

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:)	
)	
Rego Dairy Partnership)	Order No. R5-2013-0546 (Final)
Rego Family Trust)	
)	
Franklin Rego)	
Mary Ann Rego)	
Larry Rego)	
Patricia Rego)	Settlement Agreement and Stipulation
)	for Entry of Order; Order (Final)
)	

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 Rego Family Partnership (Larry S., Franklin, Mary Ann, and Patricia Rego, dba Rego Dairy Partnership)(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. Rego Dairy Partnership operated Rego Dairy #2 located at [REDACTED] Gustine, Merced County. The Rego Family Trust owned the real property located at [REDACTED], Gustine, Merced County. Larry S., Franklin, Mary Ann, and Patricia Rego, are trustees of the Rego Family Trust. 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. Rego Dairy #2 was regulated by the General Order and the General Order names both the owner and operator as "the Discharger." Rego Family Partnership (hereinafter "The Discharger") was responsible for complying with the terms of the General Order.

2. On 1 February 2012 the Central Valley Water Board performed a routine inspection of Rego Dairy #2. Staff was accompanied on the inspection by Larry Rego and, for a portion of the inspection, Lieutenant Joe Mello from the Department of Fish and Game. During the 1 February 2012 inspection (hereinafter "the Inspection"), staff

identified onsite violations of the Dairy General Order, several off-property wastewater discharge violations, and several record-keeping violations. Onsite violations included the above-ground burial of at least 50 dead cows on property, lagoon issues related to veterinary waste being disposed of in the lagoon, lack of freeboard and lagoon maintenance, excess application of manure to a 1 to 2 acre area of cropland, corral flooding, and uncontrolled leachate running off from the silage storage area. The offproperty wastewater discharge consisted of three separate discharges from Rego Dairy #2 into the drain ditch that borders the production area on the south and east sides, a tributary to the CCID Main Canal. Staff also observed flowing water discharging to the drain ditch from the corral/dead animal burial area, and discharges of septic waste moving toward the drain ditch from a failed septic system. The Discharger has not contested these violations.

3. On 15 March 2012 the Executive Officer for the Central Valley Water Board issued Cleanup and Abatement Order R5-2012-0703 (March 15 CAO) to the Discharger to address the immediate water quality threats from Rego Dairy #2. The CAO required that the Discharger immediately stop all off-property discharges to the drain ditch, remove all dead cows and dispose of them properly at a certified landfill, collect and analyze sample from the tile drains underlying the dairy, modify the silage storage area to prevent runoff, and remove manure in excess of agronomic application rates from croplands, and make several changes to the manure lagoon to comply with the Dairy General Order. The Discharger spent significant time and resources to comply with the requirements of the March 15 CAO.

4. On 13 July 2012 the Executive Officer for the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2012-0554 against the Discharger (hereafter "the Complaint"). The Complaint alleged violations of sections 13350 and 13385 of the Water Code. Specifically, the Complaint alleged that the Discharger had committed three categories of violation of the Water Code: 1) the Discharger violated section 13350(a)(2) of the Water Code by burying dead animals at a dairy facility where this waste could be discharged in to waters of the state; 2) the Discharger violated Water Code section 13385(a)(1) by discharging manure lagoon wastewater to a drainage ditch that is hydrologically connected to the CCID Main Canal and the San Joaquin River, a Water of the United States; and 3) the Discharger violated Water Code section 13385(a)(1) by directly discharging septic waste to a drainage ditch that is hydrologically connected to the CCID Main Canal and the San Joaquin River, a Water of the United States. The Discharger has not contested the violations at issue in the Complaint.

5. The Complaint proposed that an administrative civil liability of \$272,928 be imposed against the Discharger. The Complaint considered several factors such as the severity of the violations, the Discharger's culpability, the history of violations, the economic benefit incurred from the violations, the discharger's ability to pay and continue in business, and other factors as justice may require. The Complaint alleged that the Discharger had incurred an Economic Benefit of \$147,004 based on the Prosecution Team's understanding of the dairy's operational practices and the economic cost savings associated with the three categories of violation alleged in the

Complaint. The Complaint also assumed that Discharger had the ability to pay the proposed administrative civil liability based on the Discharger's equity in the real property owned at [REDACTED] in Gustine, as well as an outstanding civil judgment in excess of \$1,000,000 that was to be paid to the Discharger in 2011.

6. The Prosecution Staff and the Discharger (hereinafter "Parties") engaged in settlement negotiations regarding the Complaint. The Prosecution Team and its experts were given access to detailed information about the dairy's operations and the Discharger's financial situation. Based on this information, the Prosecution Team has determined that the Discharger does not have the ability to pay the original civil liability amount of \$272,928 proposed in the Complaint (Attachment A).

7. Water Code section 13385(e) requires that, at a minimum, a Regional Board shall assess liability at a level that recovers the economic benefits derived from the acts that constitute the violation regardless of ability to pay. Additionally, in cases where a Discharger does not have the ability to pay a proposed liability, the Water Quality Enforcement Policy requires a Regional Board to recover a minimum administrative liability equal or greater than the economic benefit associated with the violations plus 10%. These requirements are imposed to deter the types of behavior at issue in the Complaint, and so violations of water quality laws are not perceived as the cost of doing business.

