code of Civil Procedure Section 1085)

### **AUTHENTICITY OF EXHIBITS**

All exhibits accompanying this Petition are true and correct copies of original documents. All documents are on file with the respondent Superior Court.

**Exhibit A:** Amador Regional Sanitation Authority Memorandum in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order

**Exhibit B:** Declaration of Matthew L. Green in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order

**Exhibit C:** Declaration of Donald Brown in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order

**Exhibit D:** Declaration of Steven Corey Stone in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order

**Exhibit E:** Declaration of Gary Ghio in Support of Ex Parte Application for Order to Show Cause Temporary Restraining Order

---

<sup>1</sup> Ione understands that a transcript of the proceeding will not be available for several weeks. Declaration of Theresa C. Barfield, filed concurrently herewith.

- Exhibit F:** Declaration of Amy Gedney in Support of Ex Parte Application for Order to Show Cause and Temporary Restraining Order
- Exhibit G:** Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction
- Exhibit H:** City of Ione's Opposition to Ex Parte Application for Order to Show Cause and Temporary Restraining Order; Memorandum of Points and Authorities
- Exhibit I:** Declaration of Michael Rock in Support of Opposition to Ex Parte Application for Order to Show Cause and Temporary Restraining Order
- Exhibit J:** Declaration of Brett Moroz in Support of Opposition to Ex Parte Application for Order to Show Cause and Temporary Restraining Order
- Exhibit K:** Declaration of Margaret Long in Support of Opposition to Ex Parte Application for Order to Show Cause and Temporary Restraining Order
- Exhibit L:** Amador Regional Sanitation Authority Reply Memorandum in Support of Issuance of Preliminary Injunction
- Exhibit M:** Supplemental Declaration of Matthew L. Green in Support of Issuance of Preliminary Injunction
- Exhibit N:** Supplemental Declaration of Ghio, P.E. in Support of Issuance of Preliminary Injunction
- Exhibit O:** Supplemental Declaration of Donald Brown in Support of Issuance of Preliminary Injunction

- Exhibit P:** Superior Court’s October 10, 2022 Minute Order Re Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction
- Exhibit Q:** Superior Court’s October 10, 2022 Order and Preliminary Injunction
- Exhibit R:** Amador Regional Sanitation Authority Complaint for Injunctive and Declaratory Relief

## **PARTIES**

1. The Petitioner is the City of Ione (Ione) and the defendant in the underlying action, *Amador Regional Sanitation Authority v. City of Ione, California Department of Corrections and Rehabilitation*, Amador County Superior Court Case Number 22CV12824.
2. The Respondent is the Amador County Superior Court (Superior Court), the Honorable Renee C. Day.
3. The real party in interest is Amador Regional Sanitation Authority (ARSA), and the plaintiff in the underlying action.

## **PROCEDURAL HISTORY**

### **A. The Underlying Complaint**

On September 21, 2022, ARSA filed a Complaint against Ione and the California Department of Corrections and Rehabilitation (CDCR) in the Superior Court. ARSA alleges a cause of action for injunctive relief, and one for declaratory relief against Ione. Exhibit R, 9:21-10:8; 11:1-18. Although ARSA alleges the existence of a contract in its general allegations, it does not allege an independent and distinct cause of action for “breach of contract”, setting forth the elements of the cause



of action with supporting facts, including damages. Exhibit R. ARSA's complaint seeks preliminary and permanent injunctive relief restraining Ione from refusing to accept ARSA's secondarily treated wastewater from Preston Reservoir and for a judicial determination and declaration that Ione is obligated to accept such water. Exhibit R 11:21-24; 12:1-3.

**B. The Temporary Restraining Order**

ARSA filed an ex parte application for a temporary restraining order (TRO) on September 28, 2022 to compel Ione to accept secondarily treated wastewater for a period of 30 days. Exhibits A-F. ARSA claimed that Ione must accept wastewater pursuant to a 2007 contract. Exhibit A.

The Superior Court granted ARSA's ex parte TRO application on September 29, 2022, ordering Ione to accept secondarily treated wastewater from ARSA in the amount of 500,000 gallons per day for thirty days. Exhibit G. The Order was issued solely on the basis of ARSA's papers. Ione filed a Petition for Extraordinary Writ of Mandate on September 30, 2022 (Case No. C097044).<sup>2</sup> This Court stayed the TRO on October 4, 2022, pending the order to show cause hearing set before the Superior Court on October 10, 2022.

**C. The Preliminary Injunction**

Ione filed its opposition brief and supporting papers, responsive to ARSA's ex parte application, on October 5, 2022. Exhibits H-K. There, Ione states that its 2007

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<sup>2</sup> Case No. C097044 addressed the 9/29/22 TRO. This court dismissed the petition as moot on October 13, 2022.

contract ARSA terminated on July 31, 2022, and that Ione cannot continue to process wastewater from ARSA due to the compromised quality of the water, which would immediately endanger the health and safety of its citizens, as well as violate state-issued permits. Exhibits H-K. ARSA submitted a reply brief, including three supplemental declarations, on October 7, 2022. Exhibits L-O.

At the October 10, 2022 hearing, the Superior Court granted a preliminary injunction in favor of ARSA (PI Order), requiring Ione to “accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston Reservoir for the next 30 days, for a total of 15 million gallons of secondarily treated wastewater over the 30-day period, pending the trial of this action or further order of this Court.” Exhibits P (Minute Order)-Q (Formal Order).

### **APPEAL IS AN INADEQUATE REMEDY**

Writ relief is necessary because the Superior Court’s order immediately interferes with the health and safety of the citizens of Ione and the surrounding areas.

### **APPLICATION FOR AN IMMEDIATE STAY**

Petitioner requests that the Court issue an immediate stay of the Superior Court’s PI Order. (*Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835 [“It is well settled that an injunction mandatory in character is automatically stayed on appeal...” citing *Byington v. Superior Court* (1939) 14 Cal.2d 68, 70].) A stay of the Superior Court’s mandatory PI Order is necessary to preserve the status quo while this court considers the issues presented and the risk to the public.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner City of Ione respectfully prays that this Court:

1. Immediately stay the Superior Court's October 10, 2022 Order and Preliminary Injunction in *Amador Regional Sanitation Authority vs. City of Ione, et al.*, Amador County Superior Court Case No. 22CV12824, pending disposition of this Petition.
2. Issue a peremptory or alternative writ of mandate or other appropriate writ directing respondent Superior Court to vacate its October 10, 2022 Order and Preliminary Injunction, and directing the Superior Court to enter an order denying ARSA's application for order to show cause and temporary restraining order.
3. Alternatively, if a peremptory writ does not issue in the first instance, and in addition to or in lieu of any alternative writ, issue an order directing respondent Superior Court to show cause why its October 10, 2022 Order and Preliminary Injunction should not be vacated and an order denying the application for order to show cause and temporary restraining order be entered.
4. Award Petitioner its costs in this action.
5. Award such other relief as may be just and proper.

Respectfully submitted,  
SOMACH SIMMONS & DUNN  
A Professional Corporation

Dated: October 14, 2022

By: 

Theresa C. Barfield  
Michelle E. Chester  
Attorneys for Petitioner City of Ione

Document received by the CA 3rd District Court of Appeal.

# EXHIBIT F

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
THIRD APPELLATE DISTRICT

CITY OF IONE,  
Petitioner,  
v.  
THE SUPERIOR COURT  
OF AMADOR COUNTY,  
Respondent;  
AMADOR REGIONAL  
SANITATION AUTHORITY,  
Real Party in Interest.

C097112  
Amador County  
No. 22CV12824

BY THE COURT:

The petition for writ of mandate with request for stay is denied.

  
ROBIE, Acting P.J.

-----  
  
cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: City of Ione v. The Superior Court of Amador County  
C097112  
Amador County Super. Ct. No. 22CV12824

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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✓ Amador Superior Court  
500 Argonaut Lane  
Jackson, CA 95642



# EXHIBIT G

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FILED  
AMADOR SUPERIOR COURT

SEP 29 2022

CLERK OF THE SUPERIOR COURT  
By [Signature]

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF GARY GHIO IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ORDER TO SHOW CAUSE AND  
TEMPORARY RESTRAINING ORDER

Date: October 3, 2022  
Time: 8:30 a.m.  
Dept.: 1

Complaint Filed: September 20, 2022

1 I, Gary Ghio, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I have been a licensed engineer in the State of California for 41 years with extensive  
5 experience in managing wastewater disposal systems. Since 2011, I have been the Engineer for the  
6 Amador Regional Sanitation Authority ("ARSA"), a joint powers agency responsible for providing  
7 wastewater conveyance and disposal services to the Cities of Amador City and Sutter Creek and  
8 the County of Amador.

9 3. Wastewater from the City of Sutter Creek, Amador City, and the Martell community  
10 is treated by the Sutter Creek Wastewater Treatment Plant ("Sutter Creek WTP"), which is owned  
11 and operated by the City of Sutter Creek. Disinfected secondary effluent from the Sutter Creek  
12 WTP is conveyed through a series of pipelines and reservoirs, known as the "Henderson/Preston  
13 System," and ultimately to Preston Reservoir for discharge to the City of Lone ("Lone") for tertiary  
14 treatment at its Castle Oaks Water Reclamation Plant ("Castle Oaks WRP") for irrigation use at the  
15 Castle Oaks Golf Course ("Golf Course").

16 4. The Henderson/Preston System is owned by the California Department of  
17 Corrections and Rehabilitation ("CDCR"). Since approximately 1977, CDCR has leased the  
18 pipelines and reservoirs that make up the Henderson/Preston System to ARSA. A true and correct  
19 copy of the current lease between ARSA and CDCR, Ground lease No. L-2070 ("Lease"), executed  
20 on February 23, 2009, is attached as Exhibit "A" hereto.

21 5. Under the Lease, ARSA uses the Henderson/Preston System to transport water and  
22 wastewater pursuant to a separate agreement between ARSA, CDCR, and Lone, identified as the  
23 Agreement to Regulate Use of Henderson/Preston Wastewater Disposal System dated September  
24 18, 2007 ("Wastewater Agreement"), a true and correct copy of which is attached as Exhibit B to  
25 the Lease.

26 6. The Wastewater Agreement governs the wastewater rights and obligations among  
27 ARSA, CDCR, and Lone, as well as the relationship and respective rights between ARSA, CDCR,  
28 and Lone with regard to the Henderson/Preston System. The Wastewater Agreement obligates Lone

1 to accept 650 acre feet (or 211,803,427 gallons) of secondarily treated wastewater from Preston  
2 Reservoir annually, specifically up to 95 acre feet (or 30,955,886 gallons) of wastewater per month  
3 from April through September and up to 10 acre feet (or 3,258,514 gallons) of wastewater per  
4 month from October through March.

5 7. The Wastewater Agreement provides for up to 95 acre feet (or 30,955,886 gallons)  
6 of wastewater per month from April through September because those months typically fall within  
7 the irrigation season, i.e., when the wastewater is needed due to a lack of rain. The Wastewater  
8 Agreement only provides for a maximum of 10 acre feet (or 3,258,514 gallons) of wastewater per  
9 month from October through March because those months generally fall within the rainy season,  
10 i.e., when limited water is needed for irrigation. Based on my experience since the Wastewater  
11 Agreement was entered into roughly 15 years ago, however, the respective irrigation and rainy  
12 seasons generally begin roughly one month later than what is reflected in the Wastewater  
13 Agreement, meaning the irrigation season will likely last through at least October, depending on  
14 the commencement of the rainy season.

