

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

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2014-0566
IN THE MATTER OF
E&B NATURAL RESOURCES
KERN COUNTY**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) 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 E&B Natural Resources (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.

Recitals

- 1. On 21 April 2014, Central Valley Water Board staff received information from the California Division of Oil, Gas, and Geothermal Resources (CDOGGR) regarding an anonymous complaint about the disposal of fluids into unlined surface impoundments (sumps) in the Poso Creek Oil Field. The CDOGGR sent staff to investigate the complaint on 18 April 2014, and observed fluids in two unlined sumps. One sump was to the west of Highway 65 near Discharger's well "Section 5" No. 11-1, and the second was near Discharger's well "Wilcox" #38.**
- 2. After the 21 April 2014 notification, Prosecution Team staff contacted the Discharger to request information related to the discharges to the sumps.**
- 3. Discharger responded to Prosecution Team staff and submitted information to the Central Valley Water board on 28 April 2014 in a letter titled *Response to Complaint – Poso Creek Drilling Surface Impoundments*. At that time, Discharger reported that approximately 400 barrels (16,800 gallons) of produced water and crude oil had been discharged.**
- 4. On 5 June 2014, Prosecution Team staff issued a notice of violation to Discharger stating that the discharge and storage of produced water and crude oil to the unlined sump at the Section 5 #11-1 well was not an approved waste permitted for discharge in accordance with Notice of Applicability WQO 2003-DWQ-0089 (NOA) issued to E&B for the Poso Creek Oil Field. The discharge was therefore a violation of the conditions of the NOA by discharging inappropriate wastes into an unlined sump in the Poso Creek Oil Field.**
- 5. The discharge of produced water and crude oil to an unlined sump requires the submission of a Report of Waste Discharge (RWD) and the appropriate filing fee in accordance with California Water Code 13260(a). Discharger did not submit a RWD**

for the discharge. Therefore, Discharger faces liability pursuant to California Water Code section 13350 for the discharge to the sump.

6. After the request for information and notice of violation, staff from the Prosecution Team and Discharger held a meeting on 17 June 2014 to discuss the impropriety of the discharge and steps Discharger had taken to prevent future occurrences. Prosecution Team staff notified Discharger that further enforcement would be forthcoming.
7. At a subsequent meeting, Discharger reported that approximately 400 barrels (16,800 gallons) of fluid were brought to the site, but that only an estimated 239 barrels (10,038 gallons) were discharged to the unlined sump. Discharger subsequently removed 120 barrels of fluids from the sump for off-site disposal, resulting in an unpermitted discharge of approximately 119 barrels (4,998 gallons). This Order is based on the discharge of the discharged material remaining in the sump after Discharger's efforts (4,998 gallons).

Regulatory Considerations

8. The Central Valley Water Board staff has concluded that Discharger violated Water Code section 13350 for unpermitted discharges to land. The Central Valley Water Board may assess administrative civil liability based on Water Code section 13350 for such discharges.
9. Water Code section 13350(a) states: "(a) A person who (1) violates a 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 a 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"
10. Water Code section 13350(e)(2) states: "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 a per gallon basis, but not on both. (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged."
11. Water Code section 13327 states: "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."

Settlement

12. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interests of the public.
13. The Parties are agreeing to a penalty of \$8 per gallon for each gallon discharged, based on the supplemental information provided by Discharger. After consideration of the penalty calculation factors, found in the State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy*, the Parties agreed that the amount of \$8 per gallon was appropriate in order to resolve their dispute and given the potential threat to water quality and considering the goal of deterring future violations. The Prosecution Team took into account all information produced by Discharger in settlement negotiations. In addition, the Discharger is making proactive operational changes to prevent future discharges. The agreed-upon amount captures the economic benefit of the discharge plus 10%, consistent with the *Enforcement Policy*.
14. To resolve the discharges by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$39,984 (4,998 gallons X \$8/gallon) in liability.

Stipulations

The Parties stipulate to the following:

- i. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **thirty-nine thousand nine hundred eighty-four (\$39,984)** to the Central Valley Water Board to resolve the alleged Water Code violations, specifically:
 - a. **Thirty-nine thousand nine hundred eighty-four dollars (\$39,984)** shall be paid to the State Water Board *Waste Discharge Permit Fund*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board *Waste Discharge Permit Fund*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Julie Macedo, Senior Staff Counsel, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento,

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CA 95812 and Clay Rodgers, Assistant Executive Officer, Regional Water Quality Control Board, Central Valley Region, 1685 E Street, Fresno, CA 93706.

2. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations may subject it to further enforcement, including additional administrative civil liability.

3. **Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Clay Rodgers
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, CA 93706
(559) 445-5116

Julie Macedo – Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

For the Discharger:

Loren Harlow – Counsel
Baker Manock & Jensen, PC
5620 North Palm, Suite 421
Fresno, CA 93704
(559) 432-5400

4. **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.
5. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of any potential violations resulting of Water Code section 13350. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.

6. **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 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.
7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
8. **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 the 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.
9. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
10. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
11. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley 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. Subject to the foregoing sentence, the Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members

or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing 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.
12. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in this Stipulated Order, or that it has been or are in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.
13. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.
14. **Waiver of Right to Petition:** The Discharger hereby waives its 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 its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
15. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any violation alleged herein.
16. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
17. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
18. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.


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19. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
20. **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: 
Clay Rodgers
Assistant Executive Officer

Date: 9/26/14

E&B Natural Resources

By: 
Michael Finch
Vice President, HSE and Government Affairs

Date: 9/22/14

Order of the Central Valley Water Board

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 administrative civil liability. As such, the Central Valley Water Board finds that issuance of this 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, the Central Valley Water Board finds that issuance of this

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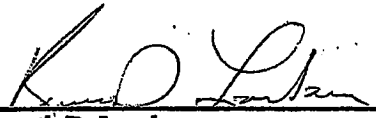
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Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

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

Pursuant to Water Code sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

By:


Kenneth D. Landau
Assistant Executive Officer

Date:

19 November 2014