STATE WATER RESOURCES CONTROL BOARD

In the matter of: **JESUS HOLGUIN**	ORDER WQ-2014-XXXX-EXEC **SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER: ORDER**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "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 Jesus Holguin ("Respondent") (Collectively "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.

1. RECITALS

WHEREAS, at all times relevant to this matter, Respondent is certified as a Grade III wastewater treatment plant operator by the State Water Board and holds certificate No. III-7602;

WHEREAS, Respondent is an operator of the Dublin San Ramon Services District Wastewater Treatment Plant ("DSRSD WWTP");

WHEREAS, California Code of Regulations, title 23, section 3671(p), provides that an operator is "any person operating a wastewater treatment plant and who occupies a position and performs duties for which the Office of Operator Certification requires an operator certificate";

WHEREAS, the Prosecution Staff alleges that Respondent engaged in certain conduct while employed as an operator of the DSRSD WWTP from July 1, 2012 through September 3, 2012 that subjects him to administrative civil liability pursuant to Water Code section 13627.1. The alleged violation is described in Exhibit A, attached hereto; and

WHEREAS, the Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the State Water Board's Executive Director for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order is less than the liability determined using the penalty methodology in the Water Quality Enforcement Policy, as described in Exhibit A. The adjustment is the result of settlement negotiations between the parties and is based on the inherent risks associated with an administrative hearing and potential subsequent litigation. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violation alleged in Exhibit A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

2. JURISDICTION

The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. ADMINISTRATIVE CIVIL LIABILITY

Within 30 days of adoption of this Stipulated Order, Respondent shall remit, by check, TWO THOUSAND DOLLARS ($2,000.00) to the State Water Board, payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order.

Respondent shall send the original signed check to David Boyers, Assistant Chief Counsel, State Water Resources Control Board Office of Enforcement, P.O. Box 100, Sacramento, California 95812.

4. MATTERS COVERED BY THIS STIPULATED ORDER

Upon adoption by the State Water Board's Executive Director, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against Respondent as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Respondent's full payment of the administrative civil liability by the deadline specified in Paragraph 3.

5. DENIAL OF LIABILITY

In settling this matter, Respondent expressly denies the allegations described in Exhibit A and this Stipulated Order and makes no admission or representation as to the appropriateness of the liability determination under the Water Quality Enforcement Policy as set forth in Exhibit A. Neither this Stipulated Order, nor any payment pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future actions by the State Water Board against Respondent.

6. COVENANT NOT TO SUE

Upon the effective date of this Stipulated Order, Respondent 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.

7. PUBLIC NOTICE

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the State Water Board's Executive Director for adoption. If the Director of the Office of Enforcement receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board's Executive Director for adoption, the Director of the Office of Enforcement may unilaterally declare this Stipulated Order void and decide not to present the Order to the State Water Board's Executive Director. Respondent agrees that he may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

8. 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.

9. WAIVERS

In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board's Executive Director, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Staff may proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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. 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 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 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.

10. APPEALS

Respondent hereby waives his right to appeal this Stipulated Order to a California Superior Court and/or any California appellate level court.

11. 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 Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

12. WATER BOARDS NOT LIABLE

Neither the State Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board members, staff, attorneys, or representatives be held as parties to or guarantor of any contract entered into by Respondent in carrying out activities required pursuant to this Stipulated Order.

13. NO WAIVER OF RIGHT TO ENFORCE

The failure of the Prosecution Staff or State 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 Staff or State 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.

14. REGULATORY CHANGES

Nothing in this Stipulated Order shall excuse Respondent from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. AUTHORITY TO ENTER STIPULATED ORDER

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.

16. 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.

17. MODIFICATION OF STIPULATED ORDER

This Order shall not be modified by any 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 or its Executive Director.

18. 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.

19. 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.

20. INCORPORATION OF EXHIBITS

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

State Water Board Prosecution Staff

By: Daniel Bayles, for _____ 12/20/13
Cris Carrigan, Director Date

Jesus Holguin

By: _____ _____
Jesus Holguin Date

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

21. 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.

22. In adopting this Stipulated Order, the State Water Board, or its delegee, has considered all the factors prescribed in Water Code section 13327, in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. The consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

23. The liability imposed by this Order is at a level that recovers the economic benefits derived from the acts that constitute the violation. In addition, this settlement recovers the costs incurred by the staff of the State Water Board for this matter.

