

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region IX

**** FILED ****
30SEP2015 - 10:45AM
U.S.EPA - Region 09

3 RICH CAMPBELL
Attorney-Advisor
4 United States Environmental Protection Agency, Region IX
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8
9 **ENVIRONMENTAL PROTECTION AGENCY**
REGION IX

10
11 IN THE MATTER OF:)

Docket No.: SDWA-9-2015- 0001

12)
13 Arvin Community Services District)
(California PWS ID. No. CA1510001))

14)
15 Respondent.)

CONSENT AGREEMENT
AND
[PROPOSED] FINAL ORDER

16 Proceedings under Section 1414(g) of the Safe)
17 Drinking Water Act, 42 U.S.C. § 300g-3(g).)

18
19 **CONSENT AGREEMENT**

20 **I. AUTHORITY**

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

25 2. The Administrator has delegated the authority to enter into this CA/FO to the Regional
Administrator of EPA Region IX. The Regional Administrator in turn has delegated the authority

1 to enter into this Consent Agreement to the Director of the Enforcement Division, EPA Region
2 IX.

3 3. In accordance with this authority, and with the “Consolidated Rules of Practice
4 Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or
5 Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the
6 Director of the Enforcement Division, EPA Region IX, and Arvin Community Services District,
7 (“Arvin CSD” or “Respondent”), together referred to as “the Parties,” hereby agree to the terms
8 of this Consent Agreement and to the issuance of the proposed Final Order.

9 4. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of this
10 CA/FO commences this proceeding, which will conclude when the Final Order becomes
11 effective.

12 5. Part II of this CA/FO contains a concise statement of the factual and legal basis for the
13 alleged violations of the SDWA, together with the specific provisions of the SDWA and
14 implementing regulations that Respondent is alleged to have violated, in accordance with
15 40 C.F.R. § 22.18(b)(2).

16 **II. STIPULATIONS AND FINDINGS**

17 EPA alleges the following:

18 1. Respondent owns and/or operates a system known to EPA as the “Arvin Community
19 Services District public water system” (hereinafter referred to as the “System”), located at 309
20 Campus Drive, Kern County, California, 93203, for the provision to the public of piped water for
21 human consumption.

22 2. The System has at least 15 service connections used by year-round residents or regularly
23 serves at least 25 year-round residents and is therefore 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 3. 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 4. The source of the System’s water is ground water from seven active wells referred to as
8 Wells Nos. 1, 5, 6, 8, 9, 10 and 11. The System serves an average of about 20,000 year-round
9 residents daily through approximately 3,760 service connections.

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

12 6. 40 C.F.R. § 141.6(j) provides that the current arsenic MCL of 10 ug/L specified at 40
13 C.F.R. § 141.62(b) became effective for the purpose of compliance on January 23, 2006.

14 7. On October 23, 2008, EPA issued an Administrative Order (Docket No. PWS-AO-2008-
15 6021) (**Attachment A**), pursuant to EPA’s authority under SDWA § 1414(g), 42 U.S.C. § 300g-
16 3(g), to Respondent that required Respondent to, *inter alia*, meet the arsenic MCL of 10 ug/L, as
17 required under 40 C.F.R. §§ 141.62(b), no later than December 31, 2010.

18 8. In response to Respondent’s October 26, 2010 request, EPA amended the Administrative
19 Order to require that Respondent meet the arsenic MCL no later than December 31, 2014
20 (**Attachment B**).

21 9. On February 6, 2015, Respondent submitted the analytical results of quarterly arsenic
22 monitoring for the fourth quarter of 2014 for each of the System’s seven wells. The running
23 annual average of arsenic in drinking water at each of these wells, after incorporating the 2014
24 fourth quarter results of arsenic monitoring, showed levels of arsenic above the arsenic MCL in
25

1 six of the seven wells: 25 ug/L in Well No. 1; 31 ug/L in Well No. 5; 17 ug/L in Well No. 6; 27
2 ug/L in Well No. 8, 9.8 ug/L in Well No. 9, 14 ug/L in Well No. 10, and 12 ug/L in Well No. 11.

3 10. By its failure to bring its System into compliance with the arsenic MCL of 10 ug/L by
4 December 31, 2014, based on the 2014 fourth quarter results described above in Paragraph 9,
5 Respondent has failed to comply with the October 23, 2008 Administrative Order, as amended.

6 11. Pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and 40
7 C.F.R. § 19.4, any person who violates or refuses to comply with an administrative order shall be
8 liable to the United States for an administrative civil penalty of not more than thirty-seven
9 thousand five-hundred dollars (\$37,500).

10 **III. SETTLEMENT TERMS**

11 The Parties agree as follows:

12 **A. General Provisions**

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

16 13. Respondent neither admits nor denies the specific factual allegations set forth in this
17 CA/FO.

