

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)	
)	
JOUNG MIN YI)	Order No. R1-2014-0020
)	
Administrative Civil Liability)	Settlement Agreement and Stipulation for
)	Entry of Order; Order
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the North Coast Regional Water Quality Control Board (Regional Water Board) Prosecution Staff (“Prosecution Staff”) and Joung Min Yi (“Settling Respondent”) (collectively “Parties”) and is presented to the North Coast Regional Water Quality Control Board (“Regional Water Board”) for adoption as an Order, by settlement, pursuant to California Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is the owner of the property located at 29980 and 30010 Highway 101 North, near Willits, California (the “Property”), identified as Mendocino County Assessor’s Parcel Numbers (APNs) 037-120-09 and 037-120-08. The Property is situated within the Upper Main Eel River watershed, a water of the state and of the United States. The Property is subject to the requirements set forth in federal Clean Water Act sections 301 and 401 (33 U.S.C. §§ 1311, 1341), California Water Codes section 13376, and waste discharge prohibitions specified by the Water Quality Control Plan for the North Coast Region (“Basin Plan”). Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of any pollutant by any person except in compliance with the law.
2. On December 18, 2013, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2013-0085 (“Complaint”) to the Settling Respondent (Attachment A, incorporated herein). The Complaint recommends imposing an administrative civil liability totaling \$56,404 for alleged water quality violations consisting of four sediment discharges from the Property without complying with the Clean Water Act.
3. To resolve by consent and without further administrative costs, the Parties have agreed to the imposition of \$56,404 against the Settling Respondent, which includes \$15,000 for staff costs. Payment to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

4. The liability amount was determined using a factors analysis consistent with Water Code section 13385 and the State Water Resources Control Board Water Quality Enforcement Policy (May 2010) (“Enforcement Policy”). The Prosecution Staff considered the methodology set forth in the Enforcement Policy for the Discharge Violation, as shown in the Complaint’s Attachment A.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation and proposing this Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff contends that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action by the Regional Water Board is warranted concerning the specific Discharge Violations except as provided in this Stipulation and Order, and that this Stipulation and Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

6. **Recitals Incorporated:** The Preceding Recitals are incorporated herein.

7. **Administrative Civil Liability:** Settling Respondent shall be subject to administrative civil liability in the total amount of \$56,404. This includes the amount of \$15,000 for the costs incurred by the Regional Water Board staff to investigate and prosecute the administrative civil liability enforcement action. Payment of \$56,404 shall be made within 30 days of receipt of the Stipulated Order executed on behalf of the Regional Water Board to the State Water Resources Control Board Cleanup and Abatement Account and submitted to:

Division of Administrative Services
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

8. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent or the Implementing Party’s directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

9. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

10. **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.

11. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of the Alleged Violations based on the specific facts alleged in the Complaint. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section II.

12. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.

14. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

15. **Modification:** This Stipulation and 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 Regional Water Board or its delegate.

16. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing

before the Regional 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 Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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.

17. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

18. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered by the Complaint and this Stipulation and Order.

20. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

21. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

22. **Effective Date:** The obligations under Section II, Paragraph 3 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, or its delegate, which incorporates the terms of this Stipulation.

23. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

24. **Counterpart Signatures:** This Stipulation 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 Staff
North Coast Region

By: Original signed by
David F. Leland, Assistant Executive Officer

Date: 12 Mar 14

Settling Respondent

By: Original signed by
Joung Min Yi

Date: 03/11/14

Order of the Regional Water Board

25. This Order incorporates the foregoing Stipulation.

26. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by Regional Water Board staff in investigating the allegation contained herein or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

27. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California North Coast Regional Water Quality Control Board.

Original signed by David Leland for

Matthias St. John
Executive Officer

Date: 11 Apr 2014

14_0020_Yi_SA_Stip&Order

Attachment A – Complaint R1-2013-0085 and its Attachment A, Calculation of Penalties