18. 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.

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20. INCORPORATION OF EXHIBITS

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

State Water Board Prosecution Staff

By: _____ 1/6/13
Cris Carrigan, Director — Date

Jesus Holguin

By: _____ 12/19/2013
Jesus Holguin — Date

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

21. 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.

22. In adopting this Stipulated Order, the State Water Board, or its delegee, has considered all the factors prescribed in Water Code section 13327, in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. The consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

23. The liability imposed by this Order is at a level that recovers the economic benefits derived from the acts that constitute the violation. In addition, this settlement recovers the costs incurred by the staff of the State Water Board for this matter.

24. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the State Water Board.

PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, **IT IS HEREBY ORDERED** ON BEHALF OF THE STATE WATER BOARD.

_____ _____

Tom Howard Date
Executive Director

EXHIBIT A

ALLEGATIONS AND CALCULATION OF LIABILITY PURSUANT TO WATER QUALITY ENFORCEMENT POLICY METHODOLOGY

VIOLATION #1: Respondent operated a WWTP while his certificate was expired.

Respondent operated the DSRSD WWTP for 37 days between July 1, 2012 and September 3, 2012, during which he was not appropriately certified.

Pursuant to California Water Code section 13627.1(a), the maximum liability for this violation is $100/day, or $3,700.

Step 1. Potential for Harm for Discharge Violations

This is not a discharge violation and therefore Step 1 does not apply.

Step 2. Assessment for Discharge Violations

This is not a discharge violation and therefore Step 2 does not apply.

Step 3. Per Day Assessments For Non-Discharge Violations

Days of Violation: Respondent engaged in uncertified operations of a WWTP for 37 days from July 1, 2012 through September 3, 2012. There are 65 days in this period; however, because the Respondent only operated certain days during this period, the number of days of violation is 37.

Per Day Factor: Based on the Potential for Harm and the Deviation from the Requirement (see discussion below), the Per Day Factor results in a multiplier of 0.55

- Potential for Harm: Because the Respondent's operated a WWTP that is a Class V system that discharges to surface waters, the potential for harm is moderate.
- Deviation from the Requirement: The Operator Certification regulations were promulgated specifically to ensure that knowledgeable and adequately trained people operate WWTPs in California. Respondent disregarded those regulations rendering them ineffective, resulting in a major deviation of the requirements.

INITIAL LIABILITY AMOUNT – VIOLATION #1

The Initial Liability Amount for the violation calculated on a per day basis, is as follows:

(Days of Violation) x (Per Day Factor) x (Statutory Maximum per Day) = Initial Liability Amount

37 x 0.55 x $100 = **$2,035**

Step 4. Adjustment Factors

Culpability: Respondent failed to receive notice that his operator certification was due to expire because of a change in his residential address. As soon as Respondent became aware of the violation, he acted quickly to renew his certification. Therefore, a multiplier of 1 is appropriate.

Cleanup and Cooperation: Uncertified operation is not a discharge violation, and therefore cleanup is not applicable. Respondent was cooperative in remedying the violation in a timely manner. A multiplier of 0.9 is appropriate.

History of Violations: Respondent has no previous enforcement action against him for violations of the Operator Certification regulations. Therefore, a multiplier of 1 is appropriate.

Step 5. Determination of Total Base Liability Amount

TOTAL BASE LIABILITY AMOUNT – VIOLATION #1

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

(Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations Multiplier) = Total Base Liability

$2,035 x 1 x 0.9 x 1 = **$1,831.50**

Step 6. Ability to Pay and Ability to Continue in Business

Respondent is able to pay the proposed liability.

Step 7. Other Factors as Justice May Require

The State Water Board has incurred $600 in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.
$1,831.50 + $600 = **$2,431.50**

Step 8. Economic Benefit

The violation discussed resulted in no economic benefit, so no adjustment is needed.

Step 9. Maximum and Minimum Liability Amounts

The combined maximum potential liability for the violation described above is $2,431.50.

There is no minimum liability amount.

The final liability falls within the maximum and minimum liability amounts. Therefore, no further adjustment is necessary.

Step 10. Final Liability Amount

The final liability amount calculated using the penalty methodology is **$2,431.50**.