

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2008-0701

FOR
STANISLAUS ALMOND RANCH, LLC
LAKE ROAD GRIZZLY RANCH, LLC
STANISLAUS COUNTY

This Order is issued to Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC based on provisions of California Water Code (CWC) section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order), and CWC section 13267, which authorizes the Regional Water Board to require the submittal of technical and monitoring reports.

The Assistant Executive Officer of the Regional Water Board finds that:

1. Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC (hereafter Dischargers) have graded over 1,000 acres of land in Stanislaus County, causing significant discharges of sediment into Peaslee Creek and the Tuolumne River. The property is in Sections 10, 11, 13 and 14, Township 4 South, Range 13 East MDB&M. The Dischargers own the property (APNs 020-008-012, 020-008-013, 020-010-003, and 020-010-004).
2. On 21 February 2008, the Stanislaus County Public Works Department informed Regional Water Board staff of the grading activities and forwarded information from the Turlock Irrigation District regarding impacts from the graded area. Turlock Irrigation District staff obtained turbidity measurements from Peaslee Creek upstream of the graded area and from the tributary of Peaslee Creek near the graded area. Turbidity measurements taken on 23 January 2008 were 11,200 nephelometric turbidity units (NTU) near the graded area and 167 NTU upstream of the graded area. Turbidity measurements taken on 28 January 2008 were 2240 NTU near the graded area and 127 NTU upstream of the graded area. Turlock Irrigation District staff provided photographs of the graded area and the turbid surface waters downstream, which are included as Attachment A to this Order. The photographs show large exposed areas with eroding slopes and stockpiles of manure on-site.
3. Sediment, when discharged to waters of the state, constitutes as a "waste" as defined in CWC section 13050. The Dischargers have discharged waste directly into surface waters which are tributary to the Tuolumne River
4. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources

Control Board. The beneficial uses of the Tuolumne River, as identified in Table II-1 of the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of aquatic organisms; and wildlife habitat.

5. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on increased temperature, sediment, settleable and suspended material, and turbidity. Turbidity data obtained by the Turlock Irrigation District indicate that the grading activities caused violations of the Basin plan's objective for turbidity.
6. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

7. The Dischargers' grading activities have resulted in the discharge of waste into surface waters, which have created, or threaten to create, a condition of pollution or nuisance.
8. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to

the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds."

9. Section 13267(b)(1) of the California Water Code provides that:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."

10. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with Basin Plan requirements. The Dischargers named in this Order own and operate the site from which waste was discharged.
11. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
12. Any person adversely affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.waterboards.ca.gov/centralvalley or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC shall:

1. Immediately take all actions to cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries, and to the Tuolumne River.
2. Immediately clean up and abate the sediment discharged to surface waters in accordance with the following minimum schedule:
 - (a) By **31 March 2008**, submit and immediately implement a *Stabilization and Cleanup Plan* (Plan). The Plan must describe how the site will be stabilized to prevent future discharges of sediment and all other wastes, and must give a proposed timeline for the work. The timeline shall not extend beyond **15 August 2008**. The Plan must describe how sediment-impacted surface waters will be cleaned up as appropriate and must include timelines and long-term monitoring to assess the effectiveness of the stabilization and cleanup efforts. The Plan must be prepared by a professional knowledgeable and experienced in erosion and sediment control measures. Comments from Regional Water Board staff should be incorporated into the Plan. The Plan shall be subject to approval by the Regional Water Board, and failure to submit an acceptable Stabilization and Cleanup Plan by the aforementioned deadline may result in the imposition of administrative civil liability.
 - (b) By **1 September 2008**, submit a *Completion Report* describing in detail how the *Stabilization and Cleanup Plan* has been implemented, and showing that the site and impacted surface waters have been fully remediated. The Dischargers shall provide staff access to areas of the property, as needed.
3. If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **1 April 2008**, submit the name and address to be used for billing purposes for oversight charges.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

As required by Business and Professions Code sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed by the registered professional.

If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability up to \$10,000 per day of violation pursuant to CWC sections 13350, 13385, and/or 13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

This Order is effective upon the date of signature.