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

21 15. Respondent waives any right to a hearing under Section 1414(g)(3)(B) of the SDWA, 42
22 U.S.C. § 300g-3(g)(B), and waives any and all remedies, claims for relief and otherwise
23 available rights to judicial or administrative review that Respondent may have with respect to
24 any issue of fact or law set forth in this CA/FO, including any rights of judicial review under the
25

1 SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review
2 of final agency action.

3 16. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
4 agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the
5 specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which
6 includes payment of administrative civil penalties of \$14,750, shall constitute full settlement
7 only of Respondent's liability for federal civil penalties for the SDWA violations specifically
8 identified in this CA/FO.

9 17. The provisions of this CA/FO shall apply to and be binding upon Respondent, and upon
10 any successor agencies or other entities or persons otherwise bound by law. Action or inaction of
11 any persons, firms, contractors, employees, agents, or corporations acting under, through, or for
12 Respondent shall not excuse any failure of Respondent to fully perform its obligations under this
13 CA/FO.

14 18. Issuance of this CA/FO does not in any case affect the right of EPA to pursue
15 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

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

6 23. This Consent Agreement may be executed and transmitted by facsimile, email or other
7 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
8 of which shall constitute an instrument. If any portion of this Consent Agreement is determined
9 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
10 portions shall remain in full force and effect.

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

13 **B. Penalty**

14 25. Respondent agrees to pay to the United States an administrative civil penalty of fourteen
15 thousand, seven-hundred fifty dollars (\$14,750) no later than 30 days following the effective date
16 of the Final Order (hereafter referred to as the "Due Date").

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

22 U.S. Environmental Protection Agency
23 Fines and Penalties
24 Cincinnati Finance Center
25 P.O. Box 979077
St. Louis, Missouri 63197-9000

1 27. Respondent must provide a letter with evidence of the payment made pursuant to
2 Paragraph 26 above, accompanied by the title and docket number of this action, to the EPA
3 Region IX Regional Hearing Clerk, the EPA Region IX Enforcement Division Compliance
4 Officer, and the EPA Region IX Office of Regional Counsel attorney, via United States mail, at
5 the following addresses:

6 Regional Hearing Clerk
7 U.S. Environmental Protection Agency
8 Region IX - Office of Regional Counsel
9 75 Hawthorne Street (ORC-1)
10 San Francisco, CA 94105

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

11 Rich Campbell, Attorney
12 U.S. Environmental Protection Agency
13 Region IX - Office of Regional Counsel
14 75 Hawthorne Street (ORC-2)
15 San Francisco, CA 94105

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

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

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

4 **IV. EFFECTIVE DATE AND TERMINATION**

5 31. This CA/FO shall terminate only after Respondent has complied with all requirements of
6 this CA/FO, including payment of any interest and late fees, and after EPA has issued a written
7 notice of termination, which notice of termination shall be issued by EPA within 14 days after
8 receipt of confirmation of completion of the work specified herein. The "Effective Date" of the
9 CA/FO shall be the date that the Final Order is filed.

10
11 FOR THE CONSENTING PARTIES:

12
13 RESPONDENT ARVIN COMMUNITY SERVICES DISTRICT:

14 BY:  DATE: 9-9-15

15 TITLE: General Manager

16
17 COMPLAINANT:

18 BY:  DATE: 9/29/15

19 Kathleen H. Johnson, Director
20 Enforcement Division
21 United States Environmental Protection Agency, Region IX
22
23
24
25

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region IX

3 RICH CAMPBELL
Attorney-Advisor
4 United States Environmental Protection Agency, Region IX
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8
9 ENVIRONMENTAL PROTECTION AGENCY
REGION IX

11 IN THE MATTER OF:) Docket No.: SDWA-9-2015-0001
12)
13 Arvin Community Services District)
(California PWS ID. No. CA1510001))
14) ~~PROPOSED~~ FINAL ORDER
15 Respondent.) *SDJ*
16)
17 Proceedings under Section 1414(g) of the Safe)
Drinking Water Act, 42 U.S.C. § 300g-3(g).)

18
19 Whereas the United States Environmental Protection Agency, Region IX, and Respondent Arvin
20 Community Services District have entered into the foregoing Consent Agreement,

21 IT IS HEREBY ORDERED THAT:

- 22 1. The foregoing Consent Agreement and this Final Order (Docket No. PWS-9-2015-0001)
23 be entered; and
24 2. Respondent shall pay a civil penalty of \$14,750 dollars to the Treasurer of the United
25 States of America in accordance with the terms set forth in the Consent Agreement.

1 3. This Final Order shall become effective on the date that it is filed with the Regional
2 Hearing Clerk, United States Environmental Protection Agency, Region IX, San Francisco,
3 California.

4
5 BY:  DATE: 09/29/15
6 Steven L. Jawgiel
7 Regional Judicial Officer
8 EPA - Region IX
9 75 Hawthorne Street
10 San Francisco, California 94105
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF SERVICE

2
3 The undersigned hereby certifies that a copy of the CONSENT AGREEMENT and FINAL
4 ORDER was delivered as follows:

5
6 Via certified mail delivery to:

7 Alan Peake
8 1601 F St
9 Bakersfield, CA 93301
10 Office: 661-327-8461

11 Date: Sept. 30 2015

12 By: Steven Ramsey
13 Regional Hearing Clerk
14 Office of Regional Counsel
15 EPA Region IX