

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

**City of Jackson
Wastewater Treatment Plant
Amador County**

ORDER R5-2018-0517

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER**

Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order, Order or ACLO) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the City of Jackson (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Background

2. The Discharger owns and operates the City of Jackson Wastewater Treatment Plant (Facility), which provides sewerage service to the City of Jackson in Amador County. Treated domestic, commercial and industrial wastewater is discharged to Jackson Creek, a water of the United States, and tributary to Lake Amador.
3. On 5 December 2013, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order R5-2013-0146, effective 24 January 2014, which contained new requirements and rescinded WDRs Order R5-2007-0133-01, except for enforcement purposes. WDRs Order R5-2013-0146 included effluent limitations and other requirements. On 6 February 2015, the Board issued amended WDRs Order R5-2013-0146-01, which removed effluent limitations for copper contained in WDRs R5-2013-0146.
4. On 5 February 2015, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2015-0003 which includes interim effluent limitations for cyanide, chlorodibromomethane, dichlorobromomethane, nitrate plus nitrite, and total trihalomethane and provides protection from mandatory minimum penalties (MMPs) until 1 March 2018. TSO R5-2015-0003 was amended on 18 February 2016 to extend the date for compliance with the final effluent limits for cyanide, chlorodibromomethane, dichlorobromomethane, nitrate plus nitrite, and total trihalomethanes until 1 November 2018.

5. WDRs Order R5-2013-0146-01 Effluent Limitations IV.A.1.e includes, in relevant part, the following effluent limitations:
 - e. **Total Coliform Organisms.** Effluent total coliform organisms shall not exceed:
 - i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median;
 - ii. 23 MPN/100mL, more than once in any 30-day period; and
 - iii. 240 MPN/100mL, at any time
6. According to the Discharger's electronic self-monitoring reports (eSMRs), between 1 June 2016 and 31 January 2017, the Discharger violated the total coliform organism limitations fourteen times, as shown on Attachment B. Attachment B is attached hereto and made part of this Order by reference.
7. The WDRs allow the discharge of treated wastewater to surface waters, under the condition that the Discharger complies with the effluent limitations and other provisions prescribed by the Board. Failure to comply with the effluent limitations of the WDRs subjects the Discharger to MMPs or discretionary penalties.

Regulatory Considerations

8. Water Code section 13385(h) and (i) requires that MMPs of \$3,000 per violation be assessed by the Board for specified effluent violations, except the first three non-serious violations occurred during any 180-days period. The Board does not have discretion in assessing MMPs and must initiate enforcement against all entities that accrue a MMP violation. If MMPs were assessed in this Order, the resulting total penalty would be \$42,000. However, due to the Discharger's long-term history of total coliform organism violations, discretionary penalties are warranted in lieu of MMPs.
9. Pursuant to Water Code section 13327, in determining the amount of discretionary civil liability, the Central Valley Water Board is required to 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.
10. In this case, application of the Enforcement Policy for a discretionary penalty results in a Total Base Liability of \$2,457,180 on a per-gallon and per-day discharged basis (see

Attachment A). The Prosecution Team asserts that this liability is unsuitable given the magnitude of the violations and the estimated economic benefit accrued by the Discharger. In addition, the amount is disproportionate to the circumstances surrounding the discharge. Moreover, a \$2.4 million penalty is inconsistent with other recent penalties for similar violations issued by the Central Valley Water Board, The Prosecution Team asserts that the punitive and deterrent goals of the Water Code and Enforcement Policy can be met here with a smaller, though still substantial, final liability in the amount of \$178,959. This application of discretion is a result of the specific circumstances peculiar to this case, and is not intended to be precedent.

11. The estimated economic benefit plus an additional 10% is the minimum amount for an ACLO under the Enforcement Policy. In this instance is, the estimated economic benefit plus 10% is \$178,959, which amounts to the estimated value of all the compliance projects completed related to exceedances of the effluent limitations for total coliforms at the time of the Parties agreement.

Settlement

12. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation 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. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **one hundred and seventy-eight thousand nine hundred fifty-nine dollars (\$178,959)** in administrative civil liability against the Discharger.
13. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public.

Stipulations

The Parties stipulate to the following:

14. **Administrative Civil Liability:** Without admitting the truth of any violations alleged in this Stipulated Order, the Discharger hereby agrees to the imposition of **one hundred and seventy-eight thousand nine hundred fifty-nine dollars (\$178,959)** in administrative civil liability to the Central Valley Water Board to resolve the violations alleged in this Stipulated Order. The Discharger agrees to pay the following amounts:
 - a. **Eighty nine thousand four hundred eighty dollars (\$89,480.00)** shall be paid to the State Water Board *Cleanup and Abatement Account*. Payment shall be made no later than thirty (30) days after adoption of an order approving this Stipulated Order by the Central Valley Water Board, or its delegee, by check payable to the State Water Board *Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Stipulated Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Nickolaus Knight, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and

Kim Sellards, Supervisor, Compliance and Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drove, Suite 200, Rancho Cordova, CA 95670.

- b. **Eighty nine thousand four hundred and seventy-nine (\$89,479.00)** shall be permanently suspended upon completion of the Supplemental Environmental Project (SEP) described in Attachment C of this Order.

15. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL 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 additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

16. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

Kim Sellards, Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670
Kim.Sellards@waterboards.ca.gov
(916) 464-4835

Nickolaus Knight
Office of Enforcement, State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812
Nickolaus.Knight@waterboards.ca.gov
(916) 327-0169

For the Discharger:

Yvonne Kimball
City Manager
City of Jackson
33 Broadway
Jackson, CA 95642
(209) 223-1646

Andre Monette
Best, Best and Krieger
2000 Pennsylvania Ave. NW
Washington, D.C. 20006
(619) 525-1374

17. **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.
18. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Stipulated Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified in Stipulation 1.
19. **Public Notice:** The Discharger understands 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 Assistant 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 Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
20. **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 Stipulated 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.
21. **No Waiver of Right to Enforce:** The failure of the Prosecution Team 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 this Stipulated Order. The failure of the Prosecution Team 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. 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. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Stipulated Order.
22. **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 Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
23. **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.

24. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
25. **If Stipulated 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 the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL 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 and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. 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 Central Valley Water Board members or their advisors and any other objections to the extent that they 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; provided however, that objections intended to preserve Discharger's due process rights are not waived by this section; or
 - b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.
26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
27. **Waiver of Right to Petition:** The Discharger hereby waives the 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 waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
28. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
29. **Water Boards 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 the negligent or intentional acts or

omissions by Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

30. **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 Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
31. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
32. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
33. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
34. **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 Stipulated Order.
35. **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 Team
Central Valley Region

By: Original signed by
Andrew Altevogt
Assistant Executive Officer

Date: 6/19/2018

City of Jackson

By: Original signed by
Yvonne Kimball
City Manager
City of Jackson

Date: 6/12/2018

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Stipulated Order, the Central Valley Water Board, or its delegee, has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for ACL. As such, the Central Valley Water Board finds that issuance of this Stipulated Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, 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.
3. The foregoing Stipulation is fully incorporated herein and made part of this Stipulated Order.

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

Original signed by _____
Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

8/8/2018
Date

Attachment A: Specific Factors Considered for Administrative Civil Liability
Attachment B: City of Jackson MMPs
Attachment C: City of Jackson SEP