UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF Lion Pacific Investments, LLC; Diane Thurston Ramstead Trust; Richard Douglas Ramstead; and Julie Marie Ramstead Kaaawa, HI Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)	DOCKET NO. UIC-09-2008-0002 **CONSENT AGREEMENT** **AND** [PROPOSED] **FINAL ORDER**

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §§ 300h-2(c),300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, and with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 64 Fed. Reg. 40,176, Subpart I (July 23, 1999) (hereinafter "Consolidated Rules of Practice"), the Director of the Water Division, EPA Region IX, hereby issues, Lion Pacific Investments, LLC, through its manager, Robert Thurston; Diane Thurston Ramstead Trust, through its trustee, Diane Thurston Ramstead; Richard Douglas Ramstead; and Julie Marie Ramstead ("Respondents"), hereby agree to the issuance of, this Consent Agreement and Final Order ("CA/FO").

II. STIPULATIONS AND FINDINGS

Respondents stipulate, and EPA finds as follows:

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control ("UIC") programs, to prevent underground injection which endangers

drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

2. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3. 40 C.F.R. § 144.3 defines a "well" as "a subsurface fluid distribution system" and "well injection" as "the subsurface emplacement of fluids through a well."

3. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are required to be closed no later than April 5, 2005. "Large capacity cesspools" include "multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides". 40 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools or a non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. Id. A "cesspool," is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3

4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

5. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4, EPA may issue an order assessing an administrative civil penalty of not more than $11,000 for each day of each violation, up to a maximum penalty of $157,500, or requiring compliance, against any person who violates the Act or any requirement of an applicable UIC program. In assessing a penalty for such violations, EPA must take into account: (1) the seriousness of the violations; (2) the economic benefit resulting from the violations; (3) the history of such violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

6. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the requirements of the Act to submit information relating to such person's compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).

7. Lion Pacific Investments, LLC is a limited liability corporation. Diane Thurston Ramstead Trust is a trust. Richard Douglas Ramstead and Julie Marie Ramstead are individuals. Thus, Respondents are "persons" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

8. Respondents own and operate four (4) large capacity cesspools at 51-666 Kamehameha Highway, Kaaawa, HI.

9. Respondents did not close the large capacity cesspools referred to in paragraph 8 by April 5, 2005 as required by 40 C.F.R. § 144.88.

10. Respondents have initiated steps to close the four large capacity cesspools, and intend to complete closure, as described in Section III.A., by April 15, 2008.

11. Based on all the foregoing, Respondents have violated the requirement that all large capacity cesspools be closed by April 5, 2005, and are therefore in violation of 40 C.F.R. § 144.88.

III. PROPOSED ORDER

Respondents and EPA agree to issuance of the following, which, upon issuance of the Final Order, shall become effective:

A. Compliance Requirements

12. Prior to closure of the large capacity cesspools, Respondents shall submit a completed application for abandonment of the four large capacity cesspools referred to in paragraph 8 to the Hawai'i Department of Health's ("DOH"), Safe Drinking Water Branch.

13. Respondents shall properly close (i.e., abandon) the four large capacity cesspools referred to in paragraph 8, in accordance with 40 C.F.R. § 144.89(a), no later than **April 15, 2008**. Respondents, and any agents, successors or assigns, shall not operate any commercial establishment at the facility until the four large capacity cesspools are properly closed.

14. Respondents must comply with DOH's well abandonment procedures and techniques and any other requirements of DOH's UIC program. Respondents shall notify DOH when closure of the four large capacity cesspools is complete. The large capacity cesspools will be considered closed when either: (a) DOH issues an "Injection Well Cesspool Backfilling Final Completion Report", or (b) Respondents submit to EPA a completed "Large Capacity Cesspool Backfilling Final Completion Report."

15. If Respondents install a new Individual Wastewater System ("IWS"), installation and operation of the IWS shall comply with DOH's wastewater requirements.

16. Within ten (10) days of receipt, Respondents shall submit to EPA copies of the DOH "Injection Well Cesspool Backfilling Final Completion Report" and, if an IWS is installed, the DOH approval(s) to operate the IWS. Documents should be sent to the LCC Project Coordinator, at the address specified in paragraph 40.

B. Penalty

17. To account for the violations set forth in the Stipulations and Findings, Respondents agree to pay to the United States an administrative civil penalty of **Forty-Two Thousand dollars ($42,000),** no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the "due date").