15 8. The Central Valley Regional Water Quality Control Board's ("Regional Board")  
16 Water Reclamation Requirements ("WRRs") Order No. 93-240 regulates the Castle Oaks WRP  
17 and flows thereto from the Henderson/Preston System. WRRs Order No. 93-240 only permits  
18 wastewater treatment and reuse based on the flows to Preston Reservoir through the  
19 Henderson/Preston System. WRRs Order No. 93-240 also names only ARSA, Ione, and Portlock  
20 International, Ltd. (the Golf Course) as the dischargers. Ione has received no other water quality  
21 permits or permit modifications from the Regional Board that allow Ione to provide reclaimed water  
22 to the Golf Course in any manner other than through the Henderson/Preston System from Preston  
23 Reservoir. A true and correct copy of WRRs Order No. 93-240 is attached as Exhibit "B" hereto.

24 9. Pursuant to WRRs Order No. 93-240, ARSA can store a maximum of 229 acre feet  
25 of water (or 74,619,977 gallons) in Preston Reservoir, which lies within two feet of the freeboard  
26 (i.e., the vertical distance between the reservoir water surface and the crest of the reservoir's  
27 embankment). Although such capacity would exceed WRRs Order No. 93-240, at 270 acre feet (or  
28 86,350,628 gallons), the dam at Preston Reservoir will overtop and wastewater will overflow from



1 the Reservoir.

2 10. In the event Preston Reservoir spills over, or the dam does not hold, the wastewater  
3 will flood a nearby Cal Fire Academy property and then run through a nearby creek, Mule Creek,  
4 and into the residential subdivision surrounding the Golf Course. The flooding and discharge of  
5 disinfected secondary effluent into Mule Creek and onto residential property poses significant  
6 public health and water quality contamination issues, as disinfected secondary effluent contains  
7 harmful pathogens (protozoa, bacteria, and viruses), inorganic compounds, and parasites. Although  
8 the wastewater that is conveyed into Preston Reservoir through the Henderson/Preston System has  
9 undergone secondary treatment at the Sutter Creek WTP, local runoff and waterfowl contribute to  
10 the bacteria in Preston Reservoir. Attached as Exhibit "C" hereto is a true and correct copy of the  
11 Preston Dam Break Inundation Map, which depicts the areas that would be impacted with flooding  
12 of disinfected secondary effluent in the event Preston Reservoir spills over.

13 11. Based on Preston Reservoir's current amount of 115 acre feet (or 37,472,914  
14 gallons) of wastewater, in the event of a substantial, upcoming rainy season in the region, such as  
15 one that includes a 100-year storm event like that experienced in 2017, Preston Reservoir will reach  
16 its permitted capacity in early March 2023, and will spill over in April 2023, before the end of the  
17 anticipated rainy season. Water balance is required by the Regional Board in order to verify that  
18 the system at issue has sufficient capacity for all flows under a 1 in 100 year storm season scenario.  
19 Per Regional Board requirements, systems must be able to treat, store, and dispose of all flows  
20 under the 1 in 100 year scenario each year.

21 12. In the past, Lone's Castle Oaks WRP has treated 1.2 million gallons (or 3.68 acre  
22 feet) per day. In order to avoid the grave consequences that will ensue in the event Preston Reservoir  
23 overflows, it is imperative that Lone immediately begin accepting at least 500,000 gallons (or 0.15  
24 acre feet) of wastewater from ARSA from Preston Reservoir. Based on my modeling, the  
25 acceptance of at least 500,000 gallons for at least 30 days should be sufficient to avoid Preston  
26 Reservoir spilling over before the end of the upcoming rainy season, depending on the extent and  
27 duration of the rainy season. The only viable option for ARSA to discharge wastewater from the  
28 Preston Reservoir is to discharge the water to the Castle Oaks WRP; no other viable options exist.

1           13. Ione has expressed an unwillingness to accept wastewater from Preston Reservoir  
2 on the grounds that the water is allegedly high in hydrogen sulfide, which could cause odor issues  
3 at the Castle Oaks WRP and the Golf Course, and that the water purportedly has high turbidity (i.e.,  
4 cloudiness), which may cause treatment difficulties.

5           14. On September 9, 2022, the Regional Board issued correspondence to ARSA, Ione,  
6 and the Golf Course addressing the issue, a true and correct copy of which is attached as Exhibit  
7 "D" hereto. Among other items, the Regional Board's September 9, 2022, letter stated in no  
8 uncertain terms that "the capacity issues at Preston [Reservoir] are presenting an even greater risk  
9 to water quality and public health than potential nuisance concerns related to the treatment of  
10 wastewater from Preston [Reservoir] at Ione's [Castle Oaks WRP]."

11           I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct.

13           Executed this 28<sup>th</sup> day of September 2022, at Sutter Creek, California.

14 

15 GARY GHIO  
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EXHIBIT D

## Central Valley Regional Water Quality Control Board

9 September 2022

Robin Peters  
ARSA, Board Chairman  
18 Main Street  
Sutter Creek, CA 95685  
[RPeters@cityofsuttercreek.org](mailto:RPeters@cityofsuttercreek.org)  
Sent via email

Dominic Atlan  
Castle Oaks Golf Course, Manager  
1000 Castle Oaks Drive  
Ione, CA 95640  
[datlan@ione-ca.com](mailto:datlan@ione-ca.com)  
Sent via email

Dan Epperson  
City of Ione, Mayor  
1 East Main Street  
Ione, CA 95640  
[depperson@ione-ca.com](mailto:depperson@ione-ca.com)  
Sent via email

### PRESTON RESERVOIR CAPACITY AND TERTIARY PLANT NUISANCE CONDITIONS, CITY OF IONE, AMADOR COUNTY REGIONAL OUTFALL AND CASTLE OAKS GOLF COURSE AND DEVELOPMENT, AMADOR COUNTY

On 3 December 1993, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Water Reclamation Requirement (WRRs) 93-240, which regulate the conveyance, storage, tertiary treatment, and land application of secondary treated domestic wastewater from the City of Sutter Creek Wastewater Treatment Plant.

The Amador Regional Sanitation Authority (ARSA) operates the conveyance, storage, and disposal system between the Sutter Creek wastewater treatment plant and Preston Reservoir (Preston). The system moves effluent from the Sutter Creek wastewater treatment plant to several land application areas and storage reservoirs (which includes Henderson Reservoir), eventually discharging to Preston, which is in Ione. ARSA and the City of Ione are both named in the WRRs 93-240 and have entered into a formal agreement<sup>1</sup> to send effluent from Preston to the City of Ione Tertiary Treatment Plant (Tertiary Plant) for further treatment and reuse on Castle Oaks Golf Course (golf course).

It is Central Valley Water Board staff's understanding that the City is concerned the water coming out of Preston may be high in hydrogen sulfide, which could cause odor issues at the Tertiary Plant and on the golf course. In addition, the intake of Preston

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<sup>1</sup> The Board understands that the status of this agreement is in dispute.

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

water for delivery to the Tertiary Plant occurs at the bottom of the reservoir and has high turbidity which may be causing treatment difficulties. However, the Board has also been made aware that Preston and Henderson Reservoirs are at or near capacity, limiting the ability of the system to withstand higher flows that may occur during the upcoming rainy season. It is of utmost importance for these capacity issues to be resolved promptly to avert potential public health and water quality contamination issues that may occur if the system becomes unable to handle additional inflows.

One way to help alleviate the current situation is for the Board to allow the City to accept water from Preston, even though that may result in the creation of nuisance conditions, which would ordinarily be considered a violation of WRRs 93-240. With the understanding that the capacity issues at Preston are presenting an even greater risk to water quality and public health than potential nuisance concerns related to the treatment of wastewater from Preston at Lone's tertiary facility, the Central Valley Water Board's Compliance and Enforcement Unit will exercise its prosecutorial discretion to not pursue enforcement of odor nuisance conditions that may occur as a result of the City's acceptance of treated wastewater from Preston at the Tertiary Plant or golf course between 9 September 2022 and 1 January 2023.

The Board expects that all dischargers named in WRRs 93-240 will continue to work cooperatively to address both the capacity concerns at Preston and to take all reasonable and appropriate steps to address any odor concerns that may arise. It is also the expectation of the Central Valley Water Board that the City of Lone and ARSA provide the following information on a weekly basis while the Board is exercising its enforcement discretion:

1. Freeboard levels of Preston and Henderson Reservoirs;
2. Flow into Preston and Henderson Reservoirs;
3. Flow in gallons per day from Preston to the Tertiary Plant;
4. A description of any polymer added by added as pre-treatment to address the nuisance conditions.
5. All previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity. This shall be reported to [Kari.Holmes@waterboards.ca.gov](mailto:Kari.Holmes@waterboards.ca.gov); and
6. A weekly summary of any nuisance complaints received by the City and the golf course, along with an explanation of how the complaint(s) were resolved. This summary will include details of coordination efforts made between all dischargers to address areas of concern.

The Board is also committed to working with ARSA to resolve issues related to the operation of their facilities, which may include enhanced maintenance requirements such as the dredging of both Henderson and Preston on a regular basis to ensure that these concerns are adequately addressed in the future.



ARSA, Castle Oaks Golf Course, City of Ione

Amador County

- 3 -

9 September 2022

If you have questions, please contact me directly at [John.Baum@waterboards.ca.gov](mailto:John.Baum@waterboards.ca.gov) or (916) 464-4839.

A handwritten signature in black ink, appearing to read 'J. Baum', with a large, sweeping flourish extending to the right.

JOHN J. BAUM,  
Assistant Executive Officer

cc: list on next page.

ARSA, Castle Oaks Golf Course, City of Ione

Amador County

- 4 -

9 September 2022

cc: Stacey Rhodes, City of Ione, Ione  
Diane Wratten, City of Ione, Ione  
Thomas Reed, City of Ione, Ione  
Dan Epperson, City of Ione, Ione  
Dominic Atlan, Castle Oaks Golf Course, Ione  
Robin Peters, ARSA, Sutter Creek  
Amy Gedney, ARSA, Sutter Creek  
Howard Hold, Central Valley Water Board, Rancho Cordova  
Kenny Croyle, Central Valley Water Board, Rancho Cordova  
Scott Armstrong, Central Valley Water Board, Rancho Cordova  
Lixin Fu, Central Valley Water Board, Rancho Cordova  
Amador County Dept. of Environmental Health, Jackson  
Grant Scavello, USEPA, San Francisco  
Jim Scully, Interested Person, Ione  
Jim Nevin, Interested Person, Ione  
Andrew Packard, Packard Law Offices, Petaluma  
Will Carlon, Packard Law Offices, Petaluma  
Erica Maharg, ATA Law Group, Oakland  
Jack Mitchell, Ledger Dispatch, Jackson  
Jennifer Buckman, Bartkiewicz, Kronick & Shanahan, APC, Sacramento  
Sally Baron, Interested Person, Rancho Cordova  
Virginia Silva, Interested Person, Ione  
David Anderson, Interested Person, Mokelumne Hill

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BEST BEST &  
KRIEGER LLP

10  
11 Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR  
15

16 AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
17 agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF STEVEN COREY  
STONE IN OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER TO MODIFY  
OCTOBER 10, 2022 ORDER AND  
PRELIMINARY INJUNCTION

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022



1 I, Steven Corey Stone, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. Since 2011, I have been the primary Operator of the Amador Regional Sanitation  
5 Authority ("ARSA"), a joint powers agency responsible for providing wastewater conveyance  
6 and disposal services to the Cities of Amador City and Sutter Creek and the County of Amador.

7 3. As ARSA's primary Operator, I am responsible for overseeing the operation and  
8 maintenance of the Henderson/Preston System, which includes, but is not limited to, oversight  
9 over three reservoirs (Henderson Reservoir, Preston Forebay, and Preston Reservoir) and the  
10 water balances therein in order to ensure compliance with all requirements imposed by the  
11 Central Valley Regional Water Quality Control Board, the California state agency who regulates  
12 wastewater discharges in the area.

