

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

In the matter of: )

Madera County Resource )  
Management Agency, )  
Madera County Road Dept. )

Administrative Civil Liability )  
Complaint R5-2009-0541 )

Administrative Civil Liability Order R5-2014-0524

Settlement Agreement and Stipulation for Entry  
of Order; Order

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order") is entered into by and between the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board" or "Board") and the Madera County Resource Management Agency, Madera County Road Department (hereafter "Respondent") (collectively referred to as the "Parties"). This Stipulated Order memorializes a settlement reached between the Parties for alleged violations of Water Code section 13385 by the Respondent and is presented for issuance by the Assistant Executive Officer of the Central Valley Water Board, who has been delegated the authority to issue such Orders pursuant to Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy. The Stipulated Order will be issued as a settlement pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. The Respondent is responsible for the maintenance and construction of roads, culverts and bridges on Madera County's maintained mileage system, excluding State Highways.
2. The Respondent began construction of Phase I of the Road 200 Widening Project (the "Project") from Spring Valley School to Leprechaun Lane (the "Site") on 7 July 2008, and continued activities through the summer and fall of 2008. The Site is in the Sierra foothills, approximately 30 miles from the City of Madera, and 2 miles northeast of the intersection of State Highway 41 and Road 200, along a 3.4 mile long section of Road 200. The Site is within Sections 16, 21, and 29 of Township 9 South, Range 21 East, and Section 14 of Township 9 South, Range 21 East, MDBM.
3. The Site is comprised of an 80-foot wide right-of-way with a 40-foot paved section, for a total of 34 acres, including approximately 16 acres of soil disturbed during construction activities. The Project crosses numerous tributaries to Willow and Ladd Creeks, which are tributaries to Fine Gold Creek. Fine Gold Creek drains to Millerton Lake, an impoundment of the San Joaquin River. The San Joaquin River and its tributaries are waters of the U.S.
4. On 19 August 1999, the State Water Resources Control Board issued Water Quality Order 99-08-DWQ, the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (the "Construction General Permit"), which regulated storm water discharges associated with construction activity. On 2 September 2009, the State Water Resources Control Board issued Order 2009-0009-DWQ, which rescinded and replaced Order 99-08-DWQ, effective 1 July 2010. All of the violations associated with this Administrative Civil Liability action occurred under the terms of Water Quality Order 99-08-DWQ.

5. The Construction General Permit requires that those who discharge storm water associated with construction activity to surface waters (a) file a Notice of Intent to obtain coverage under the Construction General Permit and (b) use best available technology economically achievable and best conventional control technology to reduce storm water pollution. The Construction General Permit authorizes non-storm water discharges only where they do not cause or contribute to a violation of any water quality standard and only when the discharges are controlled through implementation of appropriate best management practices ("BMPs") that eliminate or reduce pollutants that may affect water quality.
6. Water Code section 13376 states, in relevant part,

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260...
7. Construction activities disturbing one or more acres of land may result in the discharge of pollutants. Under the terms of the federal Clean Water Act (CWA), Water Code section 13376, and the Construction General Permit itself, the Discharger was required to obtain coverage under the Construction General Permit prior to commencing construction activities.
8. The Central Valley Water Board's Water Quality Certification program regulates dredge and fill activities that result in discharges to waters of the U.S. These projects require federal permits pursuant to CWA section 404. Section 401 of the CWA requires any applicant for a federal license or permit for activities that may result in discharge into waters of the U.S. to obtain a certification (Water Quality Certification) from the respective State that the project will meet water quality standards.
9. The Discharger's activities included moving fill materials within waters of the U.S., which required a permit pursuant to CWA section 404. In order to obtain this permit, the Discharger was required to obtain a Water Quality Certification from the Central Valley Water Board prior to initiating construction activities.
10. *The Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin*, Fourth Edition, Revised October 2011, (the "Basin Plan") designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Drainages and waters of the U.S. within the Project site are tributaries to Millerton Lake, an impoundment of the San Joaquin River. The beneficial uses of the San Joaquin River above Millerton Lake as identified in Table II-1 of the Basin Plan are: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
11. The Construction General Permit states, in part, the following:
  - A. DISCHARGE PROHIBITIONS

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    3. Storm water discharges shall not cause or threaten to cause pollution, contamination or nuisance.
  - C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

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2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.
3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants...

