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 the El Dorado Irrigation District (District) (collectively referred to as 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

2. The District is a public agency and provides municipal water, industrial water, irrigation water, wastewater treatment, recycled water, recreation, and hydroelectric services to the communities of Cameron Park, Camino, Diamond Springs, El Dorado, El Dorado Hills, Placerville, Pollock Pines, and Shingle Springs in El Dorado County.

3. On 12 June 2008, the Central Valley Water Board adopted the Low Threat Permit, Waste Discharge Requirements (WDRs) Order R5-2008-0081. The Low Threat Permit prescribes requirements for dewatering and other low threat discharges to surface waters. Under the Low Threat Permit, water suppliers that have or propose to have numerous discharge points shall prepare and implement a Pollution Prevention and Monitoring and Reporting Plan (PPMRP) in lieu of the specific Effluent Monitoring Requirements and Receiving Water Monitoring Requirements contained in the Low Threat
Permit’s Monitoring and Reporting Program. The PPMRP must be submitted with the Notice of Intent (NOI) and is subject to approval by the Executive Officer. The PPMRP is to include, at a minimum, the elements identified in Attachment H of the Low Threat Permit.

4. On 19 November 2008, the District submitted its NOI and PPMRP for its drinking water distribution and was issued a Notice of Applicability (NOA) and assigned Order R5-2008-0081-027 on 23 February 2009.

5. On 31 May 2013, Order R5-2008-0081 was replaced by WDRs Order R5-2013-0074. The District was then assigned Order R5-2013-0074-027 upon adoption of the updated Low Threat Permit. The Low Threat Permit contains, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the District must comply when it makes discharges as a result of its drinking distribution water system.

6. On 18 December 2015, coverage under the Central Valley Water Board’s Low Threat Permit was terminated and the District was enrolled under the State Water Resources Control Board’s (State Water Board’s) Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water System Discharges to Waters of the United States (Drinking Water Permit), State Water Board Order 2014-0194-DWQ. The Drinking Water Permit prescribes requirements for discharges from drinking water system discharges to waters of the U.S. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the District must comply.

7. On 26 October 2015, the District allegedly discharged 1,000,000 gallons of chlorinated drinking water into Squaw Hollow Creek in violation of Discharge Prohibitions IV.A and IV.B, as well as Standard Provision I.D of the Low Threat Permit. The discharge occurred from a break in a 24-inch diameter drinking water transmission main that ruptured in the Pleasant Valley area of El Dorado County.

8. On 30 October 2015, the District allegedly discharged 600,000 gallons of chlorinated drinking water into Hangtown Creek in Placerville in violation of Discharge Prohibitions IV.A and IV.B, as well as Standard Provision I.D of
the Low Threat Permit. The discharge occurred from a break in an eight-inch diameter drinking water main. The District failed to provide the results of sampling and sediment cleanup activities in the 5-day Incident Report as required by the District’s PPMRP, pursuant to Provision VII.C.2.a of the Low Threat Permit.

9. On 4 November 2015, the District submitted its 5-day Incident Reports for the two spill events. The Incident Report submitted for the 26 October 2015 spill exceeded the 5-day deadline. Additionally, the Incident Report submitted for the 30 October 2015 spill failed to provide the results of sampling and sediment cleanup activities conducted in response to the spill. Accordingly, the District failed to submit adequate 5-day Incident Reports in accordance with the District’s PPMRP, as required under Provision VII.C.2.a of the Low Threat Permit.

10. Staff from the Central Valley Water Board reviewed the two incident reports, in conjunction with the District’s Fourth Quarter 2015 SMR, and identified several inconsistencies, including which receiving water was impacted, the dates and volumes of the spills, and conflicting descriptions of the spill events.

11. On 28 June 2016, staff issued an Order for Technical Reports pursuant to Water Code section 13267 (13267 Order) to clarify details of all spills occurring between 1 January 2015 and 30 June 2016. The 13267 Order also required, “[a] description of actions taken to mitigate the spill, including the Discharger’s response and timeline to temporarily repair ruptured water lines and if appropriate, permanently repair the lines at a later date.”

12. The District responded to the 13267 Order on 5 August 2016, and clarified the details of the spills, including dates, times, volumes, and the receiving waters impacted.