13 4. On October 10, 2022, the Court issued a preliminary injunction ordering Ione to  
14 immediately accept 500,000 gallons of wastewater per day from Preston Reservoir for 30 days, a  
15 copy of which I understand was personally served on Ione midday on October 11, 2022. Since  
16 then, Ione has only accepted water from Preston Reservoir from October 14, 2022, through  
17 October 18, 2022. During that period of time, the water level at Preston Reservoir dropped from  
18 approximately 113.5 acre feet to roughly 108.4 acre feet, a decrease of approximately 5.1 acre  
19 feet, or 1.66 million gallons.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed this 24<sup>th</sup> day of October 2022, at Sutter Creek, California.

23 

24 STEVEN COREY STONE

# **ATTACHMENT 10**

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10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
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Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

EX PARTE APPLICATION FOR ORDER  
TO SHOW CAUSE RE CONTEMPT AND  
SANCTIONS

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 Plaintiff Amador Regional Sanitation Authority applies for an order requiring Defendant  
2 City of Ione ("Ione") to show cause why it should not be held in contempt of this Court's October  
3 10, 2022, order and preliminary injunction ("Order") pursuant to Code of Civil Procedure section  
4 1211, and why money sanctions in the amount of fifteen hundred dollars (\$1,500) per day should  
5 not be imposed against it pursuant to Code of Civil Procedure section 177.5.


6 The application for an order to show cause ("OSC") regarding contempt is made on the  
7 grounds that the Order is a valid order, Ione has actual knowledge of the Order, Ione is able to  
8 comply with the Order, and Ione has willfully disobeyed the Order. The application for an OSC  
9 regarding sanctions is made on the grounds that Ione has violated the Order, and it has done so  
10 without good cause or substantial justification.

11 This application is based upon the memorandum, the declarations of Amy Gedney and  
12 Matthew L. Green, and the records and files in this action.

13 Pursuant to the California Rules of Court, rule 3.1202, subdivision (a), Ione is represented  
14 by Theresa C. Barfield ([tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)) and Michelle E. Chester  
15 ([mchester@somachlaw.com](mailto:mchester@somachlaw.com)) of Somach Simmons & Dunn, 500 Capital Mall, Suite 1000,  
16 Sacramento, CA 95814, (916) 446-7979, and by David A. Prentice ([david@prenticelongpc.com](mailto:david@prenticelongpc.com)),  
17 Margaret Long ([margaret@prenticelongpc.com](mailto:margaret@prenticelongpc.com)), and Carolyn Walker  
18 ([carolyn@prenticelongpc.com](mailto:carolyn@prenticelongpc.com)) of Prentice Long, PC, 2240 Court Street, Redding, CA 96001,  
19 (530) 691-0800. Defendant California Department of Corrections and Rehabilitation is represented  
20 by Adam K. Guernsey ([aguernsey@hthglaw.com](mailto:aguernsey@hthglaw.com)) of Harrison Temblador Hungerford & Guernsey,  
21 2801 T Street, Sacramento, CA 95816, (916) 228-4221. Pursuant to the California Rules of Court,  
22 rule 3.1202, subdivision (b), there have been no previous applications for similar relief.

23 Dated: October 25, 2022

BEST BEST & KRIEGER LLP

24  
25 By:   
26 SHAWN D. HAGERTY  
27 MATTHEW L. GREEN  
28 FRANK A. SPLENDORIO  
Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION  
AUTHORITY

**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 26, 2022, I served a copy of the within document(s):

EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE RE CONTEMPT AND SANCTIONS;

MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE RE CONTEMPT AND SANCTIONS;

DECLARATION OF AMY GEDNEY IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE RE CONTEMPT AND SANCTIONS;

DECLARATION OF MATTHEW L. GREEN IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE RE CONTEMPT AND SANCTIONS;

[PROPOSED] ORDER TO SHOW CAUSE RE CONTEMPT AND SANCTIONS



**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below. I placed, or caused to be placed, the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.



**By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

- ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Margaret Long, Esq.  
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California Department of Corrections and  
Rehabilitation  
1515 S Street, Suite 314 South  
Sacramento, CA 95811

Attn: Patrick Covello

Tel: (916) 324-7308

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 26, 2022, at San Diego, California.



Lisa Atwood



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10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

MEMORANDUM IN SUPPORT OF EX  
PARTE APPLICATION FOR ORDER TO  
SHOW CAUSE RE CONTEMPT AND  
SANCTIONS

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 Plaintiff Amador Regional Sanitation Authority (“ARSA”) respectfully submits the  
2 following memorandum in support of its ex parte application for an order requiring Defendant City  
3 of Ione (“Ione”) to show cause why it should not be held in contempt of the Court’s order and  
4 preliminary injunction, and why money sanctions in the amount of fifteen hundred dollars (\$1,500)  
5 per day should not be imposed against Ione.

6 **I.**

7 **INTRODUCTION**

8 On October 10, 2022, the Court issued an order and preliminary injunction (“Order”)  
9 requiring Ione to immediately accept 500,000 gallons of wastewater per day from Preston Reservoir  
10 for 30 days, for a total of 15 million gallons. (Gedney Decl., Ex. A.) The Order was personally  
11 served on Ione on October 11, 2022, at 12:44 p.m. (*Id.*, Ex. B.) Aside from a period of roughly five  
12 days from October 14 through October 18, 2022, Ione has willfully disobeyed and violated the  
13 Order. Because Ione is able to comply with the Order, and there is no good cause or substantial  
14 justification for its failure to do so, the Court should issue an order to show cause regarding both  
15 contempt and sanctions.

16 **II.**

17 **LEGAL STANDARD**

18 **A. CONTEMPT**

19 The elements of an indirect contempt proceeding based on disobedience of a prior court  
20 order are (1) the issuance of a valid order, (2) respondent’s actual knowledge of the order, (3)  
21 respondent’s ability to comply with the order, and (4) respondent’s willful disobedience of the  
22 order. (*Conn v. Superior Court* (1987) 196 Cal.App.3d 774, 784; see also *Koehler v. Superior Court*  
23 (2010) 181 Cal.App.4th 1153, 1159.) “When the contempt is not committed in the immediate view  
24 and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court  
25 or judge of the facts constituting the contempt ....” (Code Civ. Proc., § 1211, subd. (a).)

26 **B. SANCTIONS**

27 “The imposition of sanctions, monetary or otherwise, is within the discretion of the trial  
28 court.” (*In re Woodham* (2001) 95 Cal.App.4th 438, 443 [citing *Moyal v. Lanphear* (1989)

208 Cal.App.3d 491, 501].) Code of Civil Procedure section 177.5 authorizes judicial officers to impose monetary sanctions, payable to the court, of up to fifteen hundred dollars “for any violation of a lawful court order by a person.” (Code Civ. Proc., § 177.5.) Due process, as well as the statute itself, requires that a person against whom Code of Civil Procedure section 177.5 sanctions may be imposed be given adequate notice that such sanctions are being considered, notice as to what act or omission of the individual is the basis for the proposed sanctions, and an objective hearing at which the person is permitted to address the lawfulness of the order, the existence of the violation, and the absence of good cause or substantial justification for the violation. (*People v. Hundal* (2008) 168 Cal.App.4th 965, 970.)

Section 177.5 defines “person” to include “a witness, a party, a party’s attorney, or both.” (*Ibid.*) Section 177.5 also does not require a willful violation, but merely one committed without “good cause or substantial justification,” which is to say, without a valid excuse. (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1081 [quoting *People v. Tabb* (1991) 228 Cal.App.3d 1300, 1311].) Indeed, unlike contempt proceedings, sanction orders do not require a finding that the violator had the ability to comply with the court’s order. (*Seykora, supra*, 232 Cal.App.3d at p. 1084.)

### III.

#### ARGUMENT

##### **A. THE ORDER IS A VALID AND LAWFUL ORDER**

A court must have issued a valid order to support a contempt charge against a party who has violated the terms thereof, whereas violation of a void order is not punishable as contempt. (*People v. Gonzalez* (1996) 12 Cal.4th 804, 808.) An order is void if “in excess of the court’s jurisdiction,” including subject matter jurisdiction, personal jurisdiction, and “the defined power of a court in any instance.” (*Id.* at p. 823.) The imposition of sanctions similarly requires violation of a “lawful court order.” (Code Civ. Proc., § 177.5; *Tabb, supra*, 228 Cal.App.3d at p. 1306.)

Here, the Court issued the Order against Ione on October 10, 2022. (Gedney Decl., Ex. A.) The Order was thereafter personally served on Ione on October 11, 2022. (*Id.*, Ex. B.) As a California superior court of unlimited jurisdiction with equity powers, it cannot be controverted

1 that the Court has personal and subject matter jurisdiction in this matter.

2 **B. IONE HAS KNOWLEDGE OF THE ORDER**

3 In order to be guilty of contempt, a party subject to an order of the court must have had  
4 actual knowledge of the order's existence. (*People v. Sup. Ct.* (1965) 239 Cal.App.2d 99, 104.)  
5 While personal service is not required, (*ibid.*), Ione was personally served with the Order on  
6 October 11, 2022. (Gedney Decl., Ex. B.) Moreover, Ione expressly informed both the Central  
7 Valley Regional Water Quality Control Board, as well as the Court of Appeal in its since-dismissed  
8 writ petition, of the Order. (Rock Decl. in Supp. of Ex Parte App. to Modify Order, Ex. 3, at p. 1;  
9 Green Decl. in Opp'n to Ex Parte App. to Modify Order, Ex. C, at pp. 1-2.)

10 **C. IONE IS AND WAS CAPABLE OF COMPLYING WITH THE ORDER AND**  
11 **HAS NO VALID EXCUSE FOR FAILING TO DO SO**

12 A party charged with contempt of a prior court order must have had the ability to comply  
13 with that order. (*Koehler, supra*, 181 Cal.App.4th at p. 1160.) The only excuse offered by Ione for  
14 why it could not accept wastewater from ARSA from Preston Reservoir was that gas readings taken  
15 on October 18 through 20, 2022, showed high levels of hydrogen sulfide at Ione's water treatment  
16 plant. (Gedney Decl., ¶ 6.)

17 Before addressing the deficiencies in Ione's excuse, and assuming *arguendo* the hydrogen  
18 sulfide condition was a valid excuse, it would only cover Ione's noncompliance for three days –  
19 October 18 through 20, 2022. Indeed, Ione has offered no justification for its failure to comply with  
20 the Order between October 11 and 14, 2022, or since October 20, 2022. (*Id.*, ¶¶ 5, 7.) Contempt  
21 and sanctions are thus appropriate for Ione's noncompliance during these time periods alone.

22 The hydrogen sulfide condition at Ione's treatment plant is also not a valid excuse for Ione's  
23 violation of the Order from October 18 through 20, 2022, or any other period of time. According  
24 to an incident report, Ione's fire department took gas readings at two top vent pipes to test the  
25 amount of hydrogen sulfide (H<sub>2</sub>S). (Supp. Chester Decl. in Supp. of Ex Parte App. to Modify Order,  
26 Ex. A.) These readings showed H<sub>2</sub>S at only 1 part per million (PPM), but detected a  
27 combustible/explosive range above the lower explosion limit (LEL) of 10% at 13-14%. (*Ibid.*)  
28 While Ione's fire department's readings showed similar results on October 19, 2022, the

1 combustible/explosive range dropped below the LEL to only 3% on October 20, 2022. (Gedney  
2 Decl., Ex. C [“Brown Decl.”], Exs. A and B thereto.) The amount of H<sub>2</sub>S, however, increased to  
3 at least 200 PPM at that time. (Brown Decl., Ex. B.) The oxygen levels from October 18 to 20,  
4 2022, nevertheless remained constant, at 20.8%, 20.2%, and 20.8%. (Brown Decl., Exs. A, B.)

