

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2014-0536
IN THE MATTER OF
VINTAGE PRODUCTION CALIFORNIA LLC
KERN COUNTY**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and Vintage Production California LLC (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

1. On 15 November 2013, Central Valley Water Board issued California Water Code Orders pursuant to Section 13267 (Section 13267 Order) to multiple owners and operators of oil and gas exploration and production operations in the region. The Discharger was a recipient of one of the Section 13267 Orders. The Section 13267 Order sought information about the: (1) discharges of drilling fluids to land (i.e., including sumps), and (2) discharges of well completion and/or workover fluids to land at any company well during the reporting period from 1 January 2012 to the date the Orders were issued.
2. On 11 March 2014, the Discharger submitted a technical report entitled *Drilling Sump Report and Information Spreadsheet; Vintage Production California LLC and OXY USA Inc.; Response to Section 13267 Directive* (Response) to the Central Valley Water Board staff. On 23 April 2014, the Discharger submitted a second technical report entitled *Supplemental Information Request - Drilling Sumps; Vintage Production California LLC and OXY USA Inc.; Response to Section 13267 Directive* (Supplemental Response) to the Central Valley Water Board staff.
3. After receiving and reviewing the Discharger's Response and Supplemental Response, the Prosecution Team was able to evaluate whether the materials discharged to the sump posed a threat to water quality, the estimated amount of materials that were discharged, and whether or not such Discharger's activities were included in the General Waiver Resolution R5-2008-0192 (Waiver Resolution), which covers the discharge of drilling muds and boring wastes.
4. Based on the Response, Supplemental Response, and an independent evaluation by the Central Valley Water Board staff, 517 barrels (21,714 gallons) of fluids were discharged to unlined sumps from two wells during either completion or stimulation phases.

Regulatory Considerations

5. The Central Valley Water Board staff has concluded that the Discharger has violated Water Code section 13350 for unpermitted discharges to land. The Central Valley Water Board may assess administrative civil liability based on Water Code section 13350 for such discharges.
6. Water Code section 13350(a) states: "(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state"
7. Water Code section 13350(e)(2) states: "The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or a per gallon basis, but not on both. (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged."
8. Water Code section 13327 states: "In determining the amount of civil liability, the regional board . . . shall take into consideration the nature, circumstance, 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 ability to continue in 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 as justice may require."

Settlement

9. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interests of the public.
10. The Parties are agreeing to a reduction from the maximum penalty of \$10 per gallon for each gallon discharged to an amount of \$6 per gallon of discharge. After consideration of the penalty calculation factors, found in the State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy*, the Parties agreed that the volume amount of \$6 per gallon was appropriate in order to resolve their dispute and given the potential threat to water quality and considering the goal

of deterring future violations. Further, this reduction was deemed appropriate given the voluntary production of information provided in response to the Section 13267 Order. In addition, the Discharger is making proactive operational changes to prevent future discharges. This is the kind of response that the Prosecution Team hope other dischargers will model, and as ongoing enforcement efforts are underway, the maximum penalties will be used for the more recalcitrant or uncooperative dischargers, consistent with the Enforcement Policy adjustment factors.

11. To resolve the discharges by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$130,284 in liability against the Discharger with a portion of the settlement proceeds going towards a Supplemental Environmental Project (SEP).

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **one hundred thirty thousand two hundred eighty-four dollars (\$130,284)** to the Central Valley Water Board to resolve the alleged Water Code violations, specifically:
 - a. **Sixty-five thousand one hundred forty-two dollars (\$65,142)** shall be paid to the State Water Board *Waste Discharge Permit Fund*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board *Waste Discharge Permit Fund*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Julie Macedo, Senior Staff Counsel, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Clay Rodgers, Assistant Executive Officer, Regional Water Quality Control Board, Central Valley Region, 1685 E Street, Fresno, CA 93706.
 - b. **Sixty-five thousand one hundred forty-two dollars (\$65,142)** shall be paid to the Rose Foundation for Communities and the Environment ("Rose Foundation") to be distributed in its entirety to the Community Water Center (CWC) solely for use as part of the Clean Water for Disadvantaged Communities Project. This Project is intended to ensure clean sources of drinking water for disadvantaged communities in the San Joaquin Valley and Tulare Lake Basin. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board. Payment shall be provided to the Rose Foundation in the form of a single check payable to the "Rose Foundation." Payment shall be sent to the following address: Rose Foundation, 6008 College Avenue,

Oakland, CA 94618, Attn: Tim Little. A copy of the check shall be sent to Julie Macedo and Clay Rodgers at the addresses set forth above.