13. Pursuant to Water Code section 13385, the above-referenced alleged unauthorized discharge violations are each subject to administrative civil liability not to exceed $10,000 per day of violation and $10 per gallon for the waste discharged and not cleaned up in excess of 1,000 gallons. Additionally, the above-mentioned alleged monitoring and reporting
violations are each subject to administrative civil liability not to exceed $1,000 per day of violation, pursuant to Water Code section 13268.

14. 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 alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of $39,092 in discretionary penalties (Attachment A to this Stipulated Order) against the District. The Parties agree to suspend a portion of the liability conditioned on successful completion of a supplemental environmental project as described in Paragraph 17 and Attachment B of this Stipulated Order.

15. 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 interest of the public.

STIPULATIONS

The Parties stipulate to the following:

16. Administrative Civil Liability: The El Dorado Irrigation District hereby agrees to the imposition of an administrative civil liability totaling THIRTY-NINE THOUSAND AND NINETY-TWO DOLLARS ($39,092) to resolve the violations alleged in Paragraphs 7 through 10, above. Specifically:

16.1. Within thirty (30) days of issuance of the Order, the District agrees to remit, by check, NINETEEN THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS ($19,546) payable to the State Water Resources Control Board Cleanup and Abatement Account, and shall indicate on the check the number of this Order. The District shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888,
Sacramento, CA 95812-1888. Copies of the check shall be sent to Heather Mapes, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Howard Hold, Acting Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

16.2. The Parties agree that NINETEEN THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS ($19,546) of the administrative civil liability shall be suspended (Suspended Liability) pending completion of a supplemental environmental project (SEP) as set forth herein and in Attachment B.

17. **Supplemental Environmental Project:** The Parties agree that this resolution includes a SEP. Detailed plans concerning how the project will be implemented, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as Attachment B.

17.1. **SEP Definitions:**

a. “Designated Central Valley Water Board Representative” – the representative from the Central Valley Water Board responsible for oversight of the SEP. That individual is:

Howard Hold  
Acting Supervisor, Compliance/Enforcement Section  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Telephone: (916) 464-4679  
Email: Howard.Hold@waterboards.ca.gov

b. “SEP Completion Date” – The date in which the SEP will be completed in its entirety.

17.2. **SEP Completion Dates:** The SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by the SEP
Completion Date. Upon a showing of good cause and upon written agreement of the Parties, the Central Valley Water Board, or its delegee, may extend the SEP Completion Date.

17.3. **Agreement to Fund, Report and Guarantee Implementation of SEPs:** The District represents that: (1) it will fund the SEP in the amount as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP by remaining liable for the Suspended Liability until the SEP is completed and approved by the Central Valley Water Board, or its delegee, in accordance with the terms of this Stipulated Order. The District agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP, in accordance with Paragraph 17.6., below.

17.4. **SEP Progress Reports:** As described in Attachment B, the District shall provide quarterly reports of progress on the SEP to the Designated Central Valley Water Board Representative commencing 30 September 2017 and continuing through submittal of the Certification of Completion described below in Paragraph 17.5, below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

17.5. **Final Report and Certification of Completion of SEP:** On or before the applicable SEP Completion Date, the District shall submit the Final Report as described in the SEP proposal (Attachment B) and a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion shall be submitted, under penalty of perjury, to the designated Central Valley Water Board representative by a responsible official representing the District. The Certification of Completion, in conjunction with the Final Report, shall include following:

a. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation
may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the District.

b. Certification documenting the expenditures by the District during the implementation period for the SEP. The District’s expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the District may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Central Valley Water Board for oversight. The District shall provide any additional information requested by the Central Valley Water Board staff, which is reasonably necessary to verify SEP expenditures.

c. Certification, under penalty of perjury, that the District followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the District shall provide the Central Valley Water Board with one of the following documents from the lead agency prior to commencing SEP construction:

i. Categorical or statutory exemptions relied upon;

ii. Negative Declaration if there are no potentially “significant” impacts;

iii. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

17.6. **Third Party Financial Audit:** In addition to the Certification of Completion and at the written request of the Central Valley Water Board Executive Officer, the District, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Central Valley Water Board Executive Officer providing such party’s professional opinion that the District has expended money in the amounts claimed. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the District of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

17.7. **Central Valley Water Board Acceptance of Completed SEP:** Upon the District's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Central Valley Water Board Executive Officer, the Designated Central Valley Water Board Representative shall send the District a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the District and result in the permanent stay of the Suspended Liability.