5 Hydrogen sulfide is a common condition that exists in sewer and wastewater systems.  
6 (Brown Decl., ¶ 5.) It is a combustible and toxic gas that forms within sewer collection systems  
7 when the organic matter in the raw sewage decomposes and is caused by the lack of oxygen in the  
8 water over longer periods of time. (*Ibid.*)

9 Setting aside the cause of the hydrogen sulfide,<sup>1</sup> hydrogen sulfide does not generally pose  
10 a health hazard when it is properly monitored and mitigated. (*Id.*, ¶ 6.) To address the presence of  
11 hydrogen sulfide, including at the levels detected by Ione’s fire department between October 18  
12 and 20, 2022, ventilation blowers are typically used to force air into the confined space at high  
13 enough volumes to exchange the air to dilute the concentration to a nonhazardous level. (*Ibid.*)  
14 Indeed, in most cases, simply ventilating the utility access hole can reduce the levels of the gas  
15 present to a safe level for entry. (*Ibid.*) Hydrogen sulfide may also be treated through the use of  
16 chemicals, including chlorine, sodium hypochlorite, or other products such as hydrogen peroxide-  
17 based oxidants. (*Ibid.*)

18 To date, Ione has provided no evidence whatsoever reflecting any attempts to treat the  
19 hydrogen sulfide. (See *id.*, ¶ 9.) Ione has instead simply shut down the system after detecting  
20 conditions that are common in wastewater systems and has elected to take no steps to treat the  
21 hydrogen sulfide. (See *ibid.*) ARSA has tested the area around the Preston Reservoir for H<sub>2</sub>S, and  
22 no H<sub>2</sub>S has been detected. (*Ibid.*) The hydrogen sulfide issues identified by Ione thus relate solely  
23 to tertiary effluent requirements. They are part of the costs of providing tertiary treatment and  
24 therefore must be resolved by Ione as the operator of the tertiary treatment plant.<sup>2</sup> (*Ibid.*)

25 \_\_\_\_\_  
26 <sup>1</sup> The likely cause of hydrogen sulfide at Ione’s treatment plant arises from Ione’s decision  
27 to stop deliveries of wastewater from Preston Reservoir. (Brown Decl., ¶ 5.) By doing so, stagnant  
28 water remained in the closed pipeline between the reservoir discharge valve and the tertiary  
treatment plant, which likely allowed the remaining oxygen to be consumed, anaerobic bacteria to  
be formed, and hydrogen sulfide to generate. (*Ibid.*)

<sup>2</sup> The H<sub>2</sub>S and LEL readings provided by Ione are also questionable at best. (Brown Decl., ¶  
7.) The H<sub>2</sub>S level was apparently measured at a level below grade in a vent line; the gas level above

**D. IONE HAS WILLFULLY DISOBEYED AND VIOLATED THE ORDER**

Finally, a valid judgment of contempt must show facts establishing that the party charged with contempt willfully violated a prior court order. (*Koehler*, 181 Cal. App. 4th at p. 1169.) A party's willfulness can be inferred from the circumstances, and the order to show cause and judgment of contempt need not state facts in support of the finding of willfulness. (*Id.*)

Here, it is beyond controversy that Ione has willfully disobeyed and violated the Order. Although required to accept 500,000 gallons of wastewater per day from Preston Reservoir since October 11, 2022, Ione only accepted water from Preston Reservoir from October 14, 2022, through October 18, 2022. (Gedney Decl., ¶ 5.)

**IV.**

**CONCLUSION**

For the reasons set forth above, the Court should issue an order for Ione to show cause why it should not be held in contempt of the Order, and why money sanctions in the amount of fifteen hundred dollars (\$1,500) per day should not be imposed against Ione.

Dated: October 25, 2022

BEST BEST & KRIEGER LLP

By: 

SHAWN D. HAGERTY  
MATTHEW L. GREEN  
FRANK A. SPLENDORIO  
Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION  
AUTHORITY

the confined space was not measured. (*Ibid.*) H<sub>2</sub>S is heavier than air, which means it will collect and concentrate in confined spaces below grade. (*Ibid.*) When mixed with the air outside of the confined space, however, it will typically produce a decreased level of concentration. (*Ibid.*) While the odor may be detectable near the vent, it could be easily mitigated through aeration. (*Ibid.*) Moreover, regarding the data provided by Ione on October 20, 2022, it does not make sense for the LEL to go down and the H<sub>2</sub>S level to increase. (*Id.*, ¶ 8.) H<sub>2</sub>S is considered combustible, which means the H<sub>2</sub>S level and LEL should rise and fall together. (*Ibid.*) The diverging H<sub>2</sub>S and LEL readings are also suspect given the amount of oxygen remained constant from October 18 to October 20, 2020. (*Ibid.*) Indeed, without calibration logs, the accuracy of the testing instruments cannot be assumed. (*Ibid.*)



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11 Attorneys for Plaintiff  
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EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
17 agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
21 OF CORRECTIONS AND  
REHABILITATION, a California state  
22 agency; and DOES 1 through 20, inclusive,

23 Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF AMY GEDNEY IN  
SUPPORT OF EX PARTE APPLICATION  
FOR ORDER TO SHOW CAUSE RE  
CONTEMPT AND SANCTIONS

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 I, Amy Gedney, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. Since June 2017, I have been the General Manager of Plaintiff Amador Regional  
5 Sanitation Authority ("ARSA"), a joint powers agency responsible for providing wastewater  
6 conveyance and disposal services to the Cities of Amador City and Sutter Creek and the County of  
7 Amador.

8 3. On October 10, 2022, the Court issued an Order and Preliminary Injunction  
9 requiring Defendant City of Ione ("Ione") and its employees and agents, and any other persons  
10 acting with or on behalf of Ione, to accept from ARSA 500,000 gallons of secondarily treated  
11 wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons of  
12 secondarily treated wastewater. A true and correct copy of the Order and Preliminary Injunction  
13 ("Order") is attached as Exhibit "A" hereto.

14 4. A copy of the Order was personally served on Ione on October 11, 2022, at 12:44  
15 p.m. A true and correct copy of the Proof of Service reflecting the same is attached as Exhibit "B"  
16 hereto.

17 5. Although it was served with the Order midday on October 11, 2022, Ione did not  
18 start accepting water from ARSA from Preston Reservoir until October 14, 2022, three days later.  
19 Ione also only accepted water from Preston Reservoir from October 14, 2022, through October 18,  
20 2022. During that period of time, the water level at Preston Reservoir dropped from approximately  
21 113.5 acre feet to roughly 108.4 acre feet, a decrease of approximately 5.1 acre feet, or 1.66 million  
22 gallons.

23 6. Ione informed ARSA and others on October 18, 2022, that it ceased accepting  
24 wastewater from Preston Reservoir due to readings taken on that date reflecting high levels of  
25 hydrogen sulfide at Ione's wastewater treatment plant. Ione informed ARSA and others that similar  
26 readings showing high levels of hydrogen sulfide were taken on October 19 and 20, 2022, and that  
27 wastewater thus could still not be accepted from Preston Reservoir on those days.

28 ///

1           7.       Since October 20, 2022, Ione has provided no further hydrogen sulfide readings to  
2 ARSA, let alone any explanation for its ongoing failure to comply with the Order. Ione has also  
3 never provided any details regarding how it is treating the hydrogen sulfide condition at its  
4 wastewater treatment plant, aside from simply shutting down the plant.

5           8.       Attached as Exhibit "C" hereto is a true and correct copy of a declaration from  
6 Donald Brown executed on October 24, 2022. In his declaration, Mr. Brown explains that hydrogen  
7 sulfide is a common condition in wastewater systems, that Ione's readings are questionable at best,  
8 that Ione may nevertheless treat the condition through aeration and chemicals, and that such  
9 treatment is part of the tertiary treatment process and must therefore be resolved by Ione as the  
10 operator of the wastewater treatment plant.

11           9.       Based on the foregoing, Ione was and is capable of complying with the Order, and  
12 there is no good cause or substantial justification for Ione's willful disobedience and violation of  
13 the Order.

14           I declare under penalty of perjury under the laws of the State of California that the foregoing  
15 is true and correct.

16           Executed this 25<sup>th</sup> day of October 2022, at Sutter Creek, California.

17   
18 AMY GEDNEY  
19  
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21  
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27  
28

# EXHIBIT A

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EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

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16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
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18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
21 corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
22 REHABILITATION, a California state agency;  
and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22-CV-12824  
Judge: Hon. Renee C. Day

**ORDER AND  
PRELIMINARY INJUNCTION**

Date: October 10, 2022  
Time: 8:30 a.m.  
Dept.: 2

Action Filed: September 20, 2022  
Trial Date: Not Set

By *FLY*

**FILED**  
Superior Court of California,  
County of Amador  
**10/10/2022 at 03:40:55 PM**  
By: B. MORRIS, Deputy Clerk

OCT 10 2022

CLERK OF THE SUPERIOR COURT

1 The order to show cause why a preliminary injunction should not ~~issue in favor of Plaintiff~~  
2 Amador Regional Sanitation Authority ("ARSA") came on for hearing in Department 2 of this  
3 Court on October 10, 2022. Matthew L. Green and Frank A. Splendorio of Best Best & Krieger  
4 LLP appeared on behalf of ARSA. Margaret Long and Carolyn Walker of Prentice Long, PC and  
5 Theresa C. Barfield of Somach Simmons & Dunn appeared on behalf of Defendant City of Ione  
6 ("Ione"). Having read ARSA's ex parte application for a temporary restraining order and for an  
7 order to show cause why a preliminary injunction should not issue, the memoranda and declarations  
8 filed by the parties, and having heard argument of counsel, and satisfactory evidence having been  
9 presented,

10 IT IS ORDERED THAT a preliminary injunction shall issue in favor of ARSA. Ione and  
11 its employees and agents, and any other persons acting with or on behalf of Ione, are required to  
12 accept from ARSA 500,000 gallons of secondarily treated wastewater per day from Preston  
13 Reservoir for the next 30 days, for a total of 15 million gallons of secondarily treated wastewater  
14 over the 30-day period, pending the trial of this action or further order of this Court.

