

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

In the Matter of:

**Planada Community Services District
Wastewater Treatment Facility
Merced County**

ORDER R5-2018-0502

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

I. Introduction

1. 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 Planada Community Services District (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 Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger owns and operates a wastewater treatment facility (Facility) approximately one-half mile southwest of the community of Planada. Under Waste Discharge Requirements (WDRs) Orders 97-123, R5-2005-0009, and R5-2011-0042, and National Pollutant Discharge Elimination System (NPDES) Permit CA0078950, the Facility discharged 0.53 million gallons per day secondary disinfected domestic wastewater to Miles Creek, a water of the United States and a tributary to the San Joaquin River.
3. On 23 June 2005, the Central Valley Water Board issued Administrative Civil Liability Order (ACLO) R5-2005-0076 to the Discharger for total coliform, chlorine residual, biochemical oxygen demand (BOD), and total suspended solids (TSS) effluent limitation violations subject to mandatory minimum penalties in the amount of two hundred and fifty-five thousand dollars (\$255,000) for violations from 1 January 2000 to 30 April 2004. The administrative civil liability would be suspended if the Discharger completed a compliance project pursuant to Water Code section 13385, subdivision (k). The compliance project included (1) the expenditures the Discharger had previous made towards correcting deficiencies at the Facility, and (2) the expenditures related to the cessation of discharge to Miles Creek.
4. On 20 November 2006, the Discharger filed a Report of Waste Discharge proposing to develop ponds and land application areas for discharge to land under waste discharge requirements and cease discharge to Miles Creek and expand the Facility. The Discharger experienced a variety of administrative delays in planning, permitting, and financing of the proposed improvements.

5. On 30 November 2009, the Assistant Executive Officer of the Central Valley Water Board issued ACLO R5-2009-0551 to the Discharger for eighty-nine (89) effluent limit violations for the period of 1 May 2004 to 31 May 2009, for a total administrative civil liability of two hundred and sixty-seven thousand dollars (\$267,000). This administrative civil liability was satisfied by the Discharger's previous expenditures of over two million dollars (\$2,000,000) on the compliance project to cease discharging to Miles Creek.
6. On 10 June 2011, the Central Valley Water Board adopted WDRs Order R5-2011-0042 and Time Schedule Order (TSO) R5-2011-0043. TSO R5-2011-0043 includes interim effluent limitations for carbon tetrachloride, chlorodibromomethane, cyanide, dichlorobromomethane, BOD, TSS, total coliform, and turbidity until 10 May 2013¹.
7. On 11 April 2013, the Central Valley Water Board adopted WDR Order R5-2013-0021 to permit effluent disposal to land rather than to Miles Creek, upon the Discharger's completion of two clay-lined storage ponds and irrigation facilities for reclaiming wastewater on approximately 135 acres of irrigated land.
8. On 30 December 2013, ACL Complaint R5-2013-0591, in the amount of sixty-nine thousand dollars (\$69,000), addressing MMPs from 1 April 2009 to 21 August 2013, was issued by the Central Valley Water Board's Assistant Executive Officer. The complaint waiver form was signed by the Discharger on 13 January 2014, selecting Option 2: Waiving the 90-day hearing requirement in order to engage in settlement discussions, but settlement discussions were never held and the complaint was not carried forward for consideration by the Central Valley Water Board.
9. The Discharger, having been designated by the State Water Resources Control Board (State Water Board) as a small community with a financial hardship, was eligible to complete a compliance project in lieu of being assessed all or part of the mandatory penalties, pursuant to Water Code section 13385, subdivision (k). The Discharger proposed a compliance project (Facility upgrades and discharge to land rather than to Miles Creek) which, upon completion, would offset the penalties.
10. On 16 March 2015, the Discharger ceased discharging treated wastewater to Miles Creek, after completing plant upgrades and purchasing land adjacent to the Facility on which it would recycle treated effluent on alfalfa.
11. On 2 October 2015, WDRs Order R5-2011-0042 and TSO R5-2011-0043 were rescinded by Order R5-2015-0119.
12. On 25 May 2017, the Discharger certified the WWTF Expansion Project (Compliance Project) complete, as detailed in the Close-Out Report (Attachment A). Total project funding included a Discharger cash contribution (\$221,436); USDA Rural Development loan (\$2,211,000) and grant (\$2,597,000); and State Water Board loan (\$4,444,825) and grant (\$3,620,000). Project accounting detailed in the 14 September 2017 USDA Outlay Report signed by the Discharger indicates that the discharger expended only 76.8%

¹ The interim effluent limits were in place until 10 May 2013 because the Discharger did not encounter a Swainson's Hawk nest. Had the Discharger encountered a Swainson's Hawk nest that caused delays, the interim effluent limits would have been effective until 8 November 2013.

