

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:)	
)	
John & Corrie Jacobi Trust)	Order No. R5-2014-0507
)	
)	
No. R5-2013-0524 for)	Settlement Agreement and Stipulation for
Administrative Civil Liability)	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 Central Valley Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and John & Corrie Jacobi Trust, owner, ("Settling Respondent") (collectively "Parties") and is presented to the Central Valley Regional Water Quality Control Board ("Regional Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is the owner of the John Jacobi Dairy located on property located at [REDACTED] Dinuba, California, County of Tulare (the "Property"). The John Jacobi Dairy is a dairy farm regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereafter Dairy General Order). On 5 December 2011, the Executive Officer issued a CWC Section 13267 Order (hereafter 13267 Order) to the Settling Respondent that directed the Settling Respondent to implement groundwater monitoring at the Dairy pursuant to the terms of the Dairy General Order.
2. On 8 March 2013, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2013-0524 ("Complaint") to the Settling Respondent. The Complaint recommends imposing an administrative civil liability totaling \$6,000 for alleged violations of the Dairy General Order and the 13267 Order.
3. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code and the General Order, set forth in the Complaint, the Parties have agreed to the imposition of \$2,750 against the Settling Respondent. Payment of \$2,750 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. In addition, within 60 days from the execution of this Order the Settling Respondent must notify the Regional Water Board that they have elected to either join a groundwater monitoring coalition, or that they plan to submit an acceptable

groundwater monitoring well installation and sampling plan (hereafter MWISP). Within 90 days from the issuance of this Order the Settling Respondent must either provide documentation to the Regional Water Board that they have joined a groundwater monitoring coalition, or submit a MWISP.

4. The Complaint alleges that the Settling Respondent violated the Dairy General Order, and failed to comply with a Section 13267 Order which directed the Settling Respondent to implement groundwater monitoring at the dairy. Specifically the 13267 Order directed the Settling Respondent to submit either written notification that the Settling Respondent has joined a coalition group that will develop a representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring program at the Dairy, or an acceptable MWISP.

5. The Complaint alleges that the Settling Respondent violated WDR Order No. R5-2007-0035 by failing to implement groundwater monitoring at the Property.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order 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 specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$2,750 as set forth in Paragraph 3 of Section II herein.

8. **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.

9. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board: Dale Essary, 1685 "E" Street, Fresno, CA, 93706.

For the Settling Respondent: John R. Jacobi and Corrie Jacobi, Trustees of John and Corrie Jacobi Trust, [REDACTED] Dinuba, CA 93618

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 all claims, violations or causes of action alleged in the Complaint, or which could have been asserted against the Settling Respondent as of 8 March 2013 based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 3 and the Settling Respondent's full satisfaction of the obligations described in Paragraph 3.

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.

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 delegee, 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 Covered Matter.

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.

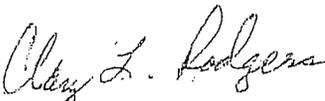
22. **Effective Date:** The obligations under Paragraph 3 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.

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.

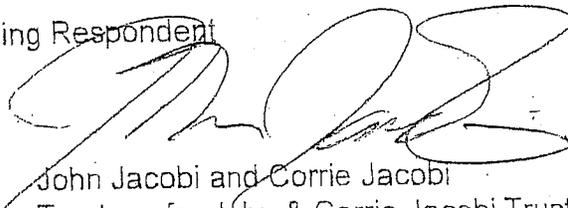
IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: 
for Pamela C. Creedon, Executive Officer

Date: 1/7/2014

Settling Respondent

By: 
John Jacobi and Corrie Jacobi
Trustees for John & Corrie Jacobi Trust

Date:

12/27/13

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 13327. The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint 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.

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



Ken Landau, Assistant Executive Officer

Date: February 10, 2014