JACK E. DEL CONTE, Assistant Executive Officer

10 March 2008

(Date)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER R5-2010-0554

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF

STANISLAUS ALMOND RANCH, LLC AND
LAKE ROAD GRIZZLY RANCH, LLC
STANISLAUS COUNTY

This Order is issued to Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC (hereafter collectively referred to as “Discharger”) pursuant to California Water Code (“CWC”) section 13350, which authorizes the imposition of Administrative Civil Liability (“ACL”). This Order memorializes a settlement reached between the Central Valley Water Board’s Prosecution Team and the Discharger, and covers all violations by all parties charged in ACL Complaint R5-2009-0563 (the “Complaint”) as well as several alleged violations that occurred subsequent to the issuance of the Complaint. The violations resolved herein include alleged violations of the Coalition Group Conditional Waiver of Waste Discharges Requirements for Discharges from Irrigated Lands (Order R5-2006-0053)(the “Irrigated Lands Conditional Waiver”) and Cleanup and Abatement Order R5-2008-0701.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds, with respect to the Discharger’s acts, or failure to act, the following:

Background

1. The Discharger is the owner and developer of roughly 1,000 acres of almond orchard located in Stanislaus County consisting of Assessor’s Parcels 020-008-012, 020-008-013, 020-010-003, and 020-010-004 (the “Property”). The Property was used as dry land pasture until 2007, when it was graded in preparation for planting almonds. The topography is rolling hills, with slopes of 0 to 75 percent. The soils are fine-textured and susceptible to erosion. The Natural Resource Conservation Service (“NRCS”) SSURGO Data, 2007, lists the potential for erosion as low for the lowlands and high to very high for the hills.
2. The Property drains to an unnamed tributary of Peaslee Creek, which is a tributary to the Tuolumne River. The Peaslee Creek outfall flows into a section of the Tuolumne River that has been designated under Fish and Game Code section 1505 as a spawning area for several fish species. This section of the river has also been identified as winter steelhead and Chinook habitat. As described in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (the “Basin Plan”), the existing and potential beneficial uses of the Tuolumne River are municipal and domestic water supply, agricultural supply, hydropower generation, water contact recreation, non-contact recreation, cold and warm fresh water habitat, cold water spawning, and wildlife habitat. Pursuant to the Basin Plan, the beneficial uses of the Tuolumne River apply to its tributaries, including Peaslee Creek.

Legal Provisions

3. On 25 August 2007, the Discharger enrolled the irrigated portion of the Property in the East San Joaquin Water Quality Coalition, thus obtaining regulatory coverage under the Irrigated Lands Conditional Waiver.
4. Definition 18 of Attachment A to the Irrigated Lands Conditional Waiver defines “Water Quality Standards” as water quality objectives in the Central Valley Water Board’s Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies.
5. The Irrigated Lands Conditional Waiver contains the following condition:

ATTACHMENT B: TERMS AND CONDITIONS

- A.10. Dischargers who are participating in a Coalition Group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance.
6. Cleanup and Abatement Order R5-2008-0701 states, in relevant part:
IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC shall:
 1. Immediately take all actions to cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries, and to the Tuolumne River.
 7. The Basin Plan includes the following water quality objective for turbidity:¹

Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:

- Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.
- Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.
- Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.
- Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

¹ In 2009, Basin Plan amendments were approved by the California Office of Administrative Law that altered the water quality objective for turbidity, but the change only affects waterbodies with a turbidity of less than 1 NTU; this change does affect any of the Findings in this Order.

8. CWC section 13350 states, in part:

(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

...

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

9. CWC section 13327 states, in relevant part:

In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

The following is a discussion of the factors recited in CWC section 13327. Please note that the State Water Board's current Water Quality Enforcement Policy, approved by the State Office of Administrative Law on May 20, 2010, uses a different methodology to arrive at penalty assessments in ACL Orders. However, ACL Complaint R5-2009-0563 was issued prior to the adoption of this policy, and settlement negotiations were well underway by the time the current Water Quality Enforcement Policy came into effect. Therefore, this Order is not required to follow the calculation methodology in the current Water Quality Enforcement Policy, and instead utilizes the methodology from the Enforcement Policy that was in effect at the time the Complaint was issued.

- a. Nature and Circumstances of the Violation: The Board alleges that Discharger failed to effectively manage stormwater runoff on the Property, resulting in the discharge of sediment-laden runoff to waters of the state.
- b. Extent and Gravity of the Violations: The Board alleges that discharges caused significant impacts to the stream reaches below the discharge point.

