

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R7-2021-0027

**Paradise Wellness Center, Inc.
Curtis Devine**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)**

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, Colorado River Basin Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and by Curtis Devine on behalf of Paradise Wellness Center, Inc, and Curtis Devine (collectively Discharger or Paradise Wellness Center). The Prosecution Team and the Discharger are herein collectively the Parties. This Order is presented to the Regional Water Board for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. Paradise Wellness Center owns and operates an indoor cannabis cultivation facility on San Bernardino County Assessor Parcel Number (APN) 0650-391-23, located at 1 Ice House Road, Needles, California ("Site").
3. On April 9, 2018, Paradise Wellness Center enrolled under the State Water Resources Control Board's (State Water Board's) *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*, Order No. WQ 2017-0023-DWQ (General Order), as amended by Order No. WQ-2019-0001-DWQ. On May 22, 2018, the Executive Officer of the Regional Water Board issued an updated Notice of Applicability (NOA) confirming Paradise Wellness Center's coverage under the Waiver of Waste Discharge Requirements for Dischargers of Waste Associated with Cannabis Cultivation Activities (Conditional Waiver), Waste Discharge Identification No. 7_36CC401592. The NOA provided Paradise Wellness Center with notice that it is responsible for all applicable requirements in the General Order, the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy), and the site-specific requirements of the Conditional Waiver.
4. On June 5, 2020, the Assistant Executive Officer of the Regional Water Board issued Paradise Wellness Center an Administrative Civil Liability (ACL) Complaint. The Complaint alleges that for 21 days, between June 5, 2019, and June 25, 2019, Paradise Wellness Center violated the Conditional Waiver requirements of the General Order by discharging approximately 8,400 gallons of

mineralized wastewater from its reverse osmosis filtration system to its onsite wastewater treatment system (OWTS), thereby discharging waste or causing or permitting waste to be deposited to waters of the state. Due to the nature and composition of the soil at the Site, the proximity to groundwater, and the Site's proximity to municipal water supply wells, the Prosecution Team asserted that the discharge of cannabis wastewater to the OWTS infiltrated groundwater posing a threat to groundwater quality.

5. The violation as alleged in the ACL Complaint constitutes a violation of Water Code section 13350, subdivision (a)(2) for which discretionary penalties may be assessed in the amount of up to five thousand dollars (\$5,000) for each day the violation occurs pursuant to Water Code section 13350, subdivision (e)(1).
6. The ACL Complaint proposes administrative civil liability in the amount of **\$50,385.44** for the alleged violation considering factors in Water Code section 13327 and the State Water Board's 2017 *Water Quality Enforcement Policy* (Enforcement Policy) as more fully discussed in Attachment A to the ACL Complaint. The ACL Complaint and Attachment A are attached hereto and incorporated as necessary by reference.
7. The penalty proposed in the ACL Complaint was based on the Prosecution Team's estimate of the contaminant concentrations in the wastewater discharged from the Site. Based on that estimate, the ACL Complaint proposed penalty is based in part on a Toxicity score of 3 (above-moderate risk), as described in Attachment A to the Complaint.
8. Paradise Wellness Center has provided the Prosecution Team with lab analyses of samples taken from the output of the reverse osmosis system demonstrating that the actual discharge was likely lower in contaminants than the estimated concentrations used in the Complaint. Notably, the lab analysis shows that certain contaminants estimated to be present were likely not actually present, including fluoride and manganese. Although the sampling was taken approximately one year from the date of the alleged discharge, the Prosecution Team agrees that the municipal source water and the reverse osmosis system output at the time of the sampling are likely similar or identical to that at the time of the discharge, and thus the lab analysis is representative of the actual discharge sufficiently for the purposes of this Stipulated Order. On that basis, the Prosecution Team agrees that the Toxicity score should be 1 (minor risk). With that adjusted Toxicity score, but leaving the other elements of the penalty methodology in Attachment A to the Complaint unchanged, the proposed administrative civil liability is eighteen thousand eight hundred eighty-five dollars and forty-four cents (\$18,885.44).
9. The Discharger disputes the allegations in the Complaint, and that as described in Paragraph 8 above, the other elements of the methodology in Attachment A to the Complaint should remain the same. Notwithstanding that dispute, the Discharger agrees to fully settle the allegations as a business decision.