(\$3,413,752) of the State Water Board loan amount. Thus, Discharger funds (excluding grants) totaling \$5,846,188 were expended on the Compliance Project.

13. Based on a review of the Discharger's electronically submitted Self-Monitoring Reports (eSMRs) from May 2009 to March 2015, the Central Valley Water Board Prosecution Team identified two hundred and twenty (220) effluent limitation violations for BOD, TSS, chlorine residual, total coliform, chlorodibromomethane, dichlorobromomethane, electrical conductivity, cyanide, and turbidity subject to mandatory minimum penalties in the amount of six hundred and sixty-three thousand dollars (\$660,000) under Water Code section 13385, subdivisions (h) and (i).
14. This Order addresses administrative civil liability for effluent violations that occurred from May 2009 to March 2015. These violations are specifically identified in Attachment B to this Order as subject to mandatory minimum penalties. Attachment B to this Order is attached hereto and incorporated herein by this reference.
15. Water Code section 13385, subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385, subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.

- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

16. Water Code section 13385, subdivision (j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

17. Water Code section 13385, subdivision (k) states:

- 1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:
 - A) The compliance project is designed to correct the violations within five years.
 - B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.
 - C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.
- 2) For the purposes of this subdivision, “a publicly owned treatment works serving a small community” means a publicly owned treatment works serving

a population of 20,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

18. Under the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), a publicly owned treatment work (POTW) serving a small community is a POTW serving a community that has a financial hardship and has a population of 10,000² or fewer people, or lies completely within one or more rural counties.
19. Under the Enforcement Policy, "financial hardship" means that the community served by the POTW meets one of the following criteria:
 - a. Median household income for the community is less than 80 percent of the California median household income;
 - b. The community has an unemployment rate of 10 percent or greater; or
 - c. Twenty percent of the population is below the poverty level.
20. The Discharger's Facility is a publicly owned treatment works serving a small community (2017 population of approximately 4,465) with financial hardship (2017 median household income for the community is 58% of the California median household income) as defined by the Enforcement Policy and within the meaning of Water Code section 13385, subdivision (k)(2).
21. On 25 May 2017, the Discharger submitted documentation that it had completed the compliance project and expended in excess of the mandatory minimum penalties imposed by this Stipulated Order and ACLOs R5-2005-0076 and R5-2009-0551.
22. 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 specifically identified in Attachment B by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **six hundred and sixty thousand dollars (\$660,000)** in MMPs against the Discharger.
23. The Central Valley Water Board Prosecution Team finds 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 interest of the public.

III. Stipulations

The Parties stipulate to the following:

² Following adoption of the Enforcement Policy, Water Code section 13385, subdivision (k)(2) was amended to raise the population threshold to 20,000 or fewer people.

24. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

25. **Administrative Civil Liability:**

- a. The Discharger hereby agrees to the assessment of an administrative civil liability in the amount of **six hundred and sixty thousand dollars (\$660,000)** to resolve the violations specifically identified in Attachment B.
- b. The six hundred and sixty thousand dollar (\$660,000) administrative civil liability is deemed satisfy by the previous completion of a compliance project. The compliance project consisted of ceasing discharges to Miles Creek and developing a process for discharging to land. This completed compliance project satisfies the requirements in the Enforcement Policy because:
 - i. The amount the Discharger spent on the compliance project is greater than the administrative civil liability to be suspended;
 - ii. The problem causing the underlying violations was corrected by the project because the compliance project was designed to cease discharges to Miles Creek; and
 - iii. The underlying violations from 1 May 2009 to 31 March 2015 occurred during project implementation.

26. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the Compliance Project, it shall state in a prominent manner that the Compliance Project was partially undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.

27. **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.

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

For the Central Valley Water Board:
Dale Harvey, Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
1685 E Street Fresno, CA 93706

Dale.Harvey@waterboards.ca.gov
(559) 445-6190

For the Discharger:
Daniel Chavez, District Manager
Planada Community Services District
103 Live Oak Street
P. O. Box 905
Planada, CA 95365
pcsd103@aol.com
(209) 382-0213

29. **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.
30. **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 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.
31. **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.
32. **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.
33. **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 administrative civil liability complaints or orders for violations other than those addressed by this Order.

34. **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 Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
35. **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.
36. **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 Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
37. **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 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; 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.
38. **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.
39. **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.

40. **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.
41. **Authority to Bind:** Each person is 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.
42. **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.
43. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
44. **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.
45. **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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Clay Rodgers
Clay Rodgers
Assistant Executive Officer

Date: 4/6/2018

Planada Community Services District

By: Larry Gonzales
Larry Gonzales
President

Date: 4-3-18

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

1. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.
3. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this 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.

By: _____
PAMELA C. CREEDON, Executive Officer
Central Valley Regional Water Quality Control Board

Date: _____

Attachment A: Compliance Project Close-Out Report

Attachment B: Mandatory Minimum Penalties