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

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6. ...At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.
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12. On 28 October 2002, Madera County approved a Mitigated Negative Declaration ("MND") for the Project. Based on comments from the U.S. Army Corps of Engineers (the "Corps") and Board staff, the MND included mitigation measures that required the Discharger to, among other things:
    - i. Obtain a CWA section 404 permit from the Corps;
    - ii. Obtain a CWA section 401 Water Quality Certification from the Central Valley Water Board; and
    - iii. Obtain coverage under the Construction General Permit.
  13. The Discharger began Project construction on 7 July 2008.
  14. On 1 August 2008, Board staff inspected the Project in response to a complaint. Board staff observed construction activity taking place, which included filling and excavation activities in various surface waters within the work area. Board staff observed that several hundred feet of tributary drainages had been excavated, filled, re-routed, or otherwise disturbed. Several acres of graded slopes adjacent to drainages were vulnerable to erosion. Board staff did not observe soil stabilization measures or other storm water BMPs implemented on disturbed areas of the Site. The Discharger had not obtained coverage under the Construction General Permit, and had not obtained a CWA section 401 Water Quality Certification for dredge and fill activities. During the inspection and in a subsequent 7 August 2008 telephone conversation, Board staff informed the Discharger that it was in violation of Water Code section 13376 for failure to obtain coverage under the General Permit, and was likely in violation of Section 401 of the CWA for failing to obtain a Water Quality Certification for dredging and discharging fill to waters of the U.S.
  15. The Discharger subsequently obtained coverage under the Construction General Permit and was assigned WDJID No. 5F20C353019 on 14 August 2008.
  16. Board staff transmitted the results of the inspection in a 26 August 2008 Notice of Violation (NOV). The NOV informed the Discharger that, at the time of the inspection, it was in violation of the CWA sections 401 and 404 and Water Code section 13376 for discharging fill to waters of the U.S. and for failing to obtain coverage under the Construction General Permit. The NOV directed the Discharger to install BMPs to stabilize disturbed areas and to submit a complete application for federal CWA section 401 Water Quality Certification.

17. On 4 November 2008, Board staff, accompanied by Madera County staff, re-inspected the Project after a rain event and observed straw wattles buried in sediment, straw wattles placed longitudinally in drainages, six-foot to ten-foot sections of silt fence that appeared to be randomly placed on site, and many slopes without erosion protection. Board staff observed erosion rills on slopes adjacent to drainages, active off-site discharges of sediment-laden water, and active sediment discharges to drainages downstream of ineffective BMPs. Board staff also observed areas where fill had been discharged into waters of the U.S. Board staff notified the Discharger during the inspection that many BMPs on site were ineffective and directed it to stabilize disturbed areas.
18. The Discharger then submitted an application for a CWA section 401 Water Quality Certification that did not accurately describe impacts to waters of the U.S. During the 4 November 2008 inspection, Board staff described to the Discharger how to accurately report the impacted waters of the U.S. in a revised application.
19. Board staff transmitted the 4 November 2008 inspection results in a 25 November 2008 NOV. The NOV instructed the Discharger to stabilize disturbed areas and to submit a restoration plan for waters of the U.S. impacted by construction activities.
20. On 17 February 2009, Board staff re-inspected the "completed" Project site during a storm event and observed sediment-laden water discharging off the site and many erosion rills on unstabilized slopes. BMPs such as silt fencing and straw wattles were compromised and/or buried in several areas. Board staff measured up to six inches of sediment accumulated on the bed of tributary drainages, and measured erosion gullies that exceeded two feet in depth and width. Disturbed areas of the Project site, which comprised approximately 16 acres, remained unstabilized and threatened to continue discharges of sediment off-site and to waters of the State and waters of the U.S.
21. On 3 April 2009, Board staff re-inspected the Project site and observed that no further work had been done to stabilize disturbed areas.
22. On 29 April 2009, Board staff re-inspected the Project site and observed that no further work had been done to stabilize disturbed areas.
23. On 24 June 2009, Board staff re-inspected the Project site and observed that no further work had been done to stabilize disturbed areas.
24. On 8 September 2009, the Discharger submitted past-due information required for a complete Water Quality Certification application.
25. The soil, sediment, and earthen material transported by erosion and discharged to the tributaries of Willow and Ladd Creeks by the Discharger constitutes "waste" as defined in Water Code section 13050. Based on Board staff observations, the Discharger's construction activities discharged waste (e.g., soil, sediment, and earthen material) directly into surface waters. The Discharger, through this activity, has caused waste to be discharged where it has caused a condition of pollution or nuisance, and continues to threaten to cause a condition of pollution or nuisance, by increasing levels of sediment, settleable materials, suspended material, and turbidity in surface waters.
26. Findings Nos. 14 through 25 show the Discharger violated Water Code section 13376; Section 401 of the CWA; and the Construction General Permit.

