

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

In the matter of:	)	
	)	
John L. Fagundes,	)	
Johnnie L. Fagundes,	)	
Bruce A. Fagundes, and	)	Order No. R5-2012-0505
John L. Fagundes Living Trust	)	
dba Fagundes Agribusiness	)	
	)	
Administrative Civil Liability	)	Settlement Agreement and Stipulation
Complaint No. R5-2011-0558	)	for Entry of Order; Order
_____	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and John L. Fagundes, Johnnie L. Fagundes, Bruce A. Fagundes, and John L. Fagundes Living Trust, doing business as Fagundes Agribusiness (the "Discharger") (Prosecution Team and Discharger are collectively, the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. John L. Fagundes, Johnnie L. Fagundes, Bruce A. Fagundes, and John L. Fagundes Living Trust own and operate Fagundes Agribusiness Dairy located at [REDACTED] Hanford, California, County of Kings. On 3 May 2007, the Central Valley Water Board issued the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order) and the General Order's corresponding Monitoring and Reporting Program. The General Order became effective on 9 May 2007. Fagundes Agribusiness Dairy is regulated by the General Order and the General Order names both the owner and operator as "the Discharger."
2. On 5 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0558 ("Complaint") to the Discharger (Attachment A). The Complaint recommends imposing an administrative civil liability totaling \$15,300 for alleged violations of the General Order.
3. The Prosecution Staff and owner (hereinafter "Parties") engaged in settlement negotiations and agree to settle the violations cited in the Complaint without

## Settlement Agreement: Fagundes Agribusiness

4. administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff 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 in the Complaint except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

5. To resolve the violations alleged in the Complaint by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$7,200 in liability against the owner. This represents an adjusted liability amount consisting of a \$8,100 reduction as described in the Complaint. The reduction in liability is based on several factors. Two of the factors used to calculate the total liability for the violations alleged in the Complaint were adjusted downward (Attachment B). The penalty factor for Cleanup and Cooperation for failure to submit the 2009 Annual Report was decreased from 1.0 to 0.75 in light of the Discharger's ongoing efforts toward compliance. The penalty factor for Culpability for failure to submit the 2009 Annual Report was decreased from 1.0 to 0.75 based on evidence presented by the Discharger during settlement discussions detailing efforts to collect the data required by the General Order from 2007-2010. These adjustments yielded a modified total penalty of \$13,200. In addition, the penalty was reduced by \$6,000 for: a) the Discharger's submission of the 2009 Annual Report; b) the Discharger's agreement to submit a completed Waste Management Plan; and c) documentation submitted to the Prosecution Staff evidencing the Discharger's enrollment in the Central Valley Dairy Representative Monitoring Program (CVDRMP) in lieu of submitting a Monitoring Well Installation and Sampling Plan as provided in Attachment A to the Revised Monitoring and Reporting Plan No. R5-2007-0035.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$7,200. Within thirty (30) days of the effective date of this Order, the owner agrees to remit, by check, SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Clay Rodgers, Central Valley Water Board 1685 "E" Street, Fresno, California 93706-2007, and shall send a copy to Ellen Howard, Office of Enforcement, State Water Resources Control Board (State Water Board), 1001 "I" Street, 16<sup>th</sup> Floor, Sacramento, California 95814.

7. **Submission of a Completed Waste Management Plan:** The Discharger agrees to submit a completed, revised Waste Management Plan by October 15<sup>th</sup>, 2011. The Discharger has retained JM Lord to oversee completion of the revised Waste

Management Plan. JM Lord will submit the Waste Management Plan to the Central Valley Water Board Fresno Office at the address listed below.


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

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

**For the Central Valley Water Board:**

Clay Rodgers  
Regional Water Quality Control Board  
Central Valley Region  
1685 "E" Street  
Fresno, CA 93706-2007

**For the Respondents:**

Johnnie L. Fagundes, Bruce A. Fagundes, John L. Fagundes,  
Fagundes Agribusiness Dairy  
  
Hanford, CA 93230

**10. 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.

**11. Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the owner or operator as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5.

