

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

In the Matter of:)	ORDER NO. R5-2014-0548
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David L. & Linda M. Davis Trust)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER
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This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Assistant Executive Officer of the 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 David L. and Linda M. Davis Trust (Dischargers) (collectively Parties) and is presented by the Prosecution Team and Discharger to the Central Valley Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

SECTION I: RECITALS

1. On 7 December 2012, the Central Valley Water Board issued, and on 3 October 2013 and 27 March 2014 revised, the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group, Order R5-2012-0116-R2 (hereinafter General Order) and the General Order's corresponding Monitoring and Reporting Program. The General Order became effective on 7 December 2012. The General Order serves as general waste discharge requirements for both indirect and direct waste discharges that result from runoff, leaching, irrigation water, and storm water, that could affect the ground or surface waters of the state.
2. The Dischargers own several irrigated agricultural parcels in Madera County, California. On 6 February and 18 April 2013, the Central Valley Water Board issued notices to the Dischargers describing the new water quality regulations and actions necessary to comply with the regulations. The Dischargers did not respond to these notices.
3. On 21 June 2013, the Central Valley Water Board issued a Directive Order pursuant to California Water Code section 13260 (13260 Directive) by certified mail that required the Dischargers to obtain regulatory coverage for irrigated lands within fifteen (15) days by either submitting to the Central Valley Water Board a Notice of Intent (NOI) and joining the East San Joaquin Water Quality Coalition (Coalition), or by submitting a Report of Waste Discharge (RoWD) to the Central Valley Water Board. The certified mail receipt for the Directive was

signed as received by Linda M. Davis on 24 June 2013. Dischargers did not obtain regulatory coverage by the 9 July 2013 deadline and did not contact the Central Valley Water Board.

4. On 17 July 2013, the Central Valley Water Board issued a Notice of Violation pursuant to California Water Code section 13260 (NOV) by certified mail notifying the Dischargers that they were in violation of the Water Code for failing to obtain regulatory coverage for irrigated lands. The certified mail receipt for the NOV was received and signed by Linda M. Davis on 30 July 2013. The NOV required the Dischargers to obtain regulatory coverage by 14 August 2013. The Dischargers did not obtain regulatory coverage and did not respond to the NOV.
5. On 29 August 2013, Central Valley Water Board staff conducted an inspection of parcel 044-290-022 and found evidence of commercial irrigated agricultural operations based on the crop grown and the size of the operation. Aerial imagery indicates that the additional five parcels owned by the Discharger also contain commercial irrigated agriculture (orchards and vineyards).
6. On 16 October 2013, Central Valley Water Board staff sent the Dischargers a notice letter via certified mail that an Administrative Civil Liability Complaint in the amount of \$8,600 would be issued if Davis did not obtain regulatory coverage and initiate settlement discussions by 1 November 2013.
7. On 10 May 2014 the Central Valley Water Board Prosecution Team issued Administrative Civil Liability Complaint No. R5-2014-0501 (Complaint) to the Dischargers. Central Valley Water Board records indicate that at the time of the Complaint's issuance, Central Valley Water Board staff had not received a RoWD, proof of Coalition membership, or an NOI from the Dischargers. On 12 June 2014, the Dischargers indicated that they would settle the Complaint by paying the liability in full and forgoing an administrative hearing on the matter. On 16 June 2014, the Dischargers submitted payment of \$8,600.
8. On May 30, 2014, Central Valley Water Board staff received the Dischargers' NOI. On 3 June 2014, the Coalition confirmed that the Dischargers had joined the Coalition.
9. On 11 July 2014, the Advisory Team issued a memorandum to the Prosecution Team tentatively rejecting the proposed settlement agreement and requesting that the Prosecution Team further explain how the proposed settlement adequately addresses the Central Valley Water Board's regulatory interests.
10. On 7 August 2014 the Prosecution Team revised the penalty methodology in response to the Advisory Team's comments, and met with the Dischargers to renegotiate a settlement agreement.

LEGAL AUTHORITY

11. Water Code section 13260, subdivision (a), requires that persons who are discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state, file a report of the discharge, containing the information that may be required by the Regional Board.

12. Water Code section 13261, subdivision (a), provides that a regional board may impose administrative civil liability on a person who fails to furnish a report or pay a fee under Section 13260 when so requested by the regional board, in an amount not exceeding \$1,000 for each day in which a violation occurs.
13. The Dischargers are alleged to have violated the Water Code by failing to submit a Report of Waste Discharge pursuant to Water Code section 13260.
14. Violations of Water Code 13260 are assessed on a per day basis. On 16 October 2013, the date on which the Pre-Complaint letter was issued, the obtainment of regulatory coverage was 305 days overdue. The maximum penalty for the violation described above is three hundred and six thousand dollars (\$305,000) based on a calculation of the total number of per-day violations times the statutory maximum penalty (305 total days of violation multiplied by \$1,000).
15. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective 20 May 2010. The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing discretionary civil liability.
16. Based on the required factors, which have been considered using the methodology in the Enforcement Policy, as explained in detail in the Calculation of Liability (Attachment A), which is hereby incorporated by reference, the administrative civil liability assessed for the alleged violations is nine thousand one hundred and fifty-two dollars (\$9,152).
17. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Boards Executive Officer for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

SECTION II: STIPULATIONS

The Parties stipulate to the following terms for a Stipulated Order:

1. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, Discharger shall remit **five hundred and fifty-two dollars (\$552)** in the form of a check made payable to the *State Water Resources Control Board*

Cleanup and Abatement Account. This amount reflects the Final Liability Amount of \$9,152 less the amount of \$8,600, which was previously submitted. The check shall indicate Order No. R5-2014-0548 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services
ATTN: ACL Payment P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Brett Stevens
Brett.Stevens@waterboards.ca.gov

3. **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.
4. **Scope of Order:** Upon adoption by the Regional Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Respondents full payment of the administrative civil liability by the deadline specified in Paragraph 2.
5. **Denial of Liability:** Neither this Stipulated Order, nor any payment pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future actions by the Regional Board against Respondent, but shall not be admissible as evidence of the specific alleged violations.
6. **Waiver of Right to Petition:** The Discharger hereby waives the 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 the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
7. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives the right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
8. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys,

representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action. Upon payment by Dischargers of the sum specified in Section 2 above, the Regional Board shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against Discharges, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

9. **Public Notice:** The Dischargers understand 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 Assistant 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 Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
10. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this 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.
11. **Waivers:** In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed

impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or

- b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
12. **Appeals:** Discharger hereby waives its right to appeal this Stipulated Order to the State Water Resources Control Board, a California Superior Court and/or any California appellate level court.
13. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
14. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by Respondent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
15. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 this Stipulated Order. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
16. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand 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 of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

17. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
18. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
19. **Modification:** This Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Board or its delegee.
20. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
21. **Counterpart Signatures:** This 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.
22. **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.

IT IS SO STIPULATED:

Original signed by

 Andrew Altevogt
 Assistant Executive Officer
 For the Regional Board Prosecution Team

8/28/2014

 Date

Original signed by

 Linda M. Davis
 For the David L. Linda M. Davis Trust

9/1/2014

 Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

23. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
24. The foregoing Stipulation is fully incorporated herein and made part of this Order.
25. The liability imposed by this Order is at a level that recovers the economic benefits derived from the acts that constitute the violations. In addition, this settlement recovers the costs incurred by the staff of the Regional Board for this matter.

PURSUANT TO SECTIONS 13385 AND 13399.33 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER **HEREBY ADOPTS THIS ORDER.**

Original signed by

Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board