27. On 25 September 2009, the Board's Executive Officer issued the ACL Complaint based on the information that was then available to Board staff. The ACL Complaint proposed that the Discharger pay five hundred ten thousand dollars (\$510,000) for the violations described herein.
28. On 17 November 2009, the State Water Resources Control Board adopted a new Water Quality Enforcement Policy, which was approved by the Office of Administrative Law on 20 May 2010. As this policy was not yet adopted by the State Water Resources Control Board at the time the ACL Complaint was issued, and was not yet in effect when settlement negotiations were commenced, the Water Quality Enforcement Policy adopted on 19 February 2002 is the controlling policy for the purposes of resolving the ACL Complaint.
29. Water Code section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

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(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

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(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

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(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

30. Per Water Code section 13385(c), liability may be assessed at \$10,000.00 per violation per day.

a. As illustrated by Findings Nos. 13, 14, and 15, the Discharger operated for 38 days (7 July 2008 through 14 August 2008) without obtaining coverage under the Construction General Permit, as required by Water Code section 13376. The Discharger's maximum liability in this regard is \$380,000.00.

b. As illustrated by Findings Nos. 13, 14, and 24, the Discharger operated for 429 days (7 July 2008 through 8 September 2009) without obtaining Water Quality Certification for

dredge and fill activities, which is required pursuant to Water Code section 13376. The Discharger's potential liability in this regard is \$4,290,000.00.

c. As illustrated by Finding Nos. 15, 16, 17, 20, 21, 22, and 23, the Discharger operated in violation of the Construction General Permit, by failing to have an effective combination of BMPs, for 242 days during the rainy season (1 October 2008 through 30 May 2009). The Discharger's failure to maintain an effective combination of BMPs violates numerous terms in the Construction General Permit. Although the Board may count each discrete violation of the Construction General Permit as a separate violation, and may therefore multiply the number of violations by the number of days, the maximum penalty for the purposes of this Order is calculated as one violation for each day. No runoff calculation was performed that would lead to a per-gallon assessment under Water Code section 13385(c)(2). AT \$10,000 per day of violation, the Discharger's potential liability in this regard is \$2,420,000.00.

The Discharger's total potential liability is \$7,090,000.00.

31. Pursuant to Water Code section 13385(e), the minimum liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. As described in Finding 32, below, the economic benefit that the Discharger gained from failing to install an adequate system of BMPs and from failing to timely obtain all necessary water quality-related permits has been calculated to be \$144,570.80.
32. Following issuance of the ACL Complaint, the Discharger and the Board's Prosecution Team conferred for the purpose of settling the violations. As a result, on 22 February 2010, after arms-length negotiations, the Discharger submitted additional information on project expenses and proposed to settle the ACL Complaint by paying \$128,735.85 and completing a Supplemental Environmental Project ("SEP") wherein it would complete the work described in Attachment A at an approximate cost of \$126,386.70. This settlement proposal was accepted by the Board's Prosecution Team, with minor adjustments for rounding and after including additional funds to cover costs that will be incurred by Board staff in providing oversight for the proposed SEP. Pursuant to Water Code section 13385(e), the Central Valley Water Board has considered the following factors:
  - a. *Nature and Extent.* The Discharger initially failed to obtain coverage under the Construction General Permit and then failed to implement an effective combination of sediment and erosion control best management practices. Board staff observed sediment discharges to waters of the State and waters of the U.S., and measured up to six inches of accumulated sediment in some stream channels. In addition, the Discharger completed the project without obtaining the required CWA water quality certification for dredge and fill activities in known waters of the U.S. The Discharger impacted waters of the State and of the U.S. and did not provide mitigation to stabilize and restore the impacted waters.  
*Circumstances.* Board staff inspected the Site before the rainy season and repeatedly during the rainy season. Board staff repeatedly encouraged the Discharger to implement adequate storm water BMPs and obtain the required water quality certification. If the Discharger had complied with the Construction General Permit, implemented appropriate storm water BMPs, and obtained and complied with the water quality certification, it could have prevented the unauthorized discharges of sediment and fill material to waters of the State and waters of the U.S.
  - b. *Gravity.* The Discharger did not obtain the appropriate permits. The Site was operated in violation of Construction General Permit requirements and without appropriate erosion

protection BMPs during the entire rainy season despite repeated notifications by Board staff. Waters of the U.S. were modified without water quality certification, resulting in unauthorized discharges of fill to waters of the U.S. Consequently, significant site erosion and unauthorized fill resulted in the discharges of turbid water and large amounts of sediment into waters of the State and waters of the U.S. These discharges likely caused, or at a minimum, threatened to cause exceedances of applicable water quality objectives for turbidity, sediment, settleable and suspended material, and toxicity. Exceedances of water quality objectives can adversely impact the beneficial uses of the receiving waters, including warm freshwater habitat (WARM) and wildlife habitat (WILD).