18. The administrative civil penalty referred to in paragraph 17 shall be made payable to the Treasurer, United States of America in accordance with any acceptable method of payment listed in Attachment A "EPA Region 9 Collection Information," which is incorporated by reference as part of this Consent Agreement.

19. Concurrent with the payment of any penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case, via certified mail to each of the following:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Brett Moffatt
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

20. Payment must be received on or before the due date specified in paragraph 17.

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

22. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondents fail to pay by the due date the administrative civil penalty assessed

in paragraph 17 of 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. 42 U.S.C. § 300h-2(c)(7).

C. General Provisions

23. Respondents waive any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondents waive any right to contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.

24. For the purpose of this proceeding, Respondents admit the jurisdictional allegations of the Consent Agreement and agree not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.

25. Respondents neither admit nor deny the allegations set forth in the Stipulations and Findings set forth in the Consent Agreement.

26. Respondents consent to the issuance of this CA/FO and the conditions specified herein, including payment of the administrative civil penalty in accordance with the terms of this CA/FO. Full payment of the penalty set forth in this Consent Agreement and Final Order shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in the Consent Agreement.

27. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.

28. The provisions of this CA/FO shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondents shall not excuse any failure of Respondents to fully perform its obligations under this CA/FO.

29. Respondents shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large capacity cesspools referred to in paragraph 8. Such transfer, however, shall have no effect on Respondents' obligation to comply with this CA/FO. Respondents shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in paragraph 8.

30. Respondents shall not deduct the administrative civil penalty, nor any interest, handling fees, or late penalty payments provided for in this CA/FO from their federal, state, or local income taxes.

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

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

33. Issuance of or compliance with this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, regulations promulgated thereunder, and any order or permit issued thereunder.

34. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondents for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.

35. Except as stated in paragraph 34, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

36. If any event occurs which causes or may cause delays in reaching the deadline for closure of the large capacity cesspools, as set forth in Part III.A. of this CA/FO, Respondents shall, within 48 hours of the delay or within 48 hours of Respondents' knowledge of the anticipated delay, whichever is earlier, notify by telephone the EPA Region 9 LCC Project Coordinator or, in her/his absence, the Manager of the EPA Region 9 Ground Water Office. Within fifteen (15) days thereafter, Respondents shall provide in writing, at the address set forth in paragraph 40, the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, a timetable by which those measures will be implemented. Respondents shall exercise their best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondents from asserting any claim of force majeure.

37. If EPA agrees that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondents, the time for performance may be extended for a period of no longer than the delay resulting from the circumstances causing the delay. In such event, EPA shall grant, in writing signed by the Manager of the EPA Region 9 Ground Water Office, the extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.

38. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of the Respondents, EPA will notify Respondents in writing of its decision and any delays will not be excused.

39. Respondents shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or is using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this section.

40. Written communications, including any requests for extension of time, shall be sent to the following address:

LCC Project Coordinator
Water Division
Ground Water Office, WTR-9
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
fax: (415) 947-3545

D. Effective Date

41. The effective date of the Consent Agreement and Final Order shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For Lion Pacific Investments, LLC:

Date: 4-23-08

Robert Thurston
18117 17th Street, East
Sumner, WA 98391

For Diane Thurston Ramstead Trust:

Date: 4/29/08

Diane Thurston Ramstead

For Richard Douglas Ramstead:

Date: 5/14/2008

Richard Douglas Ramstead

For Julie Marie Ramstead:

Date: 5-23-08

Julie Marie Ramstead

For the United States Environmental Protection Agency:

Date: 11 June 2008

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

ATTACHMENT A

In the Matter of Lion Pacific Investments, LLC; Diane Thurston Ramstead Trust; Richard Douglas Ramstead; and Julie Marie Ramstead

DOCKET NO. UIC-09-2008-0002

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency "

CHECK PAYMENTS

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF Lion Pacific Investments, LLC; Diane Thurston Ramstead Trust; Richard Douglas Ramstead; and Julie Marie Ramstead Kaaawa, HI Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)	DOCKET NO. UIC-09-2008-0002 [PROPOSED] **FINAL ORDER**

The United States Environmental Protection Agency Region IX ("EPA"), and Lion Pacific Investments, LLC, Diane Thurston Ramstead Trust, Richard Douglas Ramstead, and Julie Marie Ramstead ("Respondents"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2008-0002) be entered; and

2. Respondents shall pay an administrative civil penalty of forty-two thousand dollars ($42,000) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Stipulations and Findings and Order issued by EPA in this proceeding.

Date: _____

_____
Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

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Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: 07/31/08