

**STATE WATER RESOURCES CONTROL BOARD**

In the matter of:

**Mr. Randy Johnson**

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)  
) **Order No. WQ-2009-017-EXEC**  
) **Imposing Operator Certification Discipline**  
) **Pursuant to Settlement Agreement**  
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**INTRODUCTION:**

This Stipulated Order imposing Operator Certification Discipline (hereafter "Stipulated Order") is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board ("State Water Board"), and Mr. Randy Johnson (collectively referred to as "The Parties") and is presented to the State Water Board's Executive Director for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

**RECITALS:**

WHEREAS, Mr. Randy Johnson is certified as a Grade V wastewater treatment plant operator by the State Water Board.

WHEREAS, Mr. Johnson at certain times in 2008 acted as the Facility Manager of the Discovery Bay Wastewater Treatment Plant ("WWTP"). California Code of Regulations, Title 23, Section 3671(h), provides that a Chief Plant Operator is "a supervisor who is certified as an operator and who is responsible for the overall operation of a wastewater treatment plant." As Facility Manager, Mr. Johnson's responsibilities included those of a Chief Plant Operator.

WHEREAS, the Office of Enforcement issued a Letter of Proposed Disciplinary Action on March 17, 2009 alleging that Mr. Johnson engaged in certain conduct while employed as the Facility Manager of the WWTP, which subjected him to discipline pursuant to Water Code section 13627(e) and California Code of Regulations, Title 23, Section 3710.

WHEREAS, Mr. Johnson appealed the Office of Enforcement's Letter of Proposed Disciplinary Action on April 17, 2009 pursuant to the appeals process described in California Code of Regulations, Title 23, Section 3711.

WHEREAS, the Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the State Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Office of Enforcement 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 specific violations alleged in the Office of Enforcement's initial Letter of Proposed Disciplinary Action, except as provided in the Stipulated Order, and that this Stipulated Order is in the best interest of the public.

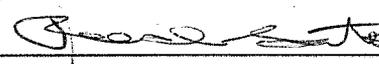
THE DIRECTOR OF THE STATE WATER BOARD OFFICE OF ENFORCEMENT AND  
MR. RANDY JOHNSON HEREBY STIPULATE AS FOLLOWS:

- A. The Parties agree that upon execution by the Executive Director, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action asserted by the Office of Enforcement in the Letter of Proposed Disciplinary Action and as part of the appeals process or which could have been asserted by the Office of Enforcement based on the specific facts alleged in the Letter of Proposed Disciplinary Action and in the appeals process, as of the effective date of this Stipulated Order.
- B. Upon the effective date of this Stipulated Order, Mr. Randy Johnson shall and does release, discharge and covenant not to sue or pursue any civil or administrative claims against the State Water 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.
- C. The Parties agree to support, advocate for, and promote the Stipulated Order before the Executive Director.
- D. The Parties covenant and agree that they will not contest the Stipulated Order before the State Water Board, or any court.
- E. This Stipulated Order shall not constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as admission of violation of any law, rule, or regulation. Mr. Johnson expressly denies the allegations in the Letter of Proposed Disciplinary Action and/or which have been made by the Office of Enforcement as part of the appeals process, and any allegations made in this Stipulated Order. However, this Stipulated Order may constitute evidence in actions seeking compliance with this Order. This Stipulated Order may be used as evidence of a prior enforcement action in any future enforcement actions by the State Water Board against Mr. Johnson.
- F. The Parties agree that Mr. Johnson's Grade V Certificate will be downgraded by the State Water Board to a Grade II Certificate for a period of six (6) months effective immediately upon execution of this Order by the Executive Director. The Parties agree that Mr. Johnson may reapply for certification as a Grade V wastewater treatment plant operator and take the examination prior to or during the six month period of certificate downgrade; however, Mr. Johnson may not operate as a Grade V wastewater treatment plant operator effective as of the date of execution of this Stipulated Order by the Executive Director and until the six month downgrade period is complete.
- G. In the event that this Stipulated Order does not take effect because it is not approved by the Executive Director, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed with the appeals process and with the additional submission of evidence on behalf of Mr. Johnson before a Final Division Decision is issued by the Deputy Director of the Division of Financial Assistance. The Parties agree that all oral and written statements and agreements

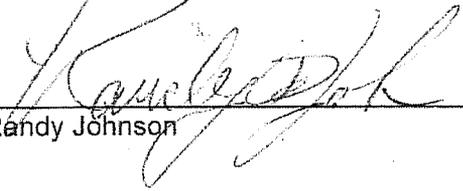
made during the course of settlement discussions will not be admissible as evidence in connection with the appeals process or any subsequent proceeding, including a petition for review of a Final Division Decision. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State 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 on the Petition in this matter; or 2) laches or delay or other equitable defenses based on the time period that the Stipulated Order may be subject to administrative or judicial review.

- H. 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.
- I. This 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.
- J. This Order shall not be modified by either of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board.
- K. 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

  
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Reed Sato  
Director  
State Water Resources Control Board, Office of Enforcement

12/23/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Randy Johnson

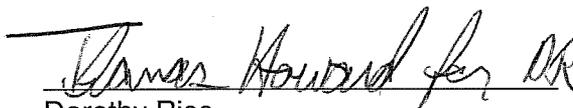
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HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:

1. 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:

IT IS HEREBY ORDERED, pursuant to section 11415.60 of the California Government Code that

1. Randy Johnson is ordered to surrender his Grade V Wastewater Treatment Plant Operator Certificate to the State Water Board immediately upon receiving written notice of this Order. The State Water Board Office of Operator Certification shall, upon receipt of Randy Johnson's Grade V Certificate, issue Randy Johnson a Grade II Certificate.
2. Randy Johnson may take the examination for certification for a Grade V wastewater treatment plant operator prior to or during the duration of the six month certificate downgrade period. If Randy Johnson passes the examination for certification as a Grade V wastewater treatment plant operator, he may not operate as a Grade V operator until the six month downgrade period is completed.
3. The six month downgrade period commences upon execution of this Order by the Executive Director.

  
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Dorothy Rice  
Executive Director  
12/22/09  
\_\_\_\_\_  
Date