c. *Toxicity.* Discharges of turbid or sediment-laden water can cause injury or death to aquatic organisms by blocking light, clogging gills and respiratory structures, blocking feeding structures, smothering eggs and organisms, scouring organisms from anchorages, and filling spawning and hiding areas. Given the ephemeral nature of the drainages, the degree of toxicity from these discharges appears to be moderate.

d. *Susceptibility of the Discharge to Cleanup.* Discharges to the Madera County's easement are susceptible to cleanup. The Executive Officer issued Cleanup and Abatement Order ("CAO") R5-2009-0703 on 30 June 2009, which required the Discharger to clean up and abate the discharge to the extent practicable. Beginning 19 August 2009, the Discharger began performing BMP corrections and repairing eroded areas. Where feasible, the Discharger has removed excessive sediment from drainages with the concurrence of the U.S. Army Corps of Engineers. The discharges of turbid water and sediments that went off-site are generally not susceptible to cleanup.

e. *Degree of Culpability.* On 25 September 2002, the Discharger filed a Mitigated Negative Declaration for the project that stated the Discharger would comply with CWA sections 401 and 404 and would obtain regulatory coverage under the Construction General Permit. Board staff inspected the Site before the rainy season and repeatedly during the rainy season and routinely observed inadequate storm water BMPs. Through a combination of verbal communication and NOV's, Board staff informed the Discharger of its obligation to implement adequate storm water BMPs.

f. *Ability to Pay.* Madera County is a municipal entity with high unemployment and a median income below the State average.

g. *Economic Benefit.* The County's economic benefit is estimated at \$144,570.80. Based on information available at the time of issuance, the ACL Complaint initially estimated the County's economic benefit to be a sum of the six categories below, which are based on monetary amounts the County should have paid for various activities related to stormwater compliance.

(1)	\$254,648.95	Amount the County should have spent to implement proper erosion controls (best management practices or (BMPs) throughout site.
(2)	\$47,250.00	Amount the County should have paid into a mitigation bank to compensate for permanent impacts to 0.23 acres of site drainages.
(3)	\$111,720.00	The amount necessary to stabilize and re-vegetate 665 linear feet of constructed drainages.
(4)	\$15,260.00	The amount necessary to stabilize and re-vegetate 763 linear feet of temporarily impacted drainages.
(5)	\$15,982.00	The water quality certification application fee for impacts to waters of the

		U.S.
(6)	\$15,000.00	The amount necessary to prepare the water quality certification application and associated jurisdictional determination and compensatory mitigation and restoration plan.

However, information submitted by the Discharger on 22 February 2010 indicates the County's general contractor originally paid approximately \$230,044.00 to implement storm water BMPs for the project. Compliance One Solutions, Inc., the County's storm water consultant, estimates approximately \$170,260.15 worth of the contractor's BMPs were installed properly and were effective. The difference between the \$254,648.95 and \$170,260.15 is \$84,388.80, which represents the minimum additional amount that should have been spent on properly-installed BMPs prior to the onset of the rainy season. Thus it also represents an economic benefit to the County.

The value of items (3) and (4) represent the amount that the Discharger has spent on stabilization and re-vegetation of impacted drainages.<sup>1</sup> Compliance One Solutions, Inc., and the County's biological consultant have indicated that these stabilization measures would not necessarily have been needed if the County's contractor implemented its erosion controls properly throughout the Site. Therefore, they do not represent a cost savings to the Discharger.

The County's economic benefit for this Order then is the sum of \$84,338.80 plus the costs associated with items (2), (5) and (6) or, \$162,620.80.

h. *Other Matters as Justice May Require.* Board staff spent approximately 360 hours investigating this matter and preparing this Order. The total cost for Board staff time is \$54,000 based on a rate of \$150 per hour. Additionally, Board staff time to oversee completion of suspended liability or SEP tasks is estimated at \$3,000.

33. The proposed ACL amount of \$258,400 recovers a greater amount than the economic benefit plus 10%, and recovers Board staff costs.
34. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). The Executive Officer is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue the Order.
35. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

### Section III: STIPULATIONS

<sup>1</sup>The re-vegetation proposed in the SEP is *not* the re-vegetation that has thus far been undertaken in these drainages. The Discharger has re-vegetated the Site to conditions that were present at the Site prior to the initiation of construction, but this is not what the Site looked like 100 years ago. The SEP proposed by the Discharger would restore historic native vegetation to these areas, which would be an improvement over pre-project conditions.