15  
16 Dated: October FE, 2022

By: 

JUDGE OF THE SUPERIOR COURT



**PROOF OF SERVICE**

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 10, 2022, I served a copy of the within document(s):

**[PROPOSED] ORDER AND PRELIMINARY INJUNCTION**

- ☐ **By personal service.** At \_\_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.
- ☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Email: [tbarfield@somachlaw.com](mailto:tbarfield@somachlaw.com)  
[mchester@somachlaw.com](mailto:mchester@somachlaw.com)

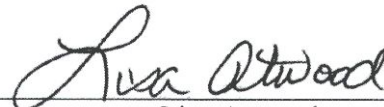
11 California Department of Corrections and  
12 Rehabilitation  
13 1515 S Street, Suite 314 South  
14 Sacramento, CA 95811

Attn: Patrick Covello

Email: [Patrick.Covello@cdcr.ca.gov](mailto:Patrick.Covello@cdcr.ca.gov)

15 I declare under penalty of perjury under the laws of the State of California that the above  
16 is true and correct.

17 Executed on October 10, 2022, at San Diego, California.

18 

19 Lisa Atwood  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT B

Attorney or Party without Attorney: Shawn D. Hagerty, Esq. (SBN 182435) BEST BEST & KRIEGER LLP 655 West Broadway, 15th Floor San Diego, CA 92101 Telephone No: 619-525-1300 Attorney For: Plaintiff				For Court Use Only  <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> AMADOR SUPERIOR COURT  OCT 13 2022  Clerk of the Superior Court By: <u>B. MORRIS</u>	
Ref. No. or File No.: 82456.000002/MLG					
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF AMADOR					
Plaintiff: AMADOR REGIONAL SANITATION AUTHORITY, a California joint powers agency Defendant: CITY OF IONE, a California municipal corporation; et al.					
<b>PROOF OF SERVICE</b>		Hearing Date:	Time:	Dept/Div:	Case Number: 22-cv-12824

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the ORDER AND PRELIMINARY INJUNCTION
3.
  - a. Party served: City of Ione, a California municipal corporation
  - b. Person served: Kenna Brosz, Administrative Assistant
4. Address where the party was served: 1 E Main Street, Ione, CA 95640
5. I served the party:
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Oct 11 2022 (2) at: 12:44 PM
6. Person Who Served Papers:
 

- a. Peter Campbell (Amador County #19-006) ()
  - b. c/o FIRST LEGAL  
530 B Street, Suite 1050  
SAN DIEGO, CA 92101
  - c. (619) 231-9111

- d. The Fee for Service was: \$176.26
  - e. I am: A Registered California Process Server
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/12/22  
(Date)

  
(Signature)



Judicial Council Form  
Rule 2.150.(a)&(b) Rev January 1, 2007

PROOF OF  
SERVICE

7787342  
(15059646)

By fax

# EXHIBIT C

SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
MATTHEW L. GREEN, Bar No. 227904  
matthew.green@bbklaw.com  
BEST BEST & KRIEGER LLP  
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FRANK A. SPLENDORIO, Bar No. 272601  
frank.splendorio@bbklaw.com  
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500 Capitol Mall, Suite 1700  
Sacramento, California 95814  
Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF DONALD BROWN IN  
OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER TO MODIFY  
OCTOBER 10, 2022 ORDER AND  
PRELIMINARY INJUNCTION

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022



1 I, Donald Brown, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am the President of Aquality Water Management ("Aquality") and have more than  
5 35 years of experience in the operations of wastewater treatment plants in California. Throughout  
6 my career, my positions have ranged from wastewater treatment plant operator to wastewater  
7 treatment facilities manager to operations consultant. I have been responsible for planning,  
8 organizing, and directing the operation and maintenance of wastewater treatment plants up to 30  
9 million gallons per day. Through Aquality, I have provided operational assistance and consulting  
10 services to the Amador Regional Sanitation Authority ("ARSA") for several years.

11 3. I have been provided and have reviewed the supplemental declaration of Michelle  
12 E. Chester dated October 18, 2022, along with the City of Ione ("Ione") Fire Department's incident  
13 report attached thereto. I have also been provided and have reviewed subsequent correspondence  
14 between Ione and the Central Valley Regional Water Quality Control Board ("Regional Board")  
15 dated October 19, 2022, and October 20-21, 2022, copies of which are attached hereto as Exhibits  
16 "A" and "B," respectively.

17 4. According to the October 18, 2022, incident report, gas readings were taken at two  
18 top vent pipes to test the amount of hydrogen sulfide (H<sub>2</sub>S) . These readings showed H<sub>2</sub>S at only  
19 1 part per million (PPM), but detected a combustible/explosive range above the lower explosion  
20 limit (LEL) of 10% at 13-14%. While Ione's fire department readings showed similar results on  
21 October 19, 2022, the combustible/explosive range dropped below the LEL to only 3% on October  
22 20, 2022. The amount of H<sub>2</sub>S, however, increased to at least 200 PPM at that time. The oxygen  
23 levels from October 18 to 20, 2022, nevertheless remained constant, at 20.8%, 20.2%, and 20.8%.

24 5. Hydrogen sulfide is a common condition that exists in sewer and wastewater  
25 systems. It is a combustible and toxic gas that forms within sewer collection systems when the  
26 organic matter in the raw sewage decomposes and is caused by the lack of oxygen in the water over  
27 longer periods of time. As detailed in my October 6, 2022, declaration, the likely cause of hydrogen  
28 sulfide at the Castle Oaks Water Reclamation Plant arises from Ione's decision to stop deliveries

1 of wastewater from Preston Reservoir. By doing so, stagnant water remained in the closed pipeline  
2 between the reservoir discharge valve and the tertiary treatment plant, which likely allowed the  
3 remaining oxygen to be consumed, anaerobic bacteria to be formed, and hydrogen sulfide to  
4 generate.

5         6. When properly monitored and mitigated, hydrogen sulfide does not generally pose  
6 a health hazard. To address the presence of hydrogen sulfide, including at the levels detected by  
7 Ione's fire department, ventilation blowers are typically used to force air into the confined space at  
8 high enough volumes to exchange the air to dilute the concentration to a nonhazardous level.  
9 Indeed, in most cases, simply ventilating the utility access hole can reduce the levels of the gas  
10 present to a safe level for entry. Hydrogen sulfide may also be treated through the use of chemicals,  
11 including chlorine, sodium hypochlorite, or other products such as hydrogen peroxide-based  
12 oxidants.

13         7. The H2S and LEL readings provided by Ione are also questionable at best. First, the  
14 H2S level was apparently measured at a level below grade in a vent line; the gas level above the  
15 confined space was not measured. H2S is heavier than air, which means it will collect and  
16 concentrate in confined spaces below grade. When mixed with the air outside of the confined space,  
17 however, it will typically produce a decreased level of concentration. While the odor may be  
18 detectable near the vent, it could be easily mitigated through aeration.

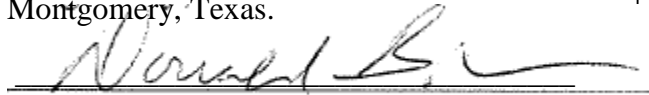
19         8. Moreover, regarding the latest data provided by Ione on October 20, 2022, it does  
20 not make sense for the LEL to go down and the H2S level to increase. H2S is considered  
21 combustible, which means the H2S level and LEL should rise and fall together. The diverging H2S  
22 and LEL readings are also suspect given the amount of oxygen remained constant from October 18  
23 to October 20, 2020. Indeed, without calibration logs, the accuracy of the testing instruments cannot  
24 be assumed.

25         9. To date, I have seen no evidence from Ione reflecting any attempts to treat the  
26 hydrogen sulfide. Ione has instead simply shut down the system after detecting conditions that are  
27 common in wastewater systems and has apparently elected to take no steps to treat the hydrogen  
28 sulfide. ARSA has tested the area around the Preston Reservoir for H2S, and no H2S has been

1 detected. The hydrogen sulfide issues identified by Ione thus relate solely to tertiary effluent  
2 requirements. They are part of the costs of providing tertiary treatment and therefore must be  
3 resolved by Ione as the operator of the tertiary treatment plant.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct.

6 Executed this 24<sup>th</sup> day of October 2022, at Montgomery, Texas.

7 

8 DONALD BROWN

# EXHIBIT A

---

**From:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>  
**Sent:** Wednesday, October 19, 2022 3:46 PM  
**To:** Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; Baum, John@Waterboards <[john.baum@waterboards.ca.gov](mailto:john.baum@waterboards.ca.gov)>  
**Cc:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srholdes@ione-ca.com](mailto:srholdes@ione-ca.com)>  
**Subject:** Ione Tertiary Plant: Lower Explosion Limits (LEL) still in violation  
**Importance:** High

Dear Kari:

The Ione Fire Department and Mule Creek State Prison Fire Department conducted another reading this morning regarding the Lower Explosion Limits (LEL) at the Tertiary Plant and the conditions are not better. The LEL is still over the limit of 10% at an average reading of 13.5% today. See attached report from this morning. The Fire Department has declared the site a hazardous condition for combustion/explosion.

Under these conditions it is not possible to operate the Tertiary Plant accepting influent from ARSA. The City has contacted the Amador Superior Court regarding this issue. I have also spoken with Mr. Baum and data (calcium nitrate, polymers and chlorine that is being used right now) will be sent to the Regional Board for analysis on how to lower the LEL and still be able to treat for the high turbidity and odorous conditions.

