

liability totaling seven thousand eight hundred dollars (\$7,800.00) for the alleged violations of the General Order, the failure to submit the 2009 Annual Report.

3. On 15 February 2012, the Prosecution Team of the Central Valley Water Board issued a second Notice of Forthcoming Assessment of Civil Liability ("2010 Pre-Complaint Letter") to the owner/operator. The Pre-Complaint Letter recommends imposing an administrative civil liability totaling \$5,700 for alleged violations of the General Order, the failure to submit the 2010 Annual Report.

4. The Prosecution Staff and owner (hereinafter "Parties") engaged in settlement negotiations and agree to settle the violations cited in the 1 September 2011 and 15 February 2012 Pre-Complaint letters without administrative or civil litigation and 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. The Prosecution Staff 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 in the Pre-Complaint Letter except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

5. To resolve the violations of CWC 13267 by consent and without further administrative proceedings, the Parties have agreed to the imposition of penalties for both violations in an amount totaling seven-thousand eight hundred forty dollars (\$7,840.00). The Parties agree to resolve the violation related to the failure to submit the 2009 Annual Report for two thousand seven hundred fifty dollars (\$2,750.00) in liability. This amount recoups the economic benefit derived from the failure to submit the 2009 Annual Report, plus 10%, which is the lowest amount permissible pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy. The Parties further agree to settle the violations related to failure to submit the 2010 Annual Report for five thousand ninety dollars (\$5,090.00). This penalty amount represents an initial increase to \$6,090 from the original liability amount issued in the 2010 Pre-Complaint letter based on the Discharger's history of repeat violations, with a \$1,000 reduction based on the Discharger's agreement to submit both missing annual reports by 15 April 2012. The Parties have agreed to reach this final settlement amount based on a demonstration of Discharger's inability to pay.

Section III: STIPULATIONS

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The owner hereby agrees to the imposition of an administrative civil liability totaling \$7,840. Within thirty (30) days of the effective date of this Order, the owner agrees to remit, by check, SEVEN THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$7,840), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Clay Rodgers, Central Valley Water Board 1685 "E" Street, Suite 100 Fresno, California 93706-2007, and shall send a copy

to Ellen Howard, Office of Enforcement, State Water Resources Control Board, 1001 "I" Street, 16th Floor Sacramento, California 95814.

7. Compliance with Applicable Laws: The Respondents 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.

8. Party Contacts for Communications related to Stipulated Order:

For the Central Valley Water Board:

Clay Rodgers
Regional Water Quality Control Board
Central Valley Region
1685 "E" Street, Suite 100
Fresno, CA 93706-2007

For the Respondents:

Tony and Nancy Thomas
Thomas Dairy
[REDACTED]
Riverdale, CA

9. 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.

10. Matters Addressed by Stipulation: Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the owner or operator as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5.

11. Public Notice: The Respondents 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 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 Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

12. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the 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.

13. No Waiver of Right to Enforce: The failure of the Prosecution Staff 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 the Order. The failure of the Prosecution Staff 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.

14. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

15. Modification: This Stipulated 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 Central Valley Water Board.

16. If Order Does Not Take Effect: In the event that 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 they expect to proceed to a contested evidentiary hearing before the 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 Central Valley Water Board members or their advisors and any other objections that 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 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. Admission of Liability: In settling this matter, the Respondents admit to the allegations of violation of the Dairy General Order in the Pre-Complaint Letter, and recognize that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

18. Waiver of Hearing: The Respondents have been informed of the rights provided by CWC section 13323(b), and hereby waive their right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

19. Waiver of Right to Petition: The Respondents hereby waive their 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 waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

20. Covenant Not to Sue: The Respondents 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 Covered Matter.

21. Central Valley Water Board is 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 acts or omissions by the Respondents, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

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

23. No Third Party Beneficiaries. This Stipulated Order is not intended to confer any rights or obligations 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.

24. 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.

25. Counterpart Signatures: This Stipulated 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.

California Regional Water Quality Control Board Prosecution Staff

Central Valley Region

By: Clay L. Rodgers
Clay Rodgers
Assistant Executive Officer

Date: 3/23/2012

By: Tony and Nancy Thomas
Tony and Nancy Thomas

Date: 3.23.12

Order of the Central Valley Water Board

26. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

27. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley 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.

28. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to CWC section 13323 and Government Code section 11415.60, IT IS **HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.



(Signature)

KENNETH D. LANDAU, ASST. EXECUTIVE OFFICER

(Print Name and Title)

Date: 1 MAY 2012

**PAYMENT AGREEMENT BETWEEN
TONY AND NANCY THOMAS
THOMAS DAIRY
AND
THE CENTRAL VALLEY WATER BOARD
FOR ORDER R5-2012-0532**

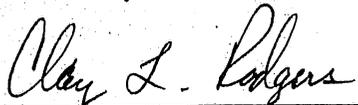
Water Code section 13323, which governs the imposition of civil liability by the Central Valley Water Board, states, in relevant part, "[p]ayment shall be made not later than 30 days from the date on which the [Administrative Civil Liability] order is issued."

Caetano Dairy (hereafter "Discharger") has agreed to the terms under Stipulated Order R5-2012-0532 to pay **seven thousand eight hundred and forty dollars (\$7,840)** in administrative civil liability to the State Water Resources Control Board Waste Discharge Permit Fund to resolve outstanding administrative civil liability for a failure to comply with Dairy General Order R5-2007-0035. When the Executive Officer executes the Stipulated Order, this action is functionally the same as the issuance of an Administrative Civil Liability Order. Therefore, the Board has the right to demand full payment of the outstanding liability within 30 days of execution. However, in order to facilitate settlement, the Central Valley Water Board will not take any action to collect the full amount before the expiration of the payment schedule prescribed below, provided that the Discharger adheres to the following provisions:

1. The Discharger agrees to pay the outstanding liability in the amount of **seven thousand eight hundred and forty dollars (\$7,840)**. Payments shall be made in monthly payments of **six hundred fifty-three dollars and thirty-three cents (\$653.33)**. The first payment will be due on June 1, 2012. Subsequent payments will be due on the first day of the month. The final payment is due on May 1, 2013.
2. The Discharger may pay the full amount of the penalty sooner than one year, but must make the final payment by May 1, 2013.
3. The Permittee shall submit payment by cashiers or certified check made payable to the "State Water Pollution Cleanup and Abatement Account – Order No. R5-2012-0532."
4. Checks shall be submitted so that they are received by the Central Valley Water Board on or before 5 p.m. on the dates listed above, and the checks shall be submitted to:

California Regional Water Quality Control Board, Central Valley Region
Attn: Clay Rodgers
1685 E Street
Fresno, CA 93706

Should the Permittee fail to make any payment according to the agreed upon schedule above, the **remaining balance will be immediately due**. Should the Permittee fail to adhere to the payment schedule outlined above or fail to pay the remaining balance if a payment is missed, the Central Valley Water Board reserves the right to take any action permitted by law to collect the amount that remains outstanding.



Prosecution Team Representative

5/7/2012

Date