1. **Administrative Civil Liability:** Respondent hereby agrees to the imposition of an administrative civil liability totaling two hundred fifty-eight thousand, four hundred dollars (\$258,400). Of this amount, the Respondent shall remit one hundred thirty-two thousand thirteen dollars (\$132,013) by check.

- a. One check shall be made payable to the *State Water Pollution Cleanup and Abatement Account* (in accordance with Wat. Code §13385(n)(1), administrative civil liability collected for violations of the Construction General Permit are to be deposited in this Account) in the amount of \$66,006, and

- b. One check shall be made payable to the *Waste Discharge Permit Fund* (in accordance with Wat. Code §13385(n)(2)(A), administrative civil liability collected for violations of CWA section 401 are to be deposited in this Fund) in the amount of \$66,007.

No later than 30 days from the date on which this Order is issued, the checks shall be remitted to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, and shall contain a reference to ACL Order R5-2014-0524.

2. Further, the Parties hereby agree that one hundred twenty-six thousand, three hundred eighty-seven dollars (\$126,387) shall be suspended pending successful completion of the work listed in Attachment A, which describes the agreed-to SEP. Attachment A, a part of this Order, also includes a list of tasks that will be completed and deliverables that will be submitted to the Central Valley Water Board. Upon successful completion of the work listed in Attachment A, the suspended liability shall be permanently waived.
3. **Agreement of Respondent to Fund, Report, and Guarantee Implementation of the SEP:** Respondent represents that: (1) it will fund the SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Central Valley Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) Respondent will guarantee implementation of the SEP by remaining liable for the SEP Suspended Liability in accordance with Paragraph 2 of Section III, until the SEP is completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulation. Respondent agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP.
4. **Apportionment of SEP Costs:** If the Assistant Executive Officer determines that any of the tasks listed in Attachment A and further described below are not satisfactorily completed by their respective due date (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability, as follows:
  - a. Task 1: If the Discharger fails to recreate 665 feet of blue oak woodland along the redirected stream channel, based on the California Department of Fish and Game (CDFG) restoration criteria of 70% of plantings surviving after 5 years, the Discharger shall pay \$31,920 of the suspended penalty.
  - b. Task 2: If the Discharger fails to vegetate 763 feet of the stream channels that were impacted by the construction activities with native understory plants, based on the CDFG restoration criteria of 70% of plantings surviving after 5 years, the Discharger shall pay \$9,843 of the suspended penalty.
  - c. Task 3: If the Discharger fails to create 763 linear feet of blue oak woodland along the stream channels that were impacted by the construction activities, based on the CDFG

restoration criteria of 70% of plantings surviving after 5 years, the Discharger shall pay \$36,624 of the suspended penalty.

- d. Task 4: If the Discharger fails to create an additional 1000 feet of blue oak woodland in the created channel corridors at Butterfield Stage Road and Road 200, based on the CDFG restoration criteria of 70% of plantings surviving after 5 years, the Discharger shall pay \$48,000 of the suspended penalty.
5. **Oversight of the SEP:** Respondent is solely responsible for paying all oversight costs incurred to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Respondent and are not credited towards Respondent's obligation to fund the SEP.
6. **SEP Progress Reports:** Respondent shall provide quarterly reports of progress to the Central Valley Water Board and the State Water Resources Control Board's Division of Financial Assistance, commencing 90 days after this Stipulated Order becomes final, and continuing through submittal of the Certificate of Completion described below in Paragraph 7. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. The quarterly reports are due by the first day of the second month following each calendar quarter (i.e., by 1 February, 1 May, 1 August, and 1 November). The reports shall describe, in detail, the work completed to date regarding each of the tasks and describing the status of the plantings. The progress reports shall include, by Task Number, copies of receipts for all expenditures and shall demonstrate the costs incurred by the County towards completing each Task.
7. **Certification of Completion of SEP:** On or before the applicable SEP Completion Date, Respondent shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted by a qualified representative of the Respondent under penalty of perjury to both the Central Valley Water Board and the State Water Resources Control Board's Division of Financial Assistance. The Certification of Completion shall include the following:
  - a. Certification that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Respondent.
  - b. Certification documenting the expenditures by Respondent during the completion period for the SEP. Expenditures may be external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Certification of Completion need not address any costs incurred by the Central Valley Water Board for oversight. Respondent shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.
  - c. Certification, under penalty of perjury, that Respondent followed all applicable environmental laws and regulations in the implementation of the SEP including, but not limited to, CEQA, the federal Clean Water Act, and the Porter-Cologne Water Quality Act.