Sincerely,

Michael Rock  
City Manager  
City of Ione, CA  
(209) 273-7712

# **CITY OF IONE FIRE DEPARTMENT**

**Incident # 22-29880**

**Incident Name  
“Treatment”**

**10-18-2022**

**1243 hrs**



<b>A</b>		MM DD YYYY		Delete		NFIRS -1	
FDID 03010 *		State CA *		Incident Date 10/18/2022 *		Station 162	
				Incident Number 22-0029880 *		Exposure 000 *	
						Change	
						No Activity	
<b>B Location*</b>		<input type="checkbox"/> Check this box to indicate that the address for this incident is provided on the Wildland Fire Census Tract 0015 - 00					
<input checked="" type="checkbox"/> Street address		10100		Five Mile		DR	
<input type="checkbox"/> Intersection		Number/Milepost		Prefix Street or Highway		Street Type	
<input type="checkbox"/> In front of				IONE		CA 95640	
<input type="checkbox"/> Rear of		Apt./Suite/Room		City		State Zip Code	
<input type="checkbox"/> Adjacent to							
<input type="checkbox"/> Directions							
		Cross street or directions, as applicable					
<b>C Incident Type *</b>		<b>E1 Date &amp; Times</b>				<b>E2 Shift &amp; Alarms</b>	
400 Hazardous condition, Other		Midnight is 0000				Local Option	
Incident Type		Check boxes if dates are the same as Alarm Date.				Shift or Alarms District	
<b>D Aid Given or Received*</b>		ALARM always required				B 02	
1 <input type="checkbox"/> Mutual aid received		Alarm * 10/18/2022 12:43:00				Platoon	
2 <input checked="" type="checkbox"/> Automatic aid recvd.		ARRIVAL required, unless canceled or did not arrive					
3 <input type="checkbox"/> Mutual aid given		X Arrival * 10/18/2022 12:51:00					
4 <input type="checkbox"/> Automatic aid given		CONTROLLED Optional, Except for wildland fires				<b>E3 Special Studies</b>	
5 <input type="checkbox"/> Other aid given		<input type="checkbox"/> Controlled				Local Option	
N <input type="checkbox"/> None		LAST UNIT CLEARED, required except for wildland fires				Special Study ID# Special Study Value	
		<input type="checkbox"/> Last Unit					
		<input type="checkbox"/> Cleared 10/19/2022 07:30:00					
<b>F Actions Taken *</b>		<b>G1 Resources *</b>		<b>G2 Estimated Dollar Losses &amp; Values</b>			
86 Investigate		<input type="checkbox"/> Check this box and skip this section if an Apparatus or Personnel form is used.		LOSSES: Required for all fires if known. Optional for non fires.			
Primary Action Taken (1)		Apparatus Personnel		Property \$ 000,000			
42 HazMat detection,		Suppression		Contents \$ 000,000			
Additional Action Taken (2)		EMS		PRE-INCIDENT VALUE: Optional			
		Other 0003 0003		Property \$ 000,000			
Additional Action Taken (3)		<input type="checkbox"/> Check box if resource counts include aid received resources.		Contents \$ 000,000			
<b>Completed Modules</b>		<b>H1* Casualties</b>		<b>H3 Hazardous Materials Release</b>		<b>I Mixed Use Property</b>	
<input type="checkbox"/> Fire-2		Deaths Injuries		N <input type="checkbox"/> None		NN <input type="checkbox"/> Not Mixed	
<input type="checkbox"/> Structure-3		Fire Service		1 <input type="checkbox"/> Natural Gas: slow leak, no evaluation or HazMat actions		10 <input type="checkbox"/> Assembly use	
<input type="checkbox"/> Civil Fire Cas.-4		Civilian		2 <input type="checkbox"/> Propane gas: <21 lb. tank (as in home BBQ grill)		20 <input type="checkbox"/> Education use	
<input type="checkbox"/> Fire Serv. Cas.-5				3 <input type="checkbox"/> Gasoline: vehicle fuel tank or portable container		33 <input type="checkbox"/> Medical use	
<input type="checkbox"/> EMS-6		<b>H2 Detector</b>		4 <input type="checkbox"/> Kerosene: fuel burning equipment or portable storage		40 <input type="checkbox"/> Residential use	
<input type="checkbox"/> HazMat-7		Required for Confined Fires.		5 <input type="checkbox"/> Diesel fuel/fuel oil: vehicle fuel tank or portable		51 <input type="checkbox"/> Row of stores	
<input type="checkbox"/> Wildland Fire-8		1 <input type="checkbox"/> Detector alerted occupants		6 <input type="checkbox"/> Household solvents: home/office spill, cleanup only		53 <input type="checkbox"/> Enclosed mall	
<input checked="" type="checkbox"/> Apparatus-9		2 <input type="checkbox"/> Detector did not alert them		7 <input type="checkbox"/> Motor oil: from engine or portable container		58 <input type="checkbox"/> Bus. & Residential	
<input checked="" type="checkbox"/> Personnel-10		U <input type="checkbox"/> Unknown		8 <input type="checkbox"/> Paint: from paint cans totaling < 55 gallons		59 <input type="checkbox"/> Office use	
<input type="checkbox"/> Arson-11				9 <input type="checkbox"/> Other: Special HazMat actions required or spill > 55gal., Please complete the HazMat form		60 <input type="checkbox"/> Industrial use	
<b>J Property Use*</b>		Structures		341 <input type="checkbox"/> Clinic, clinic type infirmary		63 <input type="checkbox"/> Military use	
131 <input type="checkbox"/> Church, place of worship		342 <input type="checkbox"/> Doctor/dentist office		539 <input type="checkbox"/> Household goods, sales, repairs		65 <input type="checkbox"/> Farm use	
161 <input type="checkbox"/> Restaurant or cafeteria		361 <input type="checkbox"/> Prison or jail, not juvenile		579 <input type="checkbox"/> Motor vehicle/boat sales/repair		00 <input type="checkbox"/> Other mixed use	
162 <input type="checkbox"/> Bar/Tavern or nightclub		419 <input type="checkbox"/> 1-or 2-family dwelling		571 <input type="checkbox"/> Gas or service station			
213 <input type="checkbox"/> Elementary school or kindergarten		429 <input type="checkbox"/> Multi-family dwelling		599 <input type="checkbox"/> Business office			
215 <input type="checkbox"/> High school or junior high		439 <input type="checkbox"/> Rooming/boarding house		615 <input type="checkbox"/> Electric generating plant			
241 <input type="checkbox"/> College, adult education		449 <input type="checkbox"/> Commercial hotel or motel		629 <input type="checkbox"/> Laboratory/science lab			
311 <input type="checkbox"/> Care facility for the aged		459 <input type="checkbox"/> Residential, board and care		700 <input type="checkbox"/> Manufacturing plant			
331 <input type="checkbox"/> Hospital		464 <input type="checkbox"/> Dormitory/barracks		819 <input type="checkbox"/> Livestock/poultry storage (barn)			
Outside		519 <input type="checkbox"/> Food and beverage sales		882 <input type="checkbox"/> Non-residential parking garage			
124 <input type="checkbox"/> Playground or park		936 <input type="checkbox"/> Vacant lot		891 <input type="checkbox"/> Warehouse			
655 <input type="checkbox"/> Crops or orchard		938 <input type="checkbox"/> Graded/care for plot of land		981 <input type="checkbox"/> Construction site			
669 <input type="checkbox"/> Forest (timberland)		946 <input type="checkbox"/> Lake, river, stream		984 <input type="checkbox"/> Industrial plant yard			
807 <input type="checkbox"/> Outdoor storage area		951 <input type="checkbox"/> Railroad right of way					
919 <input type="checkbox"/> Dump or sanitary landfill		960 <input type="checkbox"/> Other street		Lookup and enter a Property Use code only if you have NOT checked a Property Use box:			
931 <input type="checkbox"/> Open land or field		961 <input type="checkbox"/> Highway/divided highway		Property Use 900			
		962 <input type="checkbox"/> Residential street/driveway		Outside or special property,			

NFIRS-1 Revision 03/11/99



**K1 Person/Entity Involved**

Local Option ☐ Business name (if applicable) PERC WATER Area Code      Phone Number     

☐ Check This Box if same address as incident location. Then skip the three duplicate address lines.

Public works City of Ione  
 Mr., Ms., Mrs. First Name      MI      Last Name      Suffix     

10100 Five Mile DR  
 Number Prefix Street or Highway Street Type Suffix

Head IONE  
 Post Office Box Apt./Suite/Room City

CA 95640 -       
 State Zip Code

☐ More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary

**K2 Owner** ☐ Same as person involved? Then check this box and skip the rest of this section.

Local Option ☐ Business name (if Applicable)      Area Code      Phone Number     

☐ Check this box if same address as incident location. Then skip the three duplicate address lines.

                
 Mr., Ms., Mrs. First Name MI Last Name Suffix

                
 Number Prefix Street or Highway Street Type Suffix

                
 Post Office Box Apt./Suite/Room City

          -       
 State Zip Code

**L Remarks**

Local Option ☐

A walk in request from Pub Works superintendent Waklee for the fire department to use our Multi Gas monitors to check gas readings from the water at the treatment facility, due to their units reading high numbers in the Head works area and needed to confirm.

Chief 6200 contacted on duty crews and also Mule Creek Fire to respond with their monitors and double check the readings at the location.

Both Engine companies arrived and took readings from the two top vent pipes and the following readings were observed at 1300 hours

Gas Meters at the top of the head works

H2S = 1 PPM

Combustible/Explosive range 13-14 % our monitor alarms activated for explosive range at 10%

O2 - 20.8 %

The crews advised Superintendent Waklee of their findings and confirmed that the PERC employees that were inside the building did not require any medical assistance or medic unit due to their head ache symptoms, none of the employees denied assistance.

The units will return on 10-19-2022 for a re check at 0645 hrs

**L Authorization**

0703 Bennett, James FAE      10 18 2022  
 Officer in charge ID Signature Position or rank Assignment Month Day Year

☐ Check Box if same as Officer making report ID in charge. 8101 Mackey, Ken FC      10 18 2022  
 as Officer making report ID Signature Position or rank Assignment Month Day Year

03010  
FDID \*

CA  
State \*

MM DD  
10 18  
Incident Date \*

YYYY  
2022

162  
Station

22-0029880  
Incident Number \*

000  
Exposure \*

Complete  
Narrative

**Narrative:**

A walk in request from Pub Works superintendent Waklee for the fire department to use our Multi Gas monitors to check gas readings from the water at the treatment facility, due to their units reading high numbers in the Head works area and needed to confirm.

Chief 6200 contacted on duty crews and also Mule Creek Fire to respond with their monitors and double check the readings at the location.

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The crews advised Superintendent Waklee of their findings and confirmed that the PERC employees that were inside the building did not require any medical assistance or medic unit due to their head ache symptoms, none of the employees denied assistance.

The units will return on 10-19-2022 for a re check at 0645 hrs

Weather Conditions on scene: 80 degrees 33 % Humidity winds 3-6 MPH

SUPPLEMENTAL REPORT - 10-19-2022

10-19-2022 follow up readings with Engine 6235 & Engine 5610

Time: 0652 hrs

Readings using the MSA ALTAIR 4X multi gas monitor

H2 S 20 PPM

Combustible / Explosive Level : 11 %

O2 levels 20.2 %

\* Alarms activated immediately

Weather Conditions:

Temp: 61 degrees

Humidity : 43 %

Winds: SSE at 1 MPH



03010  
FDID \*

CA  
State \*

MM DD  
10 18  
Incident Date \*

YYYY  
2022

162  
Station

22-0029880  
Incident Number \*

000  
Exposure \*

Complete  
Narrative

**Narrative:**

Dew Point: 39

Elevation: 270 ft

\*\*\* Per Public works Superintendent Waklee , the entire system was shut down and the supply side of the water pipe valve was completely closed , and all ignition sources removed or secured in the area, also the access was flagged off to prevent access, and employees advised to not enter.

Amador Health Department officer contacted and report made with Dr. Kerr at 1232 hrs, she will be making contact with Amador County Environmental health due to no reporting officer currently working at the county, with information.

per Dr Kerr's question it was confirmed that all PERC employees affected on site did not want medical attention and were advised of the workers comp and medical process if they do require at a later date.

Also it was confirmed with Dr Kerr that the city had contract staff from PERC operating the facility and were qualified state certified Operators Level 2- 3 -4 's and they were on site.

Received phone call from State of California Water Resource Board at 1350 hrs from Kenny Croyle (916) 464-4676 doing a follow up on today's findings, he was advised of our findings and explained that the area was secured from any employees and the water system shut down, no environmental or human risk at this time.

The facility will remain shut down until further notice until the incoming water has been stabilized by the staff or the supply source.

Attached is the copy of the Mule Creek Fire Department - Mutual Aid Incident report - 2-  
pages

Photo # 1 - Head works

Photo # 2 Head works

Photo # 3 Head works

<b>A</b>		FDID <b>03010</b> *		State <b>CA</b> *		Incident Date <b>MM DD YYYY</b> <b>10 18 2022</b>		Station <b>162</b>		Incident Number <b>22-0029880</b> *		Exposure <b>000</b> *		<input type="checkbox"/> Delete <input type="checkbox"/> Change		NFIRS - 9 Apparatus or Resources	
<b>B</b>		Apparatus or * Resource		Date and Times <small>Check if same as alarm date</small>						Sent <input checked="" type="checkbox"/>	Number of * People	Use <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>		Actions Taken			
				Month Day Year Hour Min Dispatch <input checked="" type="checkbox"/> 10 18 2022 12:43 Arrival <input checked="" type="checkbox"/> 10 18 2022 12:51 Clear <input checked="" type="checkbox"/> 10 18 2022 13:15													
1		ID <b>E5610</b>							<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>																	
2		ID <b>E6234</b>							<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>																	
3		ID <b>E6235</b>							<input checked="" type="checkbox"/>	1	<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b>11</b>																	
4		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>																	
5		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
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6		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>																	
7		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>																	
8		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>																	
9		ID <b></b>							<input type="checkbox"/>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input type="checkbox"/> Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
Type <b></b>																	

#### Type of Apparatus or Resources

##### Ground Fire Suppression

- 11 Engine
- 12 Truck or aerial
- 13 Quint
- 14 Tanker & pumper combination
- 16 Brush truck
- 17 ARF (Aircraft Rescue and Firefighting)
- 10 Ground fire suppression, other

##### Heavy Ground Equipment

- 21 Dozer or plow
- 22 Tractor
- 24 Tanker or tender
- 20 Heavy equipment, other

##### Aircraft

- 41 Aircraft: fixed wing tanker
- 42 Helitanker
- 43 Helicopter
- 40 Aircraft, other

##### Marine Equipment

- 51 Fire boat with pump
- 52 Boat, no pump
- 50 Marine apparatus, other

##### Support Equipment

- 61 Breathing apparatus support
- 62 Light and air unit
- 60 Support apparatus, other

