

1 ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

** FILED **
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U.S.EPA - Region 09

3 IN THE MATTER OF:) Docket No. SDWA-09-2019-0041
4)
5 Land Projects Mutual Water Company)
6 Public Water System,)
7 Respondent.)
8 California PWS ID No. CA1910246)
9 Proceedings pursuant to Sections 1414(g) of)
10 the Safe Drinking Water Act, 42 U.S.C. §)
300g-3(g).)

**CONSENT AGREEMENT
AND
FINAL ORDER**

11 **CONSENT AGREEMENT**

12 **I. AUTHORITY**

13 1. This Consent Agreement is entered into and the [Proposed] Final Order (“CA/FO”) is
14 issued under the authorities vested in the Administrator of the United States Environmental
15 Protection Agency (“EPA”) by Section 1414(g)(3)(B) of the Safe Drinking Water Act
16 (“SDWA”), 42 U.S.C. § 300g-3(g)(3)(B).
17

18 2. The Administrator has delegated the authority to enter into this CA/FO to EPA
19 Region IX’s Regional Administrator. The Regional Administrator in turn has delegated the
20 authority to enter into this Consent Agreement to the EPA Region IX Enforcement Division’s
21 Director.

22 3. In accordance with this authority, and with the “Consolidated Rules of Practice
23 Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or
24 Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the
25 Director of the Enforcement Division, EPA Region IX, and Land Projects Mutual Water

1 Company (“Respondent”), together referred to as “the Parties,” hereby agree to this Consent
2 Agreement’s terms and to the issuance of the proposed Final Order.

3 4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), where the Parties here have
4 agreed to settlement before EPA Region IX’s filing of a complaint, this proceeding is
5 simultaneously commenced by the issuance of this Consent Agreement and concluded by the
6 Final Order that ratifies the Parties’ Consent Agreement.

7 5. Part II of this CA/FO contains a concise statement of the factual and legal basis for the
8 alleged violations of the SDWA, together with the specific provisions of the SDWA and
9 implementing regulations that Respondent is alleged to have violated, in accordance with
10 40 C.F.R. § 22.18(b)(2).

11 **II. STIPULATIONS AND FINDINGS**

12 EPA alleges the following:

13 1. Respondent is a California corporation and thus a “person” within the meaning of Section
14 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3

15 2. Respondent owns and/or operates a system known to EPA as the “Land Projects Mutual
16 Water Company Public Water System” (hereinafter referred to as the “System”), located at 8810
17 West Avenue E-8, Lancaster, California, for the provision to the public of piped water for human
18 consumption.

19 3. The System sources its drinking water from four ground water wells referred to as Wells
20 Nos. 1, 3, 5 and 8. The System serves an average of 1,500 year-round residents daily through
21 approximately 539 service connections.

22 4. Since the System has at least 15 service connections used by year-round residents or
23 regularly serves at least 25 year-round residents, it is a “public water system” as that term is
24 defined in Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a “community water system”
25

1 as that term is defined in Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. §
2 141.2.

3 5. As an owner and/or operator of a public water system, Respondent is a “supplier of
4 water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40
5 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the SDWA, 42
6 U.S.C. § 300g *et seq.*, and its implementing regulations at 40 C.F.R. part 141.

7 6. On January 22, 2001, EPA lowered the arsenic MCL specified at 40 C.F.R. § 141.62(b)
8 from 50 micrograms per liter (“ug/L”) to the current arsenic MCL of 10 ug/L.

9 7. 40 C.F.R. § 141.6(j) provides that the current arsenic MCL of 10 ug/L specified at 40
10 C.F.R. § 141.62(b) became effective for the purpose of compliance on January 23, 2006.

11 8. On March 23, 2017, EPA entered into an Administrative Order on Consent with
12 Respondent (Docket No. PWS-AOC-2017-6001) (“the Order”), pursuant to EPA’s authority
13 under SDWA § 1414(g), 42 U.S.C. § 300g-3(g), which required, *inter alia*, that Respondent
14 provide drinking water that meets the arsenic MCL to all of its customers by January 31, 2019.

15 9. On January 31, 2019, Respondent informed EPA that that System would not meet the
16 Order’s January 31, 2019 deadline for providing drinking water that meets the arsenic MCL of
17 10 ug/L to all of its customers.

