

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	
BENJAMIN B. MAGANA, Jr.)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
Drinking Water Distribution)	ADMINISTRATIVE CIVIL LIABILITY
Operator Certification)	ORDER
Disciplinary Action)	
)	
)	PROPOSED
)	ORDER
)	WQ 2023-XXXX-EXEC

Section I: INTRODUCTION

1. This stipulated order imposing Administrative Civil Liability and Operator Certification Discipline (hereafter “Stipulated Order”) is entered into and between the State Water Resources Control Board’s (“State Water Board”) Office of Enforcement (“OE”) and Mr. Benjamin B. Magana, Jr. (Respondent) (Collectively “Parties”). This Stipulated Order is entered into agreement as an Order by Settlement pursuant to Government Code section 11415.60.

Section II: RECITALS

2. Mr. Magana is certified as a Grade 3 drinking water distribution operator with the State Water Board and holds Certificate No. 34232.
3. Mr. Magana is the former contract operator for Allensworth Community Services District (CSD). Mr. Magana was the chief certified operator for the Allensworth CSD water distribution system. Mr. Magana was contracted with Allensworth CSD from September of 2019 to April of 2022.
4. On April 18, 2022, the State Water Board received a complaint regarding the Allensworth CSD. The complaint alleged the Allensworth CSD chlorination system had been offline since February 23, 2022, and there were allegations of misconduct regarding Mr. Magana.
5. OE’s Special Investigations Unit (SIU) conducted an investigation of the circumstances surrounding the complaint regarding Allensworth CSD.
6. On November 2, 2022, OE issued the Proposed Disciplinary Action to Mr. Magana based on the evidence acquired in its investigation. OE proposed to revoke Mr. Magana’s D3 water distribution certificate.

7. On December 16, 2022, Mr. Magana asked for a hearing regarding the Proposed Disciplinary Action. The Executive Director of the State Water Board assigned the hearing to the Administrative Hearings Office, where a hearing on the merits was scheduled for August 22, 2023.
8. Prior to the hearing date, the Parties reached this resolution of the Proposed Disciplinary Action.
9. The State Water Board alleges violations of Health and Safety Code sections 106877 and 106878 in the attached "Proposed Disciplinary Action." (Attachment A) In summary, the State Water Board alleges:
 - a. Mr. Magana provided false and misleading information to the State Water Board.
 - b. Mr. Magana failed to ensure the proper treatment of the water distribution system for which he was responsible.
 - c. Mr. Magana employed a water distribution operator who did not hold a valid, unexpired water distribution operator certificate.
10. Mr. Magana denies any wrongdoing in this matter and has reached this resolution in order to move forward without further risk or expense from additional administrative litigation.
11. The 2017 Water Quality Enforcement Policy was utilized to determine the administrative civil liability for this settlement. The analysis is contained in Attachment B.
12. The State Water Board Prosecution Team believes that the resolution of the alleged violations in paragraph 9 is fair and reasonable and fulfills all its enforcement objectives and that this Stipulate Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

13. **Jurisdiction:** The Parties agree that the State 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:** The Respondent hereby agrees to the imposition of **eight thousand two hundred seventy five dollars** (\$8,275.00) in administrative civil liability to the State Water Board to resolve the violations alleged in this Stipulated Order. Payment shall be made no later than thirty (30) days after adoption of the order approving this Stipulated Order by the State Water Board, or its delegee, by check payable to the “State Water Pollution Cleanup and Abatement Account.” The Respondent shall indicate on the check the number of this Stipulated Order (WQ 2023-XXXX-EXEC). The Respondent shall send the original signed check to the State Water Resources Control Board, 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 IV, State Water Resources Control Board, Office of Enforcement, 801 “K” Street, Suite 2300, Sacramento, California 95814.
15. **Suspension:** The Respondent agrees that Water Distribution Certificate 34232 is suspended for a period of twelve (12) months beginning on the effective date of this order.
16. **Ethics Course:** The Respondent agrees to complete an ethics course for operators within one year of the effective date of this Order. The Respondent will locate and submit the course for approval by the Director of the Office of Enforcement prior to completing the course. Failure to complete the course will result in the suspension remaining in place, unless and until the course is completed. The Respondent shall submit proof of course completion to the contact listed in paragraph 21.
17. **State Water Board Not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Respondent, his employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondent, his employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
18. **Covenant Not to Sue:** The Respondent covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