2. **Supplemental Environmental Project:** The Discharger and the Central Valley Water Board agree that the payment specified in Section 1.b of the Stipulations is a Supplemental Environmental Project (SEP), and that the amount specified (hereafter SEP Amount) will be treated as a Suspended Administrative Civil Liability for purposes of this Stipulated Order. Upon the Discharger's payment of its SEP obligations under this Stipulation, Central Valley Water Board staff shall send the Discharger a letter recognizing the satisfactory completion of its SEP obligations. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent waiver of the SEP suspended liability.
 - a. As part of the SEP funded by the Discharger, CWC will further efforts to ensure clean sources of drinking water for disadvantaged communities in the San Joaquin Valley and Tulare Lake Basin, where primary groundwater contaminants may include nitrate, metals, pesticides and bacteria. CWC will accomplish this through three main strategies: 1) Water Quality Monitoring in Disadvantaged Communities; 2) Community Outreach and Education in Disadvantaged Communities; and 3) Supporting Community Participation in Watershed Planning. Water quality monitoring will help develop a better understanding of local groundwater quality and identify impacts on beneficial uses, particularly for disadvantaged community drinking water supplies. According to the California Department of Public Health, 55% of communities with chronic contamination of drinking water wells are located in the San Joaquin Valley. Education and engagement of disadvantaged communities will enable proactive action to prevent and mitigate contamination of groundwater used as a source of drinking water. Community participation in IRWMPs and groundwater quality management plans will ensure that water quality needs of disadvantaged communities will be addressed and sources of community drinking water supplies will be protected and improved.
3. **Compliance with Applicable Laws:** The Discharger understands that payment of 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 applicable laws, and that continuing violations may subject it to further enforcement, including additional administrative civil liability.
4. **Party Contacts for Communications related to Stipulated Order:**
For the Central Valley Water Board:
Clay Rodgers
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
Central Valley Region
1685 E Street

Fresno, CA 93706
(559) 445-5116

Julie Macedo – Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

For the Discharger:

Pat Dennis – Counsel
Gibson Dunn & Crutcher
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7567

Adam Smith
Senior Counsel
Vintage Production California LLC
9600 Ming Avenue
Suite 300
Bakersfield, California 93311

5. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
6. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of any potential violations resulting from the Section 13267 Order pursuant to Water Code section 13350. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.
7. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
8. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this

Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, 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.

9. **No Waiver of Right to Enforce:** The failure of the Prosecution Team 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 Order. The failure of the Prosecution Team 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.
10. **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.
11. **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.
12. **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 delegate, or is vacated in whole or in part by the State Water Board or a court, 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. Subject to the foregoing sentence, 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 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.
13. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in this Stipulated Order, or that they have been or are in violation of the Water Code, or any other federal, state, or local law or ordinance; however,

the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

14. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
15. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Central Valley Water Board's adoption 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 California Superior Court and/or any California appellate level court.
16. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil 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 violation alleged herein.
17. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor 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 the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
18. **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.
19. **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.
20. **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.
21. **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 Prosecution Team
Central Valley Region

By: Clay L. Rodgers
Clay Rodgers
Assistant Executive Officer

Date: 8/5/2014

Vintage Production California.LLC

By: Denny Brown
Denny Brown
Operations Manager

Date: July 25, 2014

Order of the Central Valley Water Board

1. 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, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

SETTLEMENT AGREEMENT AND STIPULATION
FOR ENTRY OF
ACL ORDER R5-2014-0536
VINTAGE PRODUCTION CALIFORNIA LLC

Pursuant to Water Code sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

By: 
Kenneth D. Landau
Assistant Executive Officer

Date: 2 October 2014

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