- c. Whether the discharge is susceptible to cleanup or abatement: Once in the waterways, sediment is not a pollutant that can be readily cleaned up.
- d. Degree of Toxicity: Sediment, in sufficient mass, can cause deleterious effects in aquatic organisms and aquatic habitat.
- e. Ability to Pay: Though the Discharger has significant land holdings, the business model for permanent crops such as almond orchards requires a capital-intensive startup period before any return can be made on the initial investment. The fact that the Discharger is in this startup period has been taken into account by the Board in arriving at the final liability amount.
- f. Effect on Ability to Continue in Business: The Discharger has requested a payment schedule of 10 years, so that the viability of the business is not sacrificed by an immediate payment of \$300,000. The Board's Prosecution Team views this as a reasonable way of addressing the Discharger's outstanding liability and ability to continue in business.
- g. Voluntary Cleanup Efforts Undertaken: As stated earlier, sediment is not a pollutant that can be readily cleaned up. However, the Discharger has expended significant amounts on upgrading the management practices after the initial discharges were noted.
- h. Prior History of Violations: There is no prior history of violations, as there were no sediment discharges prior to the initiation of the grading operations which gave rise to the alleged violations.
- i. Degree of Culpability: The responsibility to effectively manage stormwater runoff so as not to violate the water quality objectives in the Basin Plan is the sole responsibility of the party enrolled in the Central Valley Water Board's Irrigated Lands Conditional Waiver.
- j. Economic Benefit or Savings: The economic benefit is equal to the deferred costs of implementing an effective combination of management practices, as the initially-deployed management practices failed to effectively limit sediment transport. However, the Board cannot definitively conclude whether the failure to control stormwater discharges was due to inadequate expenditures or deficient engineering design. In addition, the Discharger has made substantial investments subsequent to the initial deployment of the management practices. The assessed penalty is substantially greater than any economic benefit or savings that resulted from the Discharger's failure to employ effective management practices in the first instance.
- k. Other factors as justice may require: The Discharger has been diligent about its efforts to deploy an effective combination of management practices following the initial violations, but has not yet been unable to develop a sufficient remedy. The Discharger has committed to changing engineering firms, which will presumably enable the Discharger to develop more effective solutions to the sedimentation issues that arise in easily-erodible soils typical of the type found at the Property. As noted above, the Discharger has also installed substantial new improvements that will assist in addressing future discharges.

10. This Order constitutes a settlement of the violations herein mentioned, that is, all violations or alleged violations occurring on or before the date hereof with respect to the Property by any party. Notice of this settlement was published on the Central Valley Water Board's website, and was provided to all interested parties. The 30 day public

notice and comment period mandated by Federal regulations (40 C.F.R., §123.27) has expired.

11. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer (Resolution R5-2009-0027), or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.
12. Issuance of this ACL Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

Violation History

13. On 21 February 2008, the Stanislaus County Public Works Department informed Central Valley Water Board staff of grading activities at the Property and forwarded information from Turlock Irrigation District (TID) staff regarding water quality impacts caused by discharges from the graded area. TID staff obtained turbidity measurements from Peaslee Creek upstream of the graded area and from the tributary of Peaslee Creek near and downstream of the graded area. Turbidity measurements taken on 23 January 2008 were 167 nephelometric units (NTU) upstream of the graded area and 11,200 NTU downstream of the graded area; turbidity measurements taken on 28 January 2008 were 127 NTU upstream and 2240 NTU downstream; and turbidity measurements taken on 25 February 2008 were 92 NTU upstream and 2,600 NTU downstream. TID staff also provided photographs taken in January and February 2008 of the graded area and turbid waters downstream.
14. On 10 March 2008, the Central Valley Water Board issued Cleanup and Abatement Order R5-2008-0701 to the Discharger. This Order required the Discharger to immediately take action to cease the discharge of sediment and other wastes to waters of the state. The Order also required the Discharger to submit a *Stabilization and Cleanup Plan* and a subsequent *Completion Report* to document full implementation of this plan.
15. On 25 January 2009, Department of Fish & Game (DFG) staff notified Central Valley Water Board staff of sediment-laden storm water discharges from the Property. Central Valley Water Board staff inspected the Property on 26 January 2009 and found a lack of adequate erosion and sediment controls, and significant discharges of sediment-laden storm water from the Property to Peaslee Creek and the Tuolumne River. The turbidity measurements from the Property to Peaslee Creek on 25 & 26 January 2009 were 1,200 and 781 NTU, respectively; while the turbidity measurements in the Tuolumne River upstream of the Peaslee Creek confluence on those days were 2 and 4 NTU.
16. On 14 February 2009, DFG staff inspected the Property and found that a sediment dam had failed, resulting in the discharge of sediment-laden storm water to Peaslee Creek and the Tuolumne River. The turbidity of the storm water discharge from the Property was measured at 1100 NTU. DFG staff subsequently contacted the Discharger and

informed him of the inadequate erosion and sediment controls at the Property and the associated waste discharges.