**12. Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley

Settlement Agreement: Fagundes Agribusiness

Water Board, or its delegee. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

**13. 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.

**14. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff 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.

**15. 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.

**16. 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.

**17. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. Notwithstanding objections on the admissibility of settlement discussions as evidence in a hearing, 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 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 the Complaint in this matter; or

Settlement Agreement: Fagundes Agribusiness

- 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.

**18. Admission of Liability:** In settling this matter, the Discharger admits to the findings in the Complaint, and recognize that this Order may be used as evidence of a prior enforcement action consistent with California Water Code (CWC) section 13327.

**19. Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waive their right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

**20. Waiver of Right to Petition:** The Discharger hereby waives their 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 waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

**21. Covenant Not to Sue:** The Discharger agrees to a covenant 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 any Covered Matter.

**22. Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

Settlement Agreement: Fagundes Agribusiness

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff  
Central Valley Region

By: Clay L. Rodgers  
for Pamela Creedon  
Executive Officer

Date: 11/7/11

By: [Signature]  
John L. Fagundes

Date: 11/11/11

By: [Signature]  
Johnnie L. Fagundes

Date: 11/11/11

By: [Signature]  
Bruce A. Fagundes

Date: 11/11/11

**Order of the Central Valley Water Board**

27. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC section 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

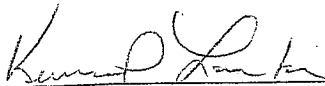
28. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public

Settlement Agreement: Fagundes Agribusiness

Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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

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



(Signature)

KENNETH D. LANDAU, ASSISTANT EXECUTIVE OFFICER  
(Print Name and Title)

Date: 10 JANUARY 2018

**ATTACHEMENT A**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0558**



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0558

IN THE MATTER OF

JOHNNIE L., BRUCE A., AND JOHN L. FAGUNDES  
FAGUNDES AGRIBUSINESS DAIRY  
KINGS COUNTY

This Complaint is issued to Johnnie L. Fagundes, Bruce A. Fagundes, John L. Fagundes, and John L. Fagundes Sr. Revocable Trust (hereinafter Discharger) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL) and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that indicate that the Discharger failed to submit technical reports pursuant to an Order issued by the Regional Water Quality Control Board, Central Valley Region under the authority of CWC section 13267.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereinafter Central Valley Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Fagundes Agribusiness Dairy (Dairy) located at [REDACTED] Hanford, California, County of Kings.
2. The Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order), which was issued by the Central Valley Water Board on 3 May 2007. (Exhibit A.) Monitoring and Reporting Program R5-2007-0035 (hereinafter MRP) accompanies the General Order. (Exhibit B.) The General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007.
3. The General Order and the MRP required that an Annual Report for the calendar year 2009 be submitted for regulated facilities by 1 July 2010 (2009 Annual Report), including the following components: a revised Annual Dairy Facility Assessment, with facility modifications implemented to date; and a status on facility retrofitting completed as proposed in the Nutrient Management Plan submittal that was due 1 July 2009.
4. The General Order required regulated facilities to submit a Waste Management Plan (WMP) by 1 July 2009. The General Order was amended by Order R5-2009-0029 to modify the compliance schedule, extending the deadline to submit the WMP to 1 July 2010 in order to give regulated parties additional time to come in to compliance. The WMP is required to have the following components: a retrofitting plan, with schedule, needed to improve storage capacity, flood protection, or design of production area; maps of the production area and land application area; a wastewater storage capacity evaluation; a flood protection evaluation; a production area design/construction evaluation; and documentation that there are no cross connections.

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and John L. Fagundes  
Fagundes Agribusiness Dairy  
Kings County

5. Under the MRP, the Executive Officer has authority pursuant to California Water Code section 13267 to order the installation of monitoring wells based on the threat that an individual dairy or dairies pose to water quality. On 23 June 2010, the Executive Officer issued a California Water Code section 13267 Order (13267 Order) to the Discharger that directed the Discharger to install groundwater monitoring wells, and to implement groundwater monitoring at the Dairy. (Exhibit C.) Specifically, the 13267 Order directed the Discharger to submit an acceptable groundwater monitoring well installation and sampling plan (MWISP) to the Central Valley Water Board by 30 September 2010.

#### STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

6. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
7. Pursuant to CWC section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
8. Pursuant to CWC section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
9. Pursuant to CWC section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation or subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

#### ALLEGED VIOLATIONS

10. On 16 August 2010, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2009 Annual Report with appurtenant components had not been received. (Exhibit D.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.

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and John L. Fagundes  
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Kings County

11. On 16 August 2010, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the Waste Management Plan with appurtenant components had not been received. (Exhibit E.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
12. On 9 December 2010, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the MWISP had not been received by 30 September 2010. (Exhibit F.) The Notice of Violation also requested that the delinquent MWISP be submitted as soon as possible to avoid incurring any additional liability.
13. Central Valley Water Board's compliance tracking system and case files indicate that the Board has not received the 2009 Annual Report, the Waste Management Plan, or the MWISP to date.
14. The Discharger is alleged to have violated the following sections of the General Order and of the MRP:
  - A) Provision E.3 of the General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program No. R5-2007-0035 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."
  - B) Provision E.13 of the General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
  - C) The MRP, which states in part:

"An annual monitoring report is due by 1 July of each year . . . . [T]he annual report shall cover information on crops harvested during the previous calendar year . . . ."
  - D) Required Reports and Notices H.1.b of the General Order, which states in part:

"The Discharger shall submit a Waste Management Plan for the production area of the dairy facility, prepared in accordance with Attachment B. The Waste Management Plan shall provide an evaluation of the existing milk cow dairy's design, construction, operation, and maintenance for flood protection and waste containment . . . ."

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and John L. Fagundes  
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Kings County

15. The Discharger violated both the General Order and the MRP by failing to submit the 2009 Annual Report as directed by the MRP that accompanies the General Order, which contain reporting requirements for dairies regulated by the General Order.
16. The Discharger violated the General Order by failing to submit the Waste Management Plan as directed by the General Order.
17. The Discharger violated both the General Order and the 13267 Order issued by the Executive Officer on 23 June 2010 by failing to submit the MWISP as required by the 13267 Order and as directed by the MRP that accompanies the General Order, which contains the requirements for implementing groundwater monitoring at dairies regulated by the General Order.

#### SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit an annual report for 2009 by 1 July 2010 as required by the General Order and the MRP. As of the date of this Complaint this report is now 308 days late.
2. **Violation No. 2:** The Discharger failed to submit a Waste Management Plan by 1 July 2010 as required by the General Order and as amended by Order R5-2009-0029. As of the date of this Complaint this report is now 308 days late.
3. **Violation No. 3:** The Discharger failed to submit an MWISP by 30 September 2010 as required by the 13267 Order and the MRP. As of the date of this Complaint this report is now 217 days late.

The Discharger has been out of compliance for a total of 833 days.

#### FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

18. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final\\_111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf)

19. The administrative civil liability was derived from the use of the penalty methodology in the Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to CWC section 13267, subdivision (b), for Violations 1 through 3. The proposed civil liability takes into account such factors as the

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and John L. Fagundes  
Fagundes Agribusiness Dairy  
Kings County

Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Violations under Water Code section 13267 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy. The failure to submit an annual report, a WMP, or an MWISP does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violations 1 and 2, the days fined is reduced to 16 days; for Violation 3, the days fined is reduced to 13 days (Attachment B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

20. The maximum penalty for the violations described above is \$833,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (833 total days of violation X \$1000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **fifteen thousand three hundred dollars (\$15,300)** for the three violations cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered, but did not change the amount of liability. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

## PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **fifteen thousand three hundred dollars (\$15,300)** for failure to submit the 2009 Annual Report and the Waste Management Plan by the 1 July 2010 deadline as required by the General Order and the MRP, and failure to submit an MWISP by the 30 September 2010 deadline as required by the 13267 Order.

