

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

Collins Pine Company

Chester Sawmill; Plumas County

ORDER R5-2015-0544

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated 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 Collins Pine Company (Collins Pine)(collectively known as 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.

RECITALS

2. On 7 November 2014, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2014-0576 (Complaint) to Collins Pine pursuant to Water Code sections 13323 and 13385. The Complaint proposed to assess two hundred thirteen thousand dollars (\$213,000) in mandatory minimum penalties (MMPs) pursuant to California Water Code section 13385 subdivisions (h) and (i) for alleged violations of effluent limits established in Central Valley Water Board Order No. R5-2009-0015. The Complaint is attached hereto as Exhibit 1. The alleged effluent limit violations are specified in Attachment A to the Complaint.
3. Since the 7 November 2014 Complaint, Collins Pine has self-reported an additional five (5) effluent limit exceedances; two (2) copper effluent limit exceedances (30 November 2014 and 31 December 2014), one (1) lead effluent limit exceedance (30 November 2014), and two (2) COD effluent limit exceedances on 10 February 2015

and 17 February 2015). The Central Valley Water Board Prosecution Team confirmed these exceedances are, in fact, violations of the effluent limits established in Order No. R5-2009-0015 for which MMPs must be assessed.

4. The Parties have agreed to settle the alleged violations in the Complaint and the additional violations described above in Paragraph 3 without an administrative hearing 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. The settlement of an administrative civil liability complaint may include violations that occur after a complaint is issued so long as the settlement makes clear that the proposed administrative civil liability in the settlement extends to a date beyond that which was originally included in the complaint.¹ To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$228,000 in mandatory minimum penalties.
5. 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:

6