17. On 5 May 2009, Central Valley Water Board staff and DFG staff again inspected the Property. The inspection was prompted by DFG staff observing a significant sediment load in the Tuolumne River. Staff observed what it considered to be significant erosion, a lack of adequate erosion and sediment controls, and discharges of sediment-laden storm water at the Property. The onsite sediment dam was again found to be blown out. The turbidity measurement in the discharge from the Property was 6900 NTU; turbidity in Peaslee Creek upstream of the Property's discharge was measured at 84 NTU; and the turbidity measurement in Peaslee Creek downstream of the Property's discharge was measured at 2300 NTU.
18. On 12 November 2009, the Executive Officer of the Central Valley Water Board issued ACL Complaint R5-2009-0563, which charged Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC with administrative civil liability for the violations that occurred through May of 2009. This Order settles these violations, as well as the additional violations described below.
19. On 14 and 20 January 2010, Central Valley Water Board staff and DFG staff conducted follow up inspections at the Property. During these inspections, staff observed sediment-laden storm water being pumped from an onsite sediment basin onto adjacent orchards. The wastewater subsequently ran off the Property and flowed into Peaslee Creek. Board staff also observed disturbed soil at the Property, as well as discharges of sediment-laden storm water from the sediment basin. The wastewater discharge from the sediment basin left the Property and flowed into Peaslee Creek. The turbidity from the Property's discharges was measured at 9700 and 2400 NTU, respectively, for 14 and 20 January. Turbidity data collected from up and downstream on these dates indicates that wastewater discharges from the Property caused or contributed to exceedances of the turbidity water quality objective.
20. The Discharger disputes certain of the Board's observations above and contends, among other things, that much of the sediment observed did not result from Discharger's activities on the Property.

Summary of Violations and Maximum Penalty Calculation

21. The Board asserts that the Discharger violated the Irrigated Lands Conditional Waiver by failing to implement adequate management practices for erosion and sediment control, which resulted in the discharge of sediment-laden water to waters of the state. Turbidity measurements taken on 23 and 28 January 2008, 25 February 2008, 25 and 26 January 2009, 14 February 2009, 5 May 2009, and 14 and 20 January 2010 show that these discharges caused or contributed to exceedances of Basin Plan Water Quality Objectives for turbidity in Peaslee Creek and the Tuolumne River. On 25 and 26 January 2009, 14 February 2009, 5 May 2009, and 14 and 20 January 2010 the Discharger is also considered by the Board to be in violation of Cleanup and Abatement Order R5-2008-0701, which required the Discharger to cease discharging wastes into waters of the state.

22. Pursuant to CWC section 13350, the maximum civil liability for violations of the Irrigated Lands Conditional Waiver and the Cleanup and Abatement Order is either \$5,000 per violation per day, or \$10 per gallon of waste discharged. The evidence documented above indicates that the Discharger, at a minimum, failed to have adequate management practices for erosion and sediment control in place from 23 January 2008 through 25 February 2008 (34 days), from 25 January 2009 through 5 May 2009 (101 days), and from 14 January 2010 through 20 January 2010 (7 days). The Cleanup and Abatement Order was in place during the 25 January 2009 through 5 May 2009 period, and during the 14 January 2010 through 20 January 2010 period, resulting in an additional 108 days of violations. Based on 108 days of violations, the Discharger has accrued a maximum civil liability of \$540,000 under a per-violation, per-day calculation under CWC section 13350.

As stated above, the Central Valley Water Board could either calculate a maximum penalty based on the number of days of violations, or could calculate a maximum penalty based on the number of gallons of sediment-laden water that were discharged from the Property. Although the Central Valley Water Board's Prosecution Team has estimated the runoff from the Property based on rainfall data gathered from a monitoring station in the vicinity of the Property, the proposed liability falls below the maximum amount allowed by law when calculated at a "per violation per day" level, which means that the Central Valley Water Board's Prosecution Team is not obligated to include a per-gallon calculation in this Order.