8. **Third Party Financial Audit:** In addition to the Certification described above, upon completion of the SEP and at the written request of the Central Valley Water Board, Respondent, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Central Valley Water Board staff, providing such parties' independent professional opinion as to whether the Respondent and/or implementing party has/have expended money in the amounts claimed by the Respondent in the Certification of Completion. The audit report shall be provided to the Central Valley Water Board within three months of notice from Central Valley Water Board to the Respondent of the need for an independent third-party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.
9. **Central Valley Water Board Acceptance of Completed SEP:** Upon Respondent's satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Central Valley Water Board, Board staff shall send Respondent a letter recognizing satisfactory completion of its SEP obligations under this Stipulation. This letter shall terminate any further SEP obligations of Respondent and result in the permanent waiver of the SEP Suspended Liability.
10. **Failure to Expend all SEP Suspended Liability Funds on the approved SEP:** In the event that Respondent is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board staff that the entire SEP Suspended Liability has been spent to complete the components of the SEP for which Respondent is financially responsible, Respondent shall pay the difference between the SEP Suspended Liability and the amount Respondent can demonstrate was actually spent on the SEP as an administrative civil liability. Respondent shall pay this remainder within 30 days of its receipt of notice of the Central Valley Water Board's determination that Respondent has failed to demonstrate that the entire SEP Suspended Liability has been spent to complete the SEP components.
11. **Force Majeure:** In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A, due to circumstances beyond the reasonable control of the Respondent and which could not have been reasonably foreseen and prevented by the exercise of due diligence, the Respondent will provide written notice to the Central Valley Water Board within five days of the date Respondent first knew of the event or circumstance that cause the deviation from the SEP terms and conditions. The final determination as to whether the circumstances were beyond the reasonable control of the Respondent will be made by the Assistant Executive Officer of the Central Valley Water Board. In this event, the parties agree to meet and confer regarding an extension of time to complete the SEP. For the purposes of this Order, a "force majeure" is defined as an event which could not have been anticipated by Respondent, is beyond the control of the Respondent, and is of such great import and character, including, but not limited to: an act of God; earthquake, flood, and any other natural disaster; civil disturbance or strike; fire and explosion; or embargo. To trigger the force majeure protection under the Order, Respondent must demonstrate that timely compliance with the SEP and/or any affected interim deadlines will be actually and necessarily delayed, that it has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions and efforts, whether before or after the occurrence of the cause of the delay; and Respondent provides written notice as described above. Delays caused by actions under the control of the Respondent will not constitute a force majeure. For purposes of this Order, a "force majeure" does not include delays caused by funding, easements, contractor performance, equipment delivery and quality, weather, permitting, and other related issues. In addition, this Order is not subject to

modification based on force majeure due to construction delays, CEQA challenges, initiative litigation, adverse legislation, or other matters of a legal nature.


12. **Failure to Complete the SEP:** Except as provided in paragraph 11, if the SEP is not fully implemented within the SEP completion dates required by this Stipulation, the Central Valley Water Board shall issue a Notice of Violation. As a consequence, Respondent shall be liable to pay the entire Suspended Liability or some portion thereof (less the value of the completion of any milestone requirements). Upon a demand by the Central Valley Water Board, the remaining suspended liability shall be paid to the State Water Board Cleanup and Abatement Account and the Waste Discharge Permit Fund according to the same ratio specified above within 30 days. Cash payment of the suspended liability will satisfy Respondent's obligations to implement the SEP.
13. **Publicity:** Should Respondent or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action prosecuted by the Central Valley Water Board against the Respondent.
14. **Compliance with Applicable Laws:** Respondent understands that payment of the administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with any applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, which may include the imposition of additional civil liability.
15. **Contact Info**
  - Central Valley Water Board
  - Debra Mahnke
  - (559) 445-6281, dmahnke@waterboards.ca.gov
  
  - Madera County Road Department
  - Johannes J. Hoevertsz
  - (559) 675-7811
16. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney's fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
17. **Matters Addressed by this Stipulation:** Upon the Central Valley Water Board's issuance of this Stipulated Order, it will represent a final and binding resolution and settlement of the violations alleged in the Complaint. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability and on the completion of the SEP, in accordance with the paragraphs above.
18. **Public Notice:** Respondent understands that this Stipulated Order will be placed on the Board's website and will be subject to a public comment period of at least 30 days in accordance with applicable Federal regulations (40 C.F.R., §123.27). If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board for issuance, then the Executive Officer may unilaterally declare this Stipulated Order void and may decide not to present it to the Central Valley Water Board's Advisory Team.