10. For the foregoing reasons, the Parties have engaged in settlement negotiations and agree to fully settle the violations alleged in the ACL Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
11. To resolve the violations by consent and without further administrative or civil proceedings, the Parties agree to the imposition of an administrative civil liability against Paradise Wellness Center in the amount of **eighteen thousand eight hundred eighty-five dollars and forty-four cents (\$18,885.44)**. The amount of administrative civil liability imposed pursuant to the Parties agreement in this Stipulated Order comports with the Enforcement Policy methodology and considers the litigation risks associated with proceeding to hearing.
12. The Prosecution Team believes that the resolution of the alleged violations recognizes the information provided by Paradise Wellness Center, while balancing the Regional Water Board's need to pursue enforcement in a fair, firm, consistent, and transparent manner. Moreover, the resolution fulfills the Prosecution Team's 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:

13. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
14. **Administrative Civil Liability:** To settle this dispute, the Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **eighteen thousand eight hundred eighty-five dollars and forty-four cents (\$18,885.44)** in accordance with Paragraph 15 below.
15. The Discharger shall pay \$18,885.44 in administrative civil liability by check made payable to the "Waste Discharge Permit Fund" no later than 30 days after the Regional Water Board, or its delegate, executes this Order. The check shall reference the Order number indicated on page one of this Stipulation. The original signed check shall be sent to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Andrew.Tauriainen@waterboards.ca.gov) and the Regional Water Board (Kathleen.Bindl@waterboards.ca.gov)

16. Compliance with Applicable Laws and Regulatory Changes: The Discharger understands that payment of an 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 additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. 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.

17. Party Contacts for Communication Related to the Stipulated Order:

For the Regional Water Board:
Andrew Tauriainen, Attorney IV
State Water Board Office of Enforcement
Andrew.Tauriainen@waterboards.ca.gov

For the Discharger:
Curtis Devine, Owner
Paradise Wellness Center
1 Ice House Road
Needles, CA. 92363
Curtis_Devine@yahoo.com

18. Attorneys' 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.

19. Matters Covered by this Stipulation: Upon approval of the Discharger, adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of actions alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 15.

20. 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 Regional Water Board. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Assistant Executive Officer may

unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

21. **Procedure:** The Parties agree that the procedure adopted for 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.
22. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the Regional 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 the Regional 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 Regional 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.
23. **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 Regional Water Board or any state agency, department, board, entity, or local agency from exercising its authority under any law, statute, or regulation.
24. **Interpretation:** This Stipulated Order shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one Party.
25. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of the Order. All modifications must be made in writing and approved by the Regional Water Board.
26. **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.
27. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board 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 Regional Water Board to determine whether to assess an

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 the 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 Regional 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 Regional 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.

24. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
25. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Water Board, the Discharger hereby waives the right to petition the Regional Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or California appellate level court.
26. **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 matter expressly addressed by this Stipulated Order.
27. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board, or any Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior

enforcement action consistent with Water Code section 13327 and/or 13385, subdivision (e).

28. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
29. **Necessity for Written Approval:** All approvals and decisions of the Regional 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 Regional 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.
30. **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.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board adopts the Order incorporating the terms of this Stipulated Order.
33. **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. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

IT IS SO STIPULATED


California Regional Water Quality Control Board, Colorado River Basin Prosecution Team

By: 

03/05/2021

Date

Paradise Wellness Center, Inc., and Curtis Devine

By: 

3-4-21

Date

Stipulated Administrative Civil Liability Order R7-2021-0027
Paradise Wellness Center and Curtis Devine

ORDER

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

1. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 33 above, by this reference, as if set forth fully herein.
2. Timeline for Completion of the terms of the Settlement Agreement and Stipulation for Entry of Order:

Task	Deadline
a) Payment of \$18,885.44 to the Waste Discharge Permit Fund	No later than 30 days from the date of this Order.

3. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e) (see Attachment 1, incorporated herein by reference). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in the Complaint "other matters as justice may require".
4. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional 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(a)(2), Title 14, of the California Code of Regulations.
5. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

I, Paula Rasmussen, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on _____.

Paula Rasmussen
Executive Officer

Date: _____

Attachment 1: ACL Complaint