17.8. **Failure to Expend all Suspended Administrative Civil Liability Funds on the SEP:** In the event that the District is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete SEP, the District shall pay the difference between the Suspended Liability and the amount the District can demonstrate was actually spent to complete the SEP, as an administrative civil liability. The District shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the District has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components. In the event that payment is due pursuant to this Paragraph, the District shall send the original signed check to the State Water Resources Control Board Accounting Office,
17.9. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulated Order, the Central Valley Water Board Executive Officer shall issue a Notice of Violation. As a consequence, the District shall be liable to pay the entire Suspended Liability or, if shown by the District, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability, as described below, or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the District shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a “Motion for Payment of Suspended Liability” before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the *State Water Board Cleanup and Abatement Account* within thirty (30) days after the service of the Central Valley Water Board’s determination. In addition, the District shall be liable for the Central Valley Water Board’s reasonable costs of enforcement, including but not limited to, reasonable legal costs and reasonable expert witness fees. Payment of the assessed amount will satisfy the District’s obligations to implement the SEP. In the event that payment is due pursuant to this Paragraph, the District shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment/SEP Failure, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Heather Mapes,
17.10. **Publicity:** Should the District or its agents or contractors publicize one or more elements of the SEP, it shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Central Valley Water Board against the District.

18. **Compliance with Applicable Laws:** The District 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 of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

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

**For the Central Valley Water Board:**
Howard Hold, Acting Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Howard.Hold@waterboards.ca.gov
(916) 464-4679

**For the District:**
Brian Poulsen, General Counsel
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
bpoulsen@eid.org
(530) 642-4021
20. **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.

21. **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 herein or which could have been asserted based on the specific facts alleged herein as of the effective date of this Stipulated Order (Covered Matters). The provisions of this Paragraph are expressly conditioned on the District’s payment of the administrative civil liability by the deadline specified in Paragraph 16.1 and the District’s successful completion of the SEP described in Paragraphs 17.1 through 17.10.

22. **Public Notice:** The District understands that this Stipulated Order must 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 Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The District agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

23. **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.

24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the 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 of the
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.

25. **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.

26. **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.

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, signed by all Parties, and approved by the Central Valley Water Board.

28. **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 delegate, 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. 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 on a formal administrative civil liability complaint 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.

29. **No Admission of Liability:** In settling this matter, the District does not admit to any of the allegations, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the District agrees that in the event of any future enforcement actions by the Central Valley Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.

30. **Waiver of Hearing:** The District 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 prior to the adoption of this Stipulated Order.

31. **Waiver of Right to Petition:** The District hereby waives its right to petition the Central Valley Water Board’s adoption of this 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.

32. **Covenant Not to Sue:** The District covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, board members, employees, representatives, agents, or attorneys arising out of or relating to Covered Matters.

33. **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 District, its 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 the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

34. **The District is Not Liable:** Neither the District nor its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the District, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff, in carrying out activities pursuant to this Stipulated Order.

35. **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.

36. **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.

37. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, approves and enters the Order.

38. **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.

39. **Incorporation of Attachments:** Attachments “A” and “B” are hereby incorporated by reference.
IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: __________________________
Andrew Altevogt
Assistant Executive Officer

Date: __10/11/17__

El Dorado Irrigation District

By: __________________________
Jim Abercrombie
General Manager, El Dorado irrigation District

Date: __10-10-17__

Reviewed & Approved as to Form on 10/10/17

[Signature]
EID, Office of the General Counsel
Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385, subdivision (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 described in the Pre-Issuance Letter or otherwise provided to the Central Valley Water Board or its delegatee 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 Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment.

3. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.
Pursuant to Water Code sections 13323 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.

_________________________________________  ____________________________
Pamela Creedon  Date
Executive Officer

Attachment A: Enforcement Policy Administrative Civil Liability Methodology
Attachment B: Supplemental Environmental Project