23. After full consideration of the factors in Finding No. 9, above, the Central Valley Water Board believes that a penalty of \$300,000 for the violations described herein is appropriate.
24. The Discharger disputes the Board's conclusions and asserts that its actions were reasonable under the circumstances. However, the Discharger has agreed to settle the claims described herein under the terms of this Order to avoid protracted and costly proceedings before the Board and litigation.
25. The Board acknowledges that the circumstances described in this Order have also resulted in the institution of criminal actions against Casey Kooyman and Michael Kooyman by the Stanislaus County District Attorney. The settlement described in this Order is intended to settle those criminal actions as well as the alleged violations asserted by the Board. The California Department of Fish and Game and the Stanislaus County District Attorney have participated in the development of this Order and have concurred that the referenced criminal actions will be dismissed with prejudice and that no further criminal actions based on the circumstances described in this Order will be initiated.
26. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website and was provided to all interested parties. The 30-day public notice and comment period has expired.

27. Upon entry of this Order and execution of the attached payment agreement (Attachment A), no further documents or actions by the Discharger are required in order to effect the settlement with the Board.

IT IS HEREBY ORDERED THAT:

1. Stanislaus Almond Ranch, LLC shall pay Administrative Civil Liability in the amount of **three hundred thousand dollars** (\$300,000.00).
2. **Sixteen thousand eight hundred and seventy-nine dollars and fifty-four cents** (\$16,879.54) of the \$300,000.00 penalty shall be permanently suspended upon payment of ten thousand dollars (\$10,000.00) in penalties to the Stanislaus County District Attorney's Office and payment of **six thousand eight hundred and seventy-nine dollars and fifty-four cents** (\$6,879.54) in costs to the California Department of Fish and Game.

Payment to the Stanislaus County District Attorney's Office shall be made by check payable to the **Stanislaus County District Attorney**. Payment to the California Department of Fish and Game shall be made by check payable to the **California Department of Fish and Game**. The check made out to the Stanislaus County District Attorney's Office and the check made out to the California Department of Fish and Game shall be received at the following address by **21 January 2011**:

Stanislaus County District Attorney's Office
Attn: Donna Robinson
P.O. Box 442
Modesto, CA 9533

3. Stanislaus Almond Ranch, LLC shall pay the remaining **two hundred eighty three thousand one hundred and twenty dollars and forty-six cents** (\$283,120.46) in accordance with the attached payment agreement (Attachment A).
4. This Order is effective upon the date of signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday,

or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request, or may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

original signed by

Kenneth Landau, Assistant Executive Officer

23 December 2010

Date

Attachment A: Payment Agreement

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0554
PAYMENT AGREEMENT BETWEEN

STANISLAUS ALMOND RANCH, LLC
AND
THE CENTRAL VALLEY WATER BOARD

California 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."

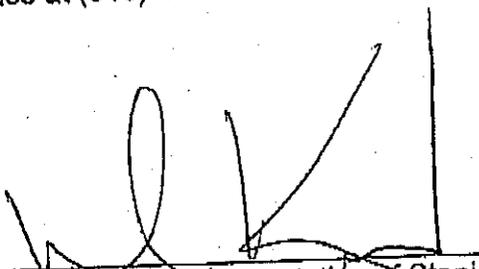
The Central Valley Water Board has the right to demand full payment of the penalty assessed in Administrative Civil Liability (ACL) Order R5-2010-0554 within 30 days of issuance of the Order. However, in order to facilitate settlement, the Central Valley Water Board will not take any action to collect the full amount before the expiration of the payment schedule prescribed below, provided that Stanislaus Almond Ranch, LLC adheres to the following provisions:

1. Stanislaus Almond Ranch, LLC agrees to pay the Administrative Civil Liability in the amount of **three hundred thousand dollars (\$300,000.00)** assessed in ACL Order R5-2010-0554. **Sixteen thousand eight hundred and seventy-nine dollars and fifty-four cents (\$16,879.54)** of the \$300,000.00 civil liability shall be permanently suspended when the Central Valley Water Board receives notice that payments of **ten thousand dollars (\$10,000.00)** and **six thousand eight hundred and seventy-nine dollars and fifty-four cents (\$6,879.54)** have been received by the Stanislaus County District Attorney's Office and the California Department of Fish and Game, respectively.
2. The remaining liability shall be paid in ten (10) payments over the course of 10 years. The first payment of **thirteen thousand one hundred and twenty dollars and forty-six cents (\$13,120.46)** shall be made by **21 January 2011**. Payments of **thirty thousand dollars (\$30,000.00)** shall be due on the **10th** of January of each year through 2020, until payment is fully satisfied.
3. Stanislaus Almond Ranch, LLC shall submit payment by checks that contain a reference to ACL Order R5-2010-0554, and shall be made payable to the "Waste Discharge Permit Fund."
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: Brett Stevens
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Should Stanislaus Almond Ranch, LLC fail to adhere to the payment schedule outlined above, the Central Valley Water Board reserves the right to take any action permitted by law to collect the amount that remains outstanding.

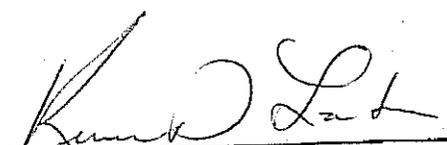
Please sign the payment agreement and fax to this office at (916) 464-4780.



Authorized Representative of Stanislaus
Almond Ranch, LLC
12/23/10

Date

The Central Valley Water Board agrees to the payment schedule detailed herein.



Kenneth Landau
Assistant Executive Officer
Central Valley Water Board
12/24/2010

Date



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Valley Region

Katherine Hart, Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

4 January 2011

Stanislaus Almond Ranch, LLC
Lake Road Grizzly Ranch, LLC
c/o Mr. Gary Sawyers, Esq.
Sawyers & Holland, LLP
652 West Cromwell, Suite 101
Fresno, CA 93711

CERTIFIED MAIL
7009 1410 0002 1421 6761

FINAL ADMINISTRATIVE CIVIL LIABILITY ORDER, STANISLAUS ALMOND RANCH, LLC AND LAKE ROAD GRIZZLY RANCH, LLC

Enclosed is a final Administrative Civil Liability Order (Order), issued pursuant to California Water Code (CWC) section 13350, for alleged violations of the Coalition Group Conditional Waiver of Waste Discharges Requirements for Discharges from Irrigated Lands (Order R5-2006-0053)(the "Irrigated Lands Conditional Waiver") and Cleanup and Abatement Order R5-2008-0701 by Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC (hereafter collectively referred to as "Discharger"). The Order was finalized after a 30-day public review period, which ended on 30 November 2010 with no comments received from interested parties.

The final Order imposes administrative civil liability in the amount of **three hundred thousand dollars** (\$300,000.00) and constitutes a settlement of violations herein charged. The signed and completed payment agreement is provided as Attachment A to the final Order. Pursuant to this agreement, your client must submit the first payments by **21 January 2011**, with annual payments due every 10th of January through 2020.

In order to conserve paper and to reduce mailing costs, paper copies of the final Order have been sent to the Discharger and oversight agencies only. The full text of the final Order is available on the Central Valley Water Board's website, under Discharger-specific Orders for Stanislaus County at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/#enforce

California Environmental Protection Agency



Exhibit E

If you have any questions regarding the final ACL Order, please contact Brett Stevens at (916) 464-4642 or bstevens@waterboards.ca.gov.

Original signed by:

JOE KARKOSKI, Chief
Irrigated Lands Regulatory Program

Enclosure: Final ACL Order
Attachment A

cc w/ encl: Mike Kooyman, Stanislaus Almond Ranch LLC, Pomona
John Goulart, Stanislaus County District Attorney's Office, Modesto
Philip McKay, Department of Fish & Game, Fresno

cc w/o encl: Pamela Creedon, Central Valley Water Board, Rancho Cordova
Kenneth Landau, Central Valley Water Board, Rancho Cordova
Kenneth Greenberg, USEPA, Region 9, San Francisco
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Gary Caseri, Stanislaus County Agricultural Commissioner, Modesto
Debbie Liebersbach, Turlock Irrigation District, Turlock
Michael Hat, Manteca
Bill Jennings, California Sport Fishing Alliance, Stockton
Parry Klassen, East San Joaquin Water Quality Coalition, Modesto
Mike Luevano, Stanislaus County Department of Public Works
Donald Tanner, National Marine Fisheries Service, Sacramento
Steve Walser, California Rivers Restoration Fund, Soulsbyville
Richard Waycott, Almond Board of California, Modesto
Wayne Zipser, Stanislaus County Farm Bureau, Modesto