8. During settlement, the Discharger and the Prosecution Team discussed the dairy's operational practices as they related to the benefit of non-compliance with the California Water Code and the violations alleged in the Complaint. The Parties discussed the avoided costs associated with maintaining proper manure management practices, and the avoided costs associated with implementing proper carcass disposal practices. The original estimated Economic Benefit of \$147,004 was based on capital investments of \$50,000 to build and maintain a septic system for 3 homes, \$50,000 to replace a manure separator, a one-time non-depreciable expense of \$60,000 to remove manure solids from the lagoon, and annual avoided costs of \$42,280 to properly remove and dispose of deceased dairy cows (Attachment B). The Prosecution Team believed these costs reflected the reasonable dairy management practices that were necessary to prevent off-site discharges to waters of the United States and maintain compliance with the General Order.

9. During settlement, the Prosecution Team and the Discharger discussed the dairy management practices specific to Rego Dairy #2. Based on these discussions, the Prosecution Team revised the economic benefit of non-compliance to reflect the minimum annual maintenance steps necessary to prevent off-site discharges and maintain compliance with the General Order. The annual cost of manure management practices was adjusted to \$25,000, and the annual cost of proper carcass disposal was adjusted to \$2,736. These adjustments yielded a modified economic benefit of noncompliance of \$76,093 (Attachment C).

10. To resolve the violations alleged in ACLC R5-2012-0554 by consent and without

further administrative proceedings, the Parties have agreed to the imposition of \$83,702 in liability against the Discharger. This revised liability has been adjusted downward to an amount equal to the economic benefit of non-compliance plus 10%, the minimum liability required by the Water Quality Enforcement Policy. The penalty has been reduced by \$189,226 from the original proposed penalty of \$272,928. The Prosecution Team believes this adjusted liability amount is fair based on the Discharger's lack of financial resources, the fact that the dairy farm is no longer operating, and the discharger's cooperation in complying with the requirements of the 15 March 2012 CAO.

Section III: STIPULATIONS

The Parties stipulate to the following:

11. Administrative Civil Liability: The owner hereby agrees to the imposition of an administrative civil liability totaling \$83,702. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, EIGHTY THREE THOUSAND FOUR HUNDRED FORTY EIGHT DOLLARS AND SEVENTY TWO CENTS (\$83,448.72), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall also remit, by check, TWO HUNDRED FIFTY THREE DOLLARS AND TWENTY-EIGHT CENTS (\$253.28) payable to the *Fish and Wildlife Pollution Account* to offset costs associated with Department of Fish and Wildlife's response costs (Attachment D). The Discharger shall send the original signed check for \$83,448.72 to ATTN: Della Kramer, Central Valley Water Board 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670. The Discharger shall send the original signed check for \$253.28 to ATTN: Becky Mack, California Department of Fish and Wildlife, P.O. Box 944209, Sacramento CA 94224. The Discharger shall send a copy of both checks to Ellen Howard, Office of Enforcement, State Water Resources Control Board, 1001 "I" Street, 16th Floor Sacramento, California 95814.

12. Compliance with Applicable Laws: The Respondents understand 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 them to further enforcement, including additional administrative civil liability.

**13. Party Contacts for Communications related to Stipulated Order:
For the Central Valley Water Board:**

Andrew Altevogt
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

For the Discharger:

Franklin Rego

[REDACTED]
Gustine, California 95322

14. 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.

15. 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.

16. Public Notice: The Respondents understand 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 Water Board, or its delegee. The Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 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 the 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.

22. Admission of Liability: In settling this matter, the Respondents admit to the allegations of violation of the Dairy General Order in the Pre-Complaint Letter, and recognize that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

23. Waiver of Hearing: The Respondents have been informed of the rights provided by Water Code 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.

24. Waiver of Right to Petition: The Respondents hereby waive 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.

25. Covenant Not to Sue: The Respondents 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.

26. 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 Respondents, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

27. 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.

28. 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.

29. 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.

30. 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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: *Pamela Creedon*
Cor Pamela Creedon
Executive Officer

Date: 6/24/13

By: *Franklin Rego*
Franklin Rego, Rego Dairy Partnership

Date: 6/24/13

By: *Mary Ann Rego*
Mary Ann Rego, Rego Dairy Partnership

Date: 6-24-13

By: *Larry Rego*
Larry Rego, Rego Dairy Partnership

Date: 6-24-13

By: *Patricia Rego*
Patricia Rego, Rego Dairy Partnership

Date: 6-24-13

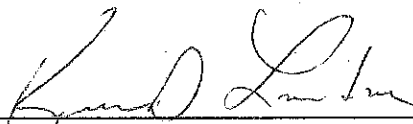
Order of the Central Valley Water Board

31. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 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.

32. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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

Pursuant to Water Code 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, ASSIST. EXECUTIVE OFFICER
(Print Name and Title)

Date: 6 August 2013