19. Compliance with Applicable Laws and Regulatory Changes: The Respondent 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 him to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Respondent from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

20. Covered Matters: Upon approval by the Respondent, adoption by the State Water Board, or its delegee, as an Order, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in relation to the conduct described in Paragraph 9, which could have been asserted under Health and Safety Code sections 106877 and 106878, based on the facts alleged against the Respondents in Attachment A. The provisions of this paragraph are expressly conditioned on Respondent's full payment of his Administrative Civil Liability.

21. Party Contacts for Communications related to this Stipulation and Order:

For the State Water Board:

Nickolaus Knight, Senior Counsel
Office of Enforcement
State Water Resources Control Board
801 "K" Street, Suite 2300
Sacramento, California 95814
nickolaus.knight@waterboards.ca.gov
916.327.0169

For Benjamin B. Magana, Jr.:

Benjamin B. Magana, Jr.
238 N. York Street
Porterville, California 93257
Benjamin.magana1985@gmail.com
Benny_magana@icloud.com

22. 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.

23. **Public Notice:** The Parties understand that this Stipulated Order will be noticed for a thirty (30) day public review period prior to consideration by the State Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board or its delegee for adoption, the Executive Director may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board. The Respondent agrees that he may not rescind or otherwise withdraw his approval of this proposed Stipulated Order.
24. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.
25. **No Waiver of Right to Enforce:** The failure of the State Water Board Prosecution Team 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 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 State 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.
26. **Interpretation:** This Stipulated Order shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
27. **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 and approved by the State Water Board or its delegee.
28. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

29. If the Order Does Not Take Effect: The Respondent's obligation under this Stipulated order is contingent upon the entry of the Order by the State Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the State 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 Administrative Hearings Office to determine whether to assess administrative civil liabilities and issue a disciplinary action 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, and any other applicable privilege under state law. The Parties 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, Administrative Hearings Office personnel, or their advisors and any other objections that are premised in whole or in part on the fact that the Water Board members, Hearing Officers 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 on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review of the alleged violations to the extent this period has been extended by these settlement proceedings.

30. Waiver of Hearing: The Respondent has been informed of the rights provided by Health and Safety Code, section 106877, subd. (c), and Water Code section 13323, subdivision (b), and, if the settlement is adopted by the State Water Board, hereby waives its right to a hearing before the State Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the State Water Board or Administrative Hearing Office for hearing, the Respondent does not waive the right to a hearing before an order is imposed.

31. Waiver of Right to Petition or Appeal: Except in the instance where the settlement is not adopted by the State Water Board or its delegee, the Respondent hereby waives his rights to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level Court.

32. **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 Stipulated Order.
33. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, or claimants, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
34. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation 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 Stipulation 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.
35. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

Date: October 13, 2023

Signed original available upon request
Eileen Sobeck
Executive Director
State Water Resources Control Board

Respondent

Date: October 4, 2023

Signed original available upon request
Benjamin B. Magana, Jr.
Respondent

**FINDINGS AND ORDER OF THE
STATE WATER RESOURCES CONTROL BOARD**

Having considered the allegations and the Parties' stipulations, the State Water Board finds that:

1. This Order incorporates Paragraphs 1 through 35 by reference as if set forth fully herein.
2. In accepting this settlement, the State Water Board has considered, where applicable, the factors prescribed Water Code section 13327.
3. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.
4. Fulfillment of the Respondent's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
5. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fails to perform any of its obligations under the Stipulated Order.
6. The Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order between the State Water Board Prosecution Team and the Respondent is approved pursuant to Health and Safety Code sections 106877 and 106878, and Government Code section 11415.60 and is incorporated by reference into this Order.

IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

Date: _____

Jonathan Bishop
Chief Deputy Director
State Water Resources Control Board