18 10. To the present date, the System remains out of compliance with the arsenic MCL of 10
19 ug/L based on the analytical results of sampling performed at the System in all four quarters of
20 2018 that show running annual average levels of arsenic of 14 ug/L, 15 ug/L, 11 ug/L, and 9
21 ug/L in Wells Nos. 1, 3, 5 and 8, respectively.

22 11. Pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and 40
23 C.F.R. § 19.4, any person who violates or refuses to comply with an administrative order issued
24 pursuant to EPA’s authority under SDWA § 1414(g), 42 U.S.C. § 300g-3(g), shall be liable to
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1 the United States for an administrative civil penalty of not more than thirty-nine thousand nine
2 hundred and thirty-six dollars (\$39,936).

3
4 **III. SETTLEMENT TERMS**

5 The Parties agree as follows:

6 **A. General Provisions**

7 12. Respondent admits the jurisdictional allegations contained in this CA/FO, and agrees not
8 to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO or
9 to enforce this CA/FO's terms.

10 13. Respondent admits the specific factual allegations set forth in this CA/FO.

11 14. Respondent consents to the issuance of this CA/FO and the conditions specified herein,
12 including the assessment and payment of the administrative civil penalty in accordance with this
13 CA/FO's terms.

14 15. Respondent waives any right to a hearing under Section 1414(g)(3)(B) of the SDWA, 42
15 U.S.C. § 300g-3(g)(B), and waives any and all remedies, claims for relief and otherwise
16 available rights to judicial or administrative review that Respondent may have with respect to
17 any issue of fact or law set forth in this CA/FO, including any rights of judicial review under the
18 SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review
19 of final agency action.

20 16. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
21 agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the
22 specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which
23 includes payment of administrative civil penalties, shall constitute full settlement only of
24 Respondent's liability for federal civil penalties for the SDWA violations specifically identified
25 in this CA/FO, but only up to the date that the Final Order is filed.

1 17. This CA/FO's provisions shall apply to and be binding upon Respondent, and upon any
2 successor agencies or other entities or persons otherwise bound by law. Action or inaction of any
3 persons, firms, contractors, employees, agents, or corporations acting under, through, or for
4 Respondent shall not excuse any failure of Respondent to fully perform its obligations under this
5 CA/FO.

6 18. This CA/FO's issuance does not in any case affect EPA's right to pursue appropriate
7 injunctive or other equitable relief or criminal sanctions for any violations of law, including any
8 SDWA violations occurring after entry of the Final Order.

9 19. This CA/FO is not a permit or modification of a permit, and does not affect
10 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
11 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
12 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
13 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
14 except as specifically set forth herein.

15 20. This CA/FO does not constitute a waiver, suspension, or modification of the requirements
16 of any federal, state, or local statute, regulation or condition of any permit issued thereunder,
17 including the requirements of the Act and accompanying regulations.

18 21. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO,
19 as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any
20 actions against Respondent for noncompliance with this CA/FO.

21 22. Unless otherwise specified, the Parties shall each bear their own costs and attorneys fees
22 incurred in this proceeding.

23 23. This Consent Agreement may be executed and transmitted by facsimile, email or other
24 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
25 of which shall constitute an instrument. If any portion of this Consent Agreement is determined

1 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
2 portions shall remain in full force and effect.

3 24. The undersigned representative of each party certifies that he or she is duly and fully
4 authorized to enter into and ratify this Consent Agreement.

5 **B. Penalty**

6 25. Respondent agrees to pay to the United States an administrative civil penalty of four
7 thousand, one-hundred ninety-three dollars (\$4,193) no later than 30 days following the Effective
8 Date of the Final Order. The penalty payment date is hereafter referred to as the "Due Date."