##### Medical & Rescue

- 71 Rescue unit
- 72 Urban Search & rescue unit
- 73 High angle rescue unit
- 75 BLS unit
- 76 ALS unit
- 70 Medical and rescue unit, other

More Apparatus?  
 Use Additional  
 Sheets

##### Other

- 91 Mobile command post
- 92 Chief officer car
- 93 HazMat unit
- 94 Type 1 hand crew
- 95 Type 2 hand crew
- 99 Privately owned vehicle
- 00 Other apparatus/resource

NN None

UU Undetermined



<b>A</b>		FDID <b>03010</b> *		State <b>CA</b> *		Incident Date <b>10/18/2022</b> *		Station <b>162</b>		Incident Number <b>22-0029880</b> *		Exposure <b>000</b> *		<input type="checkbox"/> Delete <input type="checkbox"/> Change		NFIRS - 10 Personnel	
<b>B Apparatus or Resource *</b>		<b>Date and Times</b> <small>Check if same as alarm date</small> Month Day Year Hours/mins						<b>Sent</b> <input checked="" type="checkbox"/>		<b>Number of * People</b>		<b>Use</b> <small>Check ONE box for each apparatus to indicate its main use at the incident.</small>		<b>Actions Taken</b> <small>List up to 4 actions for each apparatus and each personnel.</small>			
Use codes listed below <b>1</b> ID <b>E5610</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
6600A		Mule Creek Engine Crew 4, Personnel				X											
<b>2</b> ID <b>E6234</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
8101		Mackey, Ken		FC		X											
<b>3</b> ID <b>E6235</b> Type <b>11</b>		Dispatch <input checked="" type="checkbox"/> <b>10/18/2022 12:43</b> Arrival <input checked="" type="checkbox"/> <b>10/18/2022 12:51</b> Clear <input checked="" type="checkbox"/> <b>10/18/2022 13:15</b>		Sent <input checked="" type="checkbox"/>		Number of * People <b>1</b>		<input type="checkbox"/> Suppression <input type="checkbox"/> EMS <input checked="" type="checkbox"/> Other		<div style="border: 1px solid black; width: 30px; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 20px;"></div>							
<b>Personnel ID</b>		<b>Name</b>		<b>Rank or Grade</b>		<b>Attend</b> <input checked="" type="checkbox"/>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>		<b>Action Taken</b>			
0703		Bennett, James		FAE		X											





(CDCR) Mule Creek  
State Prison

Station: **ST1**  
Shifts Or Platoon: **A Shift**

Location: <b>10100 Five Mile DR Ione CA 95640</b>	Incident Type: <b>400 - Hazardous condition, other</b>
Lat/Long: <b>N 38° 21' 27.44" W 120° 57' 51.87"</b>	FDID: <b>03410</b> Incident #: <b>2022-362</b> Exposure ID: <b>69295537</b> Exposure #: <b>0</b> Incident Date: <b>10/18/2022</b> Dispatch Run #: <b>caaeu029880</b>
Location Type: <b>1 - Street address</b>	

Report Completed by:	Deaton, Justin	ID:	Date: 10/19/2022
Report Reviewed by:	Sackett, Kevin	ID:	Date: 10/19/2022
Report Printed by:	Sackett, Kevin	ID:	Date: 10/19/2022 Time: 12:54

Structure Type:	Property Use: <b>647 - Water utility</b>		
Automatic Extinguishment System Present: <input type="checkbox"/>	Detectors Present: <input type="checkbox"/>	Cause of Ignition:	
Aid Given or Received:	<b>Mutual aid given</b>	Primary action taken: <b>86 - Investigate</b>	
<b>Mutual AID</b>	Their FDID: <b>3010</b>	Their State: <b>CA</b>	Their Incident #: <b>029880</b>
<b>Losses</b>	<b>Pre-Incident Values</b>		
Property:	Property:	Civilian Injuries: <b>0</b>	Fire Service Injuries: <b>0</b>
Contents:	Contents:	Civilian Fatalities: <b>0</b>	Fire Service Fatalities: <b>0</b>
Total:	Total:	Total Casualties: <b>0</b>	Total Fire Service Casualties: <b>0</b>
Total # of apparatus on call:	<b>1</b>	Total # of personnel on call:	<b>3</b>

<b>Special Studies</b>	
COVID 19 was a factor in this incident.	No, COVID 19 was not a factor.

<b>Neighboring Agencies</b>	
Agency Name: City Of Ione Fire Department	
Agency ID: ION	
Agency Type: Fire	

<b>NARRATIVE (1)</b>
<b>Narrative Title:</b> Haz/Gas Incident
<b>Narrative Author:</b> Deaton, Justin
<b>Narrative Date:</b> 10/19/2022 09:59:05
<b>Narrative Apparatus ID:</b> 5610
<b>Narrative:</b> <p>On October 18, 2022 @ approximately 1243 hrs. while performing my duties as, Institutional Fire Captain, I J. Deaton, was dispatched by ECC Camino for a Hazardous Condition / Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in E-5610 with staffing of Three. Upon arrival I reported to the I.C. for assignment and simultaneously had a face to face with Reporting Party. I was assigned to utilize a MSA Altair 4x multi gas detector in the affected area, (Findings: Comb/Ex 14, O2 20.4%, CO 0, H2S 1) triggering the detectors alarm. Upon completion of the investigation, findings, and communication with the RP, the I.C. released all units and terminated the incident @ approximately 1318 Hrs. I returned to quarters without incident. Upon arrival at institution I notifying ECC Camino and Main Control that E-5610 was back on grounds with three, in quarters, and available.</p> <p>Per RP, I was requested to return to the incident location the following morning @ 0645 hrs. for further investigation and to note any situation changes.</p>



**NARRATIVE (2)****Narrative Title:** Follow Up**Narrative Author:** Deaton, Justin**Narrative Date:** 10/19/2022 10:04:48**Narrative Apparatus ID:** 5610**Narrative:**

On October 19, 2022 @ approximately 0645 hrs. while performing my duties as, Institutional Fire Captain, I J. Deaton, as requested by RP from yesterdays incident returned to Hazardous Condition/ Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in E-5610 with staffing of Three. Upon arrival, I had a face to face with the Reporting Party, who stated, that they had turned the affected areas equipment off yesterday after findings and recently turned the equipment back on this morning for further investigation. At this time, (weather conditions: Temp 61, Humidity 43%, Winds SSE 1, DP 39), I utilize a MSA Altair 4x multi gas detector in the affected area, (Findings: Comb/Ex 16, O2 20.8%, CO 0, H2S 18) triggering detectors alarm and showing increases from yesterdays findings. Upon completion of the investigation, findings, and communication with the RP, I exited the premises and returned to quarters without incident. Upon arrival at institution, I notified Main Control that E-5610 was back on grounds with three, returning to quarters and available.

**NARRATIVE (3)****Narrative Title:** Haz/GAS Incident**Narrative Author:** Sackett, Kevin**Narrative Date:** 10/19/2022 12:52:34**Narrative Apparatus ID:** C5600**Narrative:**

On October 18, 2022 @ approximately 1243 hrs. while performing my duties as, Institutional Fire Chief, I K Sackett, was dispatched by ECC Camino for a Hazardous Condition / Gas Odor @ 10100 Five Mile Dr. in Ione city limits. I responded in C-5600 with staffing of one. Upon arrival I reported to the I.C. and simultaneously had a face to face with Reporting Party ( Todd Waklee) that stated that he used his gas monitor and found high readings of H2S gas. Fire Captain Deaton was assigned to utilize a MSA Altair 4x multi gas detector in the affected area, When he returned he reported reading of Comb/Ex 14, O2 20.4%, CO 0, H2S 1 the reading triggered the detectors alarm for high Combustibles/ Explosives. Upon completion of the investigation, findings, and communication with the RP, the scene was turned over to Todd Waklee Public Works Manager. The I.C. released all units and terminated the incident.

**APPARATUS**

<b>Unit</b>	5610
<b>Type:</b>	Engine
<b>Use:</b>	Suppression
<b>Response Mode:</b>	No Lights or Sirens
<b># of People</b>	3
<b>Alarm</b>	10 /18/2022 12:42:00
<b>Dispatched</b>	10 /18/2022 12:43:00
<b>Enroute</b>	-- / -- / -- -- : -- : --
<b>Arrived</b>	10 /18/2022 12:47:00
<b>Cancelled</b>	-- / -- / -- -- : -- : --
<b>Cleared Scene</b>	10 /18/2022 13:18:00
<b>In Quarters</b>	-- / -- / -- -- : -- : --
<b>In Service</b>	-- / -- / -- -- : -- : --
<b>Number Of People not on apparatus:</b> 0	

Member Making Report (Captain Justin Deaton): \_\_\_\_\_

Incident Reviewer (Chief Kevin Sackett): \_\_\_\_\_



Treatment  
Incident  
Photo # 1











Photo # 3



# EXHIBIT B



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**From:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>  
**Sent:** Friday, October 21, 2022 11:09 AM  
**To:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>  
**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org); Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>  
**Subject:** RE: Lone Tertiary Plant - H2S over 200 ppm

Mr. Epperson, thank you for your email.

As you are aware the Regional Water Board oversees the permitting of wastewater plants throughout the region. As part of our responsibility, we inspect various facilities for compliance. One area we look at if there are compliance concerns, like the City of Lone is facing today, are the Standard Operating Procedures that a plant follows when there is an upset. Those SOPs provide a step-by-step procedures the facility can follow during times of upset. Yesterday I sent Mr. Rock two requests for those documents. The operator should have those available at moment's notice. If the Regional Board had those SOPs, we could easily review and understand the city's process to resolve the issue.

The design of Preston Reservoir and the CDCR reservoirs piping are identical. The inlet to the draft pipe is at the bottom of the reservoirs. Both reservoirs store secondary treated effluent. Where in the process is hydrogen sulfide produced? Is the high hydrogen sulfide event the result of delayed extraction from Preston? Would this same condition occurred if Preston was drained first prior to CDCR sending water? The Regional Board is just trying to better understand the problems with the wastewater using laboratory samples from a certified laboratory. The city requested a comfort letter because of the expectation of hydrogen sulfide in the wastewater. The comfort letter was issued on 9 September 2022. The city knew the expectation of the Board with respect to monitoring the plant during "high hydrogen sulfide" events. Does the city have a contract in place with Perc or an environmental consulting firm to collect these samples? Please provide a date when data can be collected and results available.

It is responsible that you have concerns about an explosion and your workers having health effects. Has the city reached out to OSHA to report this incident? To help you, here is the list of CalOSHA sites with their phone numbers: [https://www.dir.ca.gov/dosh/ca\\_map\\_counties2.pdf](https://www.dir.ca.gov/dosh/ca_map_counties2.pdf). They can be a resource. With your concerns about explosion, is the fire department onsite monitoring it until the threat has abated? Has the city notified the nearby residents of Castle Oaks Golf Course, or those along Five Mile Road. Isn't there a home that sits just across the creek from the wastewater plant. Have these people been notified of the situation? If so, when? Are they receiving updates on the situation? That information should be in your emergency plan/SOP.

We all heard during the 3 October 2022 meeting with all the parties that ARSA was willing to provide pretreatment (i.e., dosing) to eliminate the problem. What is the status of that effort. ARSA seemed more than willing to do their part. Why isn't the city receptive to their offer? With that said CDCR understood the statements made by the Executive Officer and together with ARSA they have begun to deploy water cannons to aid in the evaporation. Your point about the sludge is one that will be addressed when the water levels reach the appropriate levels. You should be aware that the City of Ione, ARSA, and the Castle Oaks Golf Course are named in the Regional Board's permit, as well as the revised MRP. Therefore, there is a shared responsibility for compliance. All parties need to work together to find a solution. Cooperation during the plant upset is something the Regional Board will take into consideration with any future compliance action.