19. **Addressing Objections Raised During Public Comment Period:** In the event procedural objections are raised prior to the Stipulated Order becoming final, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
20. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Stipulated Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
21. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
22. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
23. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court of competent jurisdiction, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
  - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
24. **Waiver of Hearing:** Respondent has been informed of the rights provided by Water Code section 13323(b), and has waived its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
25. **Waiver of Right to Petition:** Respondent hereby waives its right to petition the Central Valley Water Board's issuance of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a court of competent jurisdiction.
26. **Covenant not to Sue:** Respondent covenants not to sue or pursue and administrative claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any covered matter.

- 27. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members not the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Respondent, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
- 28. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
- 29. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
- 30. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
- 31. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one document.

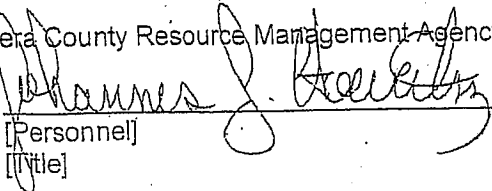
**IT IS SO STIPULATED**

California Regional Water Quality Control Board,  
Central Valley Region  
Prosecution Staff

By:   
Pamela Creedon  
Executive Officer

4-29-14  
Date

Madera County Resource Management Agency

By: , Road Commissioner  
[Personnel]  
[Title]

4-23-14  
Date

**Order of the Central Valley Water Board**

- 32. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information obtained by Central Valley Water

Board staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers costs incurred by the staff of the Central Valley Water Board for this matter.

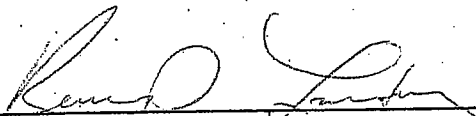
33. The terms of the foregoing Stipulation are fully incorporated herein made part of this Order of the Central Valley Water Board.

Pursuant to Water Code section 13323 and Government Code section 11415.60, IT IS HEREBY ORDERED by the California Regional Water Quality Control Board, Central Valley Region.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request or may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/index.shtml).

By:

  
Kenneth Landau  
Assistant Executive Officer

10 June 2014  
Date

Attachment A: Suspended Liability Tasks

**ATTACHMENT A**  
ACL ORDER R5-2014-0524  
MADERA COUNTY RESOURCE MANAGEMENT AGENCY  
MADERA COUNTY ROAD DEPARTMENT  
MADERA COUNTY

**TASK 1: RECREATE 665 LINEAR FEET OF BLUE OAK WOODLAND ALONG REDIRECTED STREAM CHANNEL**

Due Date: [Completed by 5 years, 3 months from signature date of ACL Order]

Assigned Credit for Task Completion: \$31,920

Description of the Task: The County of Madera shall recreate 665 linear feet of native blue oak woodland along the redirected stream channel on the southwest corner of Road 200 and Lily Mine Way, enhancing this corridor with native blue oaks. The County will plant approximately 42 live blue oak stakes along this channel. The proposed SEP will enhance the waterway's ecosystem by re-introducing native tree species that have been replaced by non-native species over the last 80+ years. These enhancements will give the public an idea of what a native ecosystem looks like, will contribute biologic enhancements to the existing ecosystem, and will demonstrate that the establishment of native-plant ecosystems is both ecologically viable and aesthetically pleasing.

Project Schedule and Deliverables:

Initial planting of a minimum of 42 live stakes shall be completed by [3 Months following signature date of ACL Order].

The plantings shall be monitored quarterly for five years or until the California Department of Fish and Game (CDFG) vegetation restoration criteria (i.e., 70% of plantings surviving after five years) is met.

Annually, in late spring, a qualified biologist shall monitor the condition of the plantings and provide the County with a recommendation for planting replacement or project modification. This survey may be conducted in conjunction with the annual walk-through survey required under Task 2 of the *Phase 1 Road 200 Improvements Project Long-Term Management Plan for Restored and Preserved Wetlands*, submitted by the County on 7 September 2009.