The Executive Officer proposes that the amount of the assessed administrative liability (\$15,300) may be reduced provided the Discharger submits one or more of the following: 1) a complete 2009 Annual Report; 2) a complete Waste Management Plan; and/or 3) a complete MWISP. The amount of the assessed civil liability shall be reduced by \$2,000 for each report described above that is received by 20 June 2011 and which the Executive Officer finds complete. The total adjustment to the liability amount will not exceed \$6,000.

Johnnie L., Bruce A.,  
and John L. Fagundes  
Fagundes Agribusiness Dairy  
Kings County

If a panel of the Central Valley Water Board holds a hearing, it may choose to recommend to the Central Valley Water Board the imposition of administrative civil liability in the amount proposed, in a higher or lower amount, or it may decline to seek civil liability, or it may recommend referral of the matter to the Attorney General for enforcement. . . If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order, the MRP, the 13267 Order, and/or future orders issued by the Central Valley Water Board.

5/5/11

Date

*Clay L. Rodgers*

*for*

Pamela C. Creedon

Assistant Executive Officer

Central Valley Water Board Prosecution Team

**PAYMENT AGREEMENT BETWEEN  
JOHN L. FAGUNDES, JOHNNIE L. FAGUNDES, BRUCE FAGUNDES, AND JOHN L.  
FAGUNDES LIVING TRUST  
FAGUNDES AGRIBUSINESS DAIRY  
AND  
THE CENTRAL VALLEY WATER BOARD  
FOR ORDER R5-2012-0505**

Pursuant to proposed Stipulated Order R5-2012-0505 (attached), you have stipulated to pay \$7,200 to the State Water Resources Control Board (State Water Board) Cleanup and Abatement Account to resolve outstanding administrative civil liability for a failure to comply with Dairy General Order R5-2007-0035. Water Code section 13323, which governs the imposition of civil liability by the Central Valley Water Board, states, in relevant part, "[p]ayment shall be made not later than 30 days from the date on which the [Administrative Civil Liability] order is issued." When the Executive Officer executes the Stipulated Order, this action is functionally the same as the issuance of an Administrative Civil Liability Order. Therefore, the Central Valley Water Board has the right to demand full payment of the outstanding liability within 30 days of execution.

In order to resolve this matter, and in consideration of our settlement negotiations, the Central Valley Water Board Prosecution Team is amenable to you making four separate payments which will total \$7,200. If you make payments in accordance with the following time schedule, the Central Valley Water Board Prosecution Team will not seek to enforce the terms of Paragraph the Order that require payment of \$7,200 within 30 days from the date the Order is issued pursuant to Paragraph 5 of the Order. provided that the Discharger adheres to the following provisions:

1. The Discharger agrees to pay the outstanding liability in the amount of **seven thousand two hundred dollars** (\$7,200.00). Payments shall be made in four (4) quarterly installments of one thousand eight hundred dollars (\$1,800.00). The first payment shall be made by **February 20, 2012**. Subsequent payments shall be due on May 20, 2012, August 20, 2012, and November 20, 2012.
2. The Permittee shall submit payment by cashiers or certified check made payable to the "State Water Pollution Cleanup and Abatement Account – Order No. R5-2012-0505."
3. Checks shall be submitted so that they are received by the Central Valley Water Board on or before 5 p.m. on the dates listed above, and the checks shall be submitted to:

California Regional Water Quality Control Board, Central Valley Region  
Attn: Clay Rodgers  
1685 E Street  
Fresno, CA 93706

Should the Permittee fail to make any payment according to the agreed upon schedule above, the **remaining balance will be immediately due**. Should the Permittee fail to adhere to the payment schedule outlined above or fail to pay the remaining balance if a payment is missed, the Central Valley Water Board reserves the right to take any action permitted by law to collect the amount that remains outstanding.

  
\_\_\_\_\_  
Prosecution Team Representative

\_\_\_\_\_  
Date 1/19/2012