

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

In the Matter of:

Balbir K. Natt

ORDER R5-2018-0522 (Proposed)

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER**

I. Introduction

1. 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 Balbir K. Natt (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 California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger owns approximately 192.82 acres of agricultural land in Tulare County, identified as Assessor's Parcel Numbers (APN's) 240-040-015 and 236-190-006. Both parcels are commercially irrigated for walnut production.
3. On 23 January 2018, the Assistant Executive Officer of the Central Valley Water Board issued an Administrative Civil Liability Complaint No. R5-2018-0500 (ACLC or Complaint) alleging that that the Discharger failed to enroll her two commercially irrigated parcels in the Waste Discharge Requirements General Order for Discharges From Irrigated Lands Within the Central Valley Region for Dischargers not Participating in a Third Party Group (Order R5-2013-0100 or Individual General Order). The Complaint proposed an assessment of administrative civil liability for the failure to submit a RoWD for the Individual General Order in the amount of \$85,470.
4. On 29 January 2018, the Discharger called staff and confirmed that she received the Complaint. It was through this conversation that staff first learned that their previous phone calls regarding the failure to submit a RoWD had not been with the Discharger and that the Discharger was unaware that this other individual was claiming to be Balbir K. Natt. The Discharger stated that the man who previously claimed to be Balbir does not handle any business-related matters and should not have been communicating with Board staff on her behalf.

5. On the same day, 29 January 2018, staff had an additional telephone conversation with the Discharger regarding steps to resolve the Complaint, including submission of the Waiver Form that was included as Attachment F to the Complaint. She stated that she would complete the Waiver and mail it to staff. Staff also discussed the Discharger's need to enroll in an appropriate coalition for the area in which her parcels are located. Staff agreed to email her instructions on where and how to enroll, as well as who to contact with questions.
6. On 6 February 2018, staff received the Discharger's signed Waiver Form electing to waive the 90-day hearing requirement in order to engage in settlement discussions.
7. On 12 February 2018, the Prosecution Team submitted its evidence package for ACLC R5-2018-0500. Included in the Prosecution Team's evidence submission were amended versions of the Complaint and proposed penalty assessment (attachment E to the Complaint). The amended Complaint and amended proposed penalty assessment are attached hereto as Exhibit A and incorporated by reference.
8. On 21 February 2018, the Parties met for settlement discussions at the Central Valley Water Board Fresno office. Following settlement discussions, the Discharger enrolled her parcels with the appropriate coalition, including enrollment of APNs 240-040-015, 236-190-006, and 236-150-013 with the Tule Basin Water Quality Coalition, and APN 060-200-05 with the Kern River Watershed Coalition Authority.

III. Settlement

9. The Parties agree to settle the matter without administrative or civil litigation 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. To resolve the alleged violation by consent and without further administrative proceeding, the Parties have agreed to the imposition of \$33,264 in liability against the Discharger.
10. After discovering the Discharger was not the individual with whom they had been communicating in 2015 and 2017, and the Discharger's willingness to promptly engage with staff upon receipt of the Complaint, the Prosecution Team agreed that the actions of the other individual would not be attributable to the Discharger. Therefore, the Assistant Executive Officer found that the facts supported collapsing the number of days to the minimum provided under the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), thereby decreasing the number of days of violation from 74 to 42 days.
11. Additionally, the Prosecution Team had assessed the maximum multiplier for cleanup and cooperation based on the uncooperative nature of the individual they had been communicating with in 2015 and 2017. Having decided that the behavior of that individual would not be attributed to the Discharger, and acknowledging that the Discharger has since been responsive and engaged in settlement negotiations to

resolve this matter, the Assistant Executive Officer determined that the multiplier for cleanup and cooperation should be reduced from 1.5 to 1.2.

12. Through settlement discussions, the Prosecution Team was informed that the Discharger suffered an injury in January 2015 and subsequently underwent several surgeries and rehabilitation to repair the injury over the course of 2015 and 2016. It was during this time that staff attempted to contact the Discharger about the need to obtain regulatory coverage for her parcels and unknowingly communicated with another individual instead of the Discharger. The Discharger did not authorize that individual to present himself as Balbir K. Natt, nor was she aware of his communications with Central Valley Water Board staff. Therefore, the Assistant Executive Officer found that a reduction in the multiplier for culpability, from 1.4 to 1.2, was warranted.
13. The liability imposed by this Stipulated Order is consistent with a reasonable liability determination using the Enforcement Policy methodology. The Prosecution Team believes that this resolution of the alleged violation, as described in Exhibit A, is fair and reasonable and fulfills its enforcement objectives. No further action is warranted concerning the violation, except as provided in this Stipulated Order, and this Stipulated Order is in the best interest of the public.

IV. Stipulations

The Parties stipulate to the following:

14. **Administrative Civil Liability:** The Discharger hereby agrees to pay **thirty-three thousand two-hundred and sixty-four dollars (\$33,264)** in administrative civil liability (ACL) to the Central Valley Water Board to resolve the alleged Water Code violation. The ACL shall be paid to the State Water Board *Cleanup and Abatement Account*. 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 *Cleanup and Abatement Account*. 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, California 95812-1888. A copy of the check shall be sent to David Sholes, Central Valley Water Quality Control Board, 1685 E Street, Fresno, California 93706.
15. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL 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 additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

16. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

David Sholes – Senior Engineering Geologist
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, California 93706
(559) 445-6279

Heather Mapes – Attorney
Office of Enforcement, State Water Resources Control Board
801 K Street, 23rd Floor
Sacramento, California 95814
(916) 341-5163

For the Discharger:

Balbir K. Natt
10963 Stallion Way
Rancho Cucamonga, CA 91737
(951) 751-5470

Zachary Stringham – Attorney
STRINGHAM & STRINGHAM, PLC
756 E. Tulare Avenue
Tulare, CA 93274
(559) 686-1747

17. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

18. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water 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 Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified in Paragraph 14.

19. **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 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 Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of settlement by the Parties and review by the public, as reflected in this Stipulated Order, is lawful and 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.
21. **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 this Stipulated 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. 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 Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Order.
22. **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.
23. **Modification:** This Stipulated 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 Central Valley Water Board or its delegee.
24. **If Order Does Not Take Effect:** In the event 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 Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL 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 Central Valley Water 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 Central Valley Water 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 solely on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

25. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.

26. **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.

27. **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 any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.

28. **Water Boards 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 the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.

29. **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.
30. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
31. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
32. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
33. **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.
34. **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.

IT IS SO STIPULATED.

Original signed by
Clay Rodgers
Assistant Executive Officer
For the Central Valley Water Board Prosecution Team

9/17/18
Date

Original signed by
Balbir K. Natt

9/10/18
Date

**WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER,
FINDS THAT:**

1. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.
2. 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 section 13327 and has applied the Enforcement Policy methodology as show in Exhibit A, which is incorporated herein by reference. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board’s staff in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
3. 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 ACL. 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, 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.
4. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

I, PATRICK PULUPA, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.

Original signed by

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

10/25/18

Date

Attachments:

Exhibit A: Administrative Civil Liability Complaint R5-2018-0500 and proposed penalty assessment