

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R4-2024-0166 (Proposed)

**JAMES S. RASMUSSEN AND JEANNE
T. RASMUSSEN, AS TRUSTEES OF
THE RASMUSSEN LIVING TRUST**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; 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 Acting Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Team (Prosecution Team), and James S. Rasmussen and Jeanne T. Rasmussen, as trustees of the Rasmussen Living Trust (Dischargers) (collectively known as the Parties) and is presented to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The James S. Rasmussen and Jeanne T. Rasmussen own the property located at 700 West Doris Avenue, in Oxnard, California (Site), as trustees of the Rasmussen Living Trust.
3. On May 14, 2020, the Dischargers filed a Notice of Intent (NOI) with the State Water Resources Control Board (State Water Board) to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities (General Permit) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, NPDES No. CAS000002, WDID No. 4 56C390320, for a construction project located at the Site. The NOI identifies the Project as Risk Level 1. General Permit, section IX requires all Risk Level 1 dischargers to “comply with the requirements included in Attachment C of [the] General Permit.” On May 31, 2023, the Los Angeles Water Board approved the Notice of Termination and terminated WDID No. 456C390320 for the Site.
4. The Prosecution Team alleges that the Dischargers violated the General Permit, Water Code section 13376, and Clean Water Act section 301 (33 U.S.C. § 1311) by discharging sediment-laden stormwater to a water of the United States, and violated the General Permit by failing to implement best management practices (BMPs) and update a list required in the storm water pollution prevention plan (SWPPP), as described in **Attachment A**, herein incorporated by reference. Dischargers dispute the above allegations, and dispute every alleged violation

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recited in **Attachment A**, including but not limited to certain portions of the “Penalty Calculation Methodology” applied to the alleged violations.

5. Water Code section 13385 provides that any person who violates the General Permit, Water Code section 13376, and/or Clean Water Act section 301 is subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurs plus ten dollars (\$10) per gallon of waste discharged but not cleaned up that exceeds 1,000 gallons. (Wat. Code, § 13385(a)(1), (a)(2), (a)(5), (c).)
6. The Parties have engaged in confidential settlement negotiations and agree to fully settle the alleged violations summarized above, and specifically identified in Attachment A, without administrative or civil litigation and by presenting this Stipulation to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
7. To resolve the alleged violations by consent and without further administrative or civil proceedings, and without Dischargers admitting the validity of the alleged violations, the Parties have agreed to the imposition of an administrative civil liability against the Dischargers in the amount of forty thousand dollars (\$40,000).
8. The 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 interest of the public.

III. Stipulations

The Parties stipulate to the following:

9. **Jurisdiction:** The Parties agree that the Los Angeles Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
10. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability in the amount of **forty thousand dollars (\$40,000)** by the Los Angeles Water Board to resolve the violations specifically alleged herein. Payment of this penalty shall be made within 30 days of adoption of this Order. The Dischargers shall submit a check made payable to the “State Water Pollution Cleanup and Abatement Account,” reference the Order number on page one of this Order, and mail it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

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The Dischargers shall provide a copy of the checks via email to the State Water Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Los Angeles Water Board (Russ.Colby@waterboards.ca.gov).

11. Compliance with Applicable Laws and Regulatory Changes: This Stipulated Order resolves only the claims that are made or could have been made based on the specific facts alleged in this Stipulated Order. The Dischargers understand that payment of an 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 additional violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

12. Party Contacts for Communications Related to Stipulated Order:

For the Los Angeles Water Board:

Russ Colby
Acting Assistant Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6375
Russ.Colby@waterboards.ca.gov

For the Dischargers:

James S. Rasmussen
Rasmussen Living Trust
26500 West Agoura Road #652
Calabasas, CA 91302
(818) 419-1655
james@rasmussendevelopment.com

13. Attorneys' 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.

14. Matters Addressed by This Stipulated Order: Upon the Los Angeles Water Board's or its delegee's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged above and in Attachment A, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in section III, paragraph 10.

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15. **No Admission of Liability:** In settling this matter, the Dischargers do not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance. In the event of any future enforcement action, nothing in this paragraph shall be interpreted as an admission of liability by the Discharges of the violations alleged herein. However, the Dischargers agree that in the event of any future enforcement actions by the Los Angeles Water Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with the “prior history of violations” consideration in Water Code section 13327 and/or section 13385, subdivision (e).
16. **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 Los Angeles Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption, the Acting Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
17. **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.
18. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Los Angeles 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 Los Angeles 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 Los Angeles Water 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.
19. **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 Los Angeles Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

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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. **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 Los Angeles Water Board or its delegee.
22. **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.
23. **If Order Does Not Take Effect:** The Dischargers' obligations under this Stipulated Order are contingent upon the entry of the Order of the Los Angeles Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles 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 Los Angeles Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In such event, and otherwise, Dischargers reserve all rights and continue to dispute all above allegations, including every alleged violation recited in **Attachment A**, including but not limited to certain portions of the "Penalty Calculation Methodology" applied to the alleged violations. 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 Los Angeles 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 Los Angeles 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 on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

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24. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Los Angeles Water Board, hereby waives their right to a hearing before the Los Angeles Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Los Angeles Water Board or State Water Board for hearing, the Dischargers do not waive the right to a hearing before an order is imposed.
25. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Los Angeles Water Board, the Dischargers hereby waive the right to petition the Los Angeles Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
26. **Covenant Not to Sue:** The Dischargers covenant 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 expressly addressed by this Stipulation and Order. Once the Stipulated Order is approved, the Los Angeles Water Board covenants not to sue or pursue any administrative or civil claim(s) against Dischargers arising out of or relating to any matter expressly addressed by this Stipulation and Order. The Prosecution Team is unaware of any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys intending to sue the Dischargers for anything arising out of or relating to any matter expressly addressed by this Stipulation and Order.
27. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
28. **Necessity for Written Approvals:** All approvals and decisions of the Los Angeles Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Los Angeles Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Stipulated Order.
29. **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.
30. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

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31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.

32. **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. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

IT IS SO STIPULATED.

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Los Angeles Regional Water Quality Control Board Prosecution Team

By: Original signed by Russ Colby on November 21, 2024
Russ Colby
Acting Assistant Executive Officer

Date

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James S. Rasmussen and Jeanne T. Rasmussen, as trustees of the Rasmussen Living Trust

By: Original signed by James S. Rasmussen on December 5, 2024
James S. Rasmussen _____ Date _____
Trustee

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**HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES
REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:**

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles 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, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Los Angeles Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under this Order.

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

Susana Arredondo
Executive Officer
Los Angeles Regional Water Quality
Control Board

Date

Attachment A: Penalty Calculation Methodology