**TASK 2: RE-VEGETATE 763 LINEAR FEET OF REDIRECTED STREAM CHANNELS WITH NATIVE PLANT SPECIES**

Due Date: [Completed by 5 years, 3 months from signature date of ACL Order]

Assigned Credit for Task Completion: \$9,843

Description of the Task: The County of Madera shall re-vegetate 763 linear feet of stream channel with native understory plant plugs (*lupinus albifrons*) along the stream channels that were impacted by the construction activities. The proposed SEP will enhance the waterway's ecosystem by re-introducing native species that have been replaced by non-native species over the last 80+ years. These enhancements will give the public an idea of what a native ecosystem looks like, will contribute biologic enhancements to the existing ecosystem, and will demonstrate that the establishment of native-plant ecosystems is both ecologically viable and aesthetically pleasing.

Project Schedule and Deliverables:

Initial planting of the understory plant plugs shall be completed by [3 Months following signature date of ACL Order].



The plantings shall be monitored quarterly for five years or until the CDFG vegetation restoration criteria (i.e., 70% of plantings surviving after five years) is met.

Annually, in late spring, a qualified biologist shall monitor the condition of the plantings and provide the County with a recommendation for planting replacement or project modification. This survey may be conducted in conjunction with the annual walk-through survey required under Task 2 of the *Phase 1 Road 200 Improvements Project Long-Term Management Plan for Restored and Preserved Wetlands*, submitted by the County on 7 September 2009.

By [4 Months following signature date of ACL Order], the County shall submit a report to the Central Valley Water Board detailing the initial planting.

**TASK 3: CREATE 763 LINEAR FEET OF BLUE OAK WOODLAND ALONG REDIRECTED STREAM CHANNELS**

Due Date: [Completed by 5 years, 3 months from signature date of ACL Order]

Assigned Credit for Task Completion: \$36,624

Description of the Task: The County of Madera shall create 763 linear feet of blue oak woodland along the redirected stream channel on the northeast corner of Road 200 and Lily Mine Way that was impacted by the construction activities. The County will plant a minimum of 89 live stakes. The proposed SEP will enhance the waterway's ecosystem by re-introducing native tree species that have been replaced by non-native species over the last 80+ years. These enhancements will give the public an idea of what a native ecosystem looks like, will contribute biologic enhancements to the existing ecosystem, and will demonstrate that the establishment of native-plant ecosystems is both ecologically viable and

Project Schedule and Deliverables:

Initial planting of a minimum of 89 live stakes shall be completed by [3 Months following signature date of ACL Order].

The plantings shall be monitored quarterly for five years or until the CDFG vegetation restoration criteria (i.e., 70% of plantings surviving after five years) is met.

Annually, in late spring, a qualified biologist shall monitor the condition of the plantings and provide the County with a recommendation for planting replacement or project modification. This survey may be conducted in conjunction with the annual walk-through survey required under Task 2 of the *Phase 1 Road 200 Improvements Project Long-Term Management Plan for Restored and Preserved Wetlands*, submitted by the County on 7 September 2009.

By (by 4 Months following signature date of ACL Order), the County shall submit a report to the Central Valley Water Board detailing the initial planting.

**TASK 4: CREATE 1000 LINEAR FEET OF BLUE OAK WOODLAND AT BUTTERFIELD STAGE ROAD AND ROAD 200**

ATTACHEMENT A  
ACL ORDER R5-2010-XXXX  
MADERA COUNTY RESOURCE MANAGEMENT AGENCY  
MADERA COUNTY ROAD DEPARTMENT  
MADERA COUNTY

3

Due Date: [by 5 years, 3 months from signature date of ACL Order]

Assigned Credit for Task Completion: \$48,000

Description of the Task: The County of Madera shall create an additional 1000 linear feet of blue oak woodland along the created channel corridor on the southeast corner of Butterfield Stage Road and Road 200. The County will plant a minimum of 89 live stakes. The proposed SEP will enhance the waterway's ecosystem by re-introducing native tree species that have been replaced by non-native species over the last 80+ years. These enhancements will give the public an idea of what a native ecosystem looks like, will contribute biologic enhancements to the existing ecosystem, and will demonstrate that the establishment of native-plant ecosystems is both ecologically viable and

Project Schedule and Deliverables:

Initial planting of a minimum of 89 live stakes shall be completed by [3 Months following signature date of ACL Order].

The plantings shall be monitored quarterly for five years or until the CDFG vegetation restoration criteria (i.e., 70% of plantings surviving after five years) is met.

Annually, in late spring, a qualified biologist shall monitor the condition of the plantings and provide the County with a recommendation for planting replacement or project modification. This survey may be conducted in conjunction with the annual walk-through survey required under Task 2 of the *Phase 1 Road 200 Improvements Project Long-Term Management Plan for Restored and Preserved Wetlands*, submitted by the County on 7 September 2009.

By [4 Months following signature date of ACL Order], the County shall submit a report to the Central Valley Water Board detailing the initial planting.