9 26. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer,
10 Automated Clearing House (ACH), or online payment. Payment instructions are available at:
11 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
12 check must be payable to the order of "Treasurer, United States of America" and delivered to the
13 following address:

14 U.S. Environmental Protection Agency
15 Fines and Penalties
16 Cincinnati Finance Center
17 P.O. Box 979077
18 St. Louis, Missouri 63197-9000

19 27. Respondent must provide a letter with evidence of the payment made pursuant to
20 Paragraph 26 above, accompanied by this action's title and docket number, to the EPA Region
21 IX Regional Hearing Clerk and the EPA Region IX Enforcement Division Compliance Officer
22 via United States mail, at the following addresses:

23 Regional Hearing Clerk
24 U.S. Environmental Protection Agency
25 Region IX - Office of Regional Counsel
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

Christopher Chen, Compliance Officer
U.S. Environmental Protection Agency
Region IX - Enforcement Division
75 Hawthorne Street (ENF-3)
San Francisco, CA 94105

1 28. If the full penalty payment is not received on or before the due date, interest shall accrue
2 on any overdue amount from the due date through the date of payment, at the annual rate
3 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a \$15.00
4 late payment handling charge will be assessed for each 30-day period (or any portion thereof)
5 following the due date in which the balance remains unpaid. A six percent per annum penalty
6 will also be applied on any principal amount not paid within ninety (90) days of the due date.
7 Respondent shall tender any interest, handling charges, or late penalty payments in the same
8 manner as described above.

9 29. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if Respondent
10 fails to pay by the due date the administrative civil penalty assessed in this CA/FO, EPA may
11 bring a civil action in an appropriate district court to recover the amount assessed (plus costs,
12 attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of such
13 penalty shall not be subject to review.

14 30. Respondent shall not deduct the civil penalty, nor any interest, late penalty payments, or
15 administrative handling fees provided for in this CA/FO from Respondent's federal, state, or
16 local income taxes.

17 **IV. EFFECTIVE DATE**

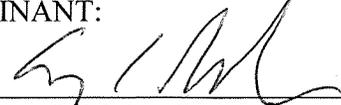
18 31. The "Effective Date" of the CA/FO shall be the date that the Final Order is filed.
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20 FOR THE CONSENTING PARTIES:

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22 RESPONDENT LAND PROJECTS MUTUAL WATER COMPANY:

23 BY: *Costy Von Massenbach* DATE: 5/14/2019
24 NAME (printed): Costy Von Massenbach
25 TITLE: President

1 COMPLAINTANT:

2 BY:  _____

DATE: 6/17/19

3 Amy C. Miller, Director
4 Enforcement Division
United States Environmental Protection Agency, Region IX

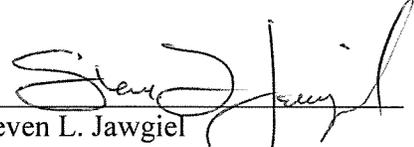
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8 Of counsel:

9 Rich Campbell
10 Attorney-Advisor
Office of Regional Counsel
11 U.S. Environmental Protection Agency, Region IX
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1 ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

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4 IN THE MATTER OF:) Docket No.: SDWA-09-2019-0041
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6 Land Projects Mutual Water Company)
Public Water System,)
7 Respondent.) **FINAL ORDER**
8)
9 California PWS ID No. CA1910246)
10 Proceedings pursuant to Sections 1414(g) of)
the Safe Drinking Water Act, 42 U.S.C. §)
300g-3(g).)

11 It is Hereby Ordered that the foregoing Consent Agreement and this Final Order (U.S.
12 EPA Docket No. SDWA-09-2019-0041) be entered and that Respondent shall pay a civil penalty
13 in the amount of four thousand one hundred and ninety-three dollars (\$4,193) in accordance with
14 the terms of this Consent Agreement and Final Order.

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16 BY:  DATE: 06/24/19
17 Steven L. Jawgiel
Regional Judicial Officer
18 EPA - Region IX
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the CONSENT AGREEMENT and FINAL ORDER, Docket No. SDWA-9-2019-0041, was delivered as follows:

Via certified mail delivery to:

Costy Von Massenbach
President, Board of Directors
Land Projects Mutual Water Company
8810 West Avenue E-8
Lancaster, CA 93536

Date: June 25, 2019 By: Steven Armsay
Regional Hearing Clerk
Office of Regional Counsel
EPA Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MEMORANDUM

FROM: Rich Campbell, Attorney-Advisor
TO: Steven Armsey, Regional Hearing Clerk
DATE: June 20, 2019
SUBJECT: *In re Land Projects Mutual Water Company*, Docket No. SDWA-09-2019-0041
Re: Inapplicability of 40 C.F.R. § 22.45(b) Requirements

No public notice of this proceeding is required under either the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., its implementing regulations at 40 C.F.R. Part 141, or the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. Part 22, including 40 C.F.R. § 22.45(b).