Looking forward to receiving the requested information. Until the situation is resolved, please have Mr. Rock provide daily updates by email. Perfect Regards,

Howard Hold, PG #7466  
Senior Engineering Geologist  
Title 27 and WDR Compliance and Enforcement Unit  
Central Valley, Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Our office is currently teleworking. Please submit all contact by email. Thank you

[hhold@waterboards.ca.gov](mailto:hhold@waterboards.ca.gov)

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**From:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>

**Sent:** Friday, October 21, 2022 8:56 AM

**To:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>

**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)

**Subject:** Re: Ione Tertiary Plant - H2S over 200 ppm

Mr. Hold,

Pardon my ignorance in the matters of meters and science. If our warning meters are maxing out, is the City of Ione supposed to ignore the dangers indicated? I am deeply concerned for the health and safety of our staff and operators.

We have every intention to fully comply with The Boards demands but risking the health and safety of our staff due to the negligence of our partner agencies is terrifying. The board demanded ARSA clean out the ponds in 2017. ARSA's inaction is a major factor as to how situation has arisen to the level it has. By their own admission ARSA's contracted ponds are 30% full of sludge currently.

Sorry for my bluntness but I am worried about an explosion or other injuries from toxic gases that our systems alarms have indicated at our head works. I will check with staff ASAP regarding the lab tests and chain of custody issues. Thank you hearing my concerns.

Sincerely,

Dan Epperson

Mayor of the City of Ione

Dan Epperson

Mayor of Ione

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**From:** Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>

**Sent:** Thursday, October 20, 2022 4:50:50 PM

**To:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>; Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>

**Cc:** Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>; Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org) <[smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)>

**Subject:** RE: Ione Tertiary Plant - H2S over 200 ppm

Mr. Rock, et. al thank you for your update that you sent to comply with the comfort letter (see attached) that was issued by our assistant executive officer on 9 September 2022. As I read your email, it appears the samples are only results from a field meter. A field meter is appropriate as a screening tool, to evaluate the situation. However, the Assistant Executive Officer required in the comfort letter a certified laboratory analyze the gas samples, using proper chain of custody procedures, when high gas levels exist.

Item 5 states: *"All previous and future water quality and air samples, including a chain of custody and monitoring locations, for all samples collected to verify high hydrogen sulfide and turbidity. This shall be reported to [Kari.Holmes@waterboards.ca.gov](mailto:Kari.Holmes@waterboards.ca.gov);"*

Again, the Regional Board appreciates the notifications and the updates, but when will we receive the required data from a certified laboratory using the proper chain of custody?

This morning I reached out to you and request a copy of the facilities SOPs, which still have not been received. When should I expect to see those document?

Finally, anytime there is a hazardous substance released to the air, ground or water the Office of Emergency Services must be notified. Has your operator filed a report with OES. I have not seen a copy of the report come across my desk yet.

Compliance is a challenge at times, thank you for your attention to these issues.

Howard Hold, PG #7466

Senior Engineering Geologist  
Title 27 and WDR Compliance and Enforcement Unit  
Central Valley, Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Our office is currently teleworking. Please submit all contact by email. Thank you

[hhold@waterboards.ca.gov](mailto:hhold@waterboards.ca.gov)

---

**From:** Michael Rock <[mrock@ione-ca.com](mailto:mrock@ione-ca.com)>

**Sent:** Thursday, October 20, 2022 3:59 PM

**To:** Baum, John@Waterboards <[John.Baum@Waterboards.ca.gov](mailto:John.Baum@Waterboards.ca.gov)>; Holmes, Kari@Waterboards <[kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov)>; Croyle, Kenny@Waterboards <[Kenny.Croyle@Waterboards.ca.gov](mailto:Kenny.Croyle@Waterboards.ca.gov)>; Hold, Howard@Waterboards <[Howard.Hold@waterboards.ca.gov](mailto:Howard.Hold@waterboards.ca.gov)>; Amy Gedney <[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)>; [smeyer@amadorgov.org](mailto:smeyer@amadorgov.org)

**Cc:** Dan Epperson <[Depperson@ione-ca.com](mailto:Depperson@ione-ca.com)>; Rodney Plamondon <[rplamondon@ione-ca.com](mailto:rplamondon@ione-ca.com)>; Dominic Atlan <[datlan@ione-ca.com](mailto:datlan@ione-ca.com)>; Diane Wratten <[dwratten@ione-ca.com](mailto:dwratten@ione-ca.com)>; Stacy Rhoades <[srhoades@ione-ca.com](mailto:srhoades@ione-ca.com)>; Todd Waklee <[twaklee@ione-ca.com](mailto:twaklee@ione-ca.com)>; Brett Moroz <[bmoroz@percwater.com](mailto:bmoroz@percwater.com)>; Orta, Anthony@CDCR <[Anthony.Orta@cdcr.ca.gov](mailto:Anthony.Orta@cdcr.ca.gov)>

**Subject:** lone Tertiary Plant - H2S over 200 ppm

EXTERNAL:

Kari:

Today's readings from Lone Fire Department indicate the LEL is 3% which is in compliance. However, the H2S (Hydrogen Sulfide) reading at the top of the stairs at the Headworks was 200+ ppm. The MSA ALTAIR 4X Multigas (Canary) device for reading the LEL levels only goes up to 200 ppm and the needle was maxed out. Mule Creek Fire Department data is identical to Lone Fire Department Report that is attached. I will have the Mule Creek data sent tomorrow.

Even at the bottom of the stairs of the Headworks the H2S was 134 ppm. Maximum general industry peak levels for H2S is 50 ppm. Maximum general industry ceiling limits is 20 ppm. PERC and West Yost both believe there is methane gas present.

The odor for staff at the Tertiary Plant is overwhelming and thus we cannot operate today either.

We have now received 7 formal written or phone call complaints from residents in Castle Oaks regarding the odor. Most of the residents submitting a complaint live on Shakeley Lane near the Tertiary Plant. A direct phone call I received at 8:45 am today was from Michael Politi who lives on Shakeley Lane. He said the odor was quite strong and he was not able to be in his backyard.

Michael

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Attorneys for Plaintiff  
AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

AMADOR REGIONAL SANITATION  
AUTHORITY, a California joint powers  
agency,

Plaintiff,

v.

CITY OF IONE, a California municipal  
corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

DECLARATION OF MATTHEW L. GREEN  
IN SUPPORT OF EX PARTE  
APPLICATION FOR ORDER TO SHOW  
CAUSE RE CONTEMPT AND SANCTIONS

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 I, Matthew L. Green, declare as follows:

2 1. I have personal knowledge of the following facts, and if called to testify, I would  
3 and could testify competently thereto.

4 2. I am an attorney at law duly licensed to practice before all of the courts of the State  
5 of California. I am Of Counsel at Best Best & Krieger LLP, attorneys of record for Plaintiff Amador  
6 Regional Sanitation Authority ("ARSA"). As one of the attorneys for ARSA, I am familiar with  
7 the proceedings in the above-entitled action.

8 3. On October 26, 2022, at 9:39 a.m., I notified Defendant City of Ione's counsel,  
9 specifically Theresa C. Barfield, Michelle E. Chester, David A. Prentice, Margaret Long, and  
10 Carolyn Walker, by electronic mail that ARSA would be presenting to the Court, at a time and date  
11 to be determined by the Court, in Department 1 an ex parte application for an order requiring Ione  
12 to show cause why it should not be held in contempt of this Court's October 10, 2022, order and  
13 preliminary injunction, and why money sanctions in the amount of fifteen hundred dollars (\$1,500)  
14 per day should not be imposed against it. A copy of my electronic mail to all of Ione's counsel is  
15 attached as Exhibit "A" to this declaration. Although ARSA's ex parte application does not seek  
16 any relief against Defendant California Department of Corrections and Rehabilitation, I also copied  
17 its counsel, Adam K. Guernsey, on my ex parte notice electronic mail.

18 4. As of the time of the execution of this declaration, no response has been received,  
19 but opposition is expected.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing  
21 is true and correct.

22 Executed this 26th day of October 2022, at San Diego, California.

23   
24 \_\_\_\_\_

MATTHEW L. GREEN



# EXHIBIT A

**Lisa Atwood**



---

**From:** Matthew Green  
**Sent:** Wednesday, October 26, 2022 9:39 AM  
**To:** Theresa Barfield; 'Michelle Chester'; 'david@prenticelongpc.com'; 'Margaret Long'; Carolyn@prenticelongpc.com  
**Cc:** 'Adam Guernsey'; Frank Splendorio; Lisa Atwood  
**Subject:** Amador Regional Sanitation Authority v. City of Lone, Case No. 22CV12824 - Notice of ARSA's Ex Parte Application for OSC re Contempt and Sanctions Against City of Lone

Dear Counsel,

Pursuant to the California Rules of Court, rule 3.1204, subdivision (a), Plaintiff Amador Regional Sanitation Authority will be presenting to the Court, at a time and date to be determined by the Court, in Department 1 of the Superior Court of California, County of Amador, located at 500 Argonaut Lane in Jackson, California, an ex parte application for an order requiring Defendant City of Lone to show cause why it should not be held in contempt of this Court's October 10, 2022, order and preliminary injunction, and why money sanctions in the amount of fifteen hundred dollars (\$1,500) per day should not be imposed against it. Please advise whether the City of Lone intends to appear to oppose the application.



**Matthew Green**  
Of Counsel  
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8 Sacramento, California 95814  
Telephone: (916) 325-4000  
9 Facsimile: (916) 325-4010

10  
11 Attorneys for Plaintiff  
12 AMADOR REGIONAL SANITATION AUTHORITY

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF AMADOR

15  
16 AMADOR REGIONAL SANITATION  
17 AUTHORITY, a California joint powers  
agency,

18 Plaintiff,

19 v.

20 CITY OF IONE, a California municipal  
21 corporation; CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
22 REHABILITATION, a California state  
agency; and DOES 1 through 20, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV12824  
Judge: Hon. J.S. Hermanson

[PROPOSED] ORDER TO SHOW CAUSE  
RE CONTEMPT AND SANCTIONS

Date:  
Time:  
Dept.: 1

Complaint Filed: September 20, 2022

1 TO DEFENDANT CITY OF IONE:

2 Plaintiff Amador Regional Sanitation Authority ("ARSA") having presented to this Court  
3 sufficient grounds to initiate a contempt proceeding, you are ordered to appear on  
4 \_\_\_\_\_, 2022, at 8:30 a.m. in Department 1 of this Court located at 500 Argonaut  
5 Lane, Jackson, California 95642 to show cause why you should not be held in contempt of this  
6 Court's order, dated October 10, 2022, requiring you to immediately accept 500,000 gallons of  
7 wastewater per day from Preston Reservoir for 30 days, for a total of 15 million gallons, pending  
8 trial in this action, and why money sanctions in the amount of fifteen hundred dollars (\$1,500) per  
9 day should not be imposed against you.

10 IT IS FURTHER ORDERED THAT:

11 This Order to Show Cause shall be served on Defendant City of Ione ("Ione") by personal  
12 service or in some other manner that ensures formal notification of the contempt charge and the  
13 time and place of the hearing no later than \_\_\_\_\_, 2022. Proof of such service  
14 shall be filed at least \_\_\_\_\_ court days prior to the hearing.

15 Any opposition papers to the Order to Show Cause shall be filed and served on ARSA by  
16 electronic mail and overnight mail no later than \_\_\_\_\_, 2022. Any reply papers  
17 to the opposition shall be filed and served on Ione by electronic mail and overnight mail no later  
18 than \_\_\_\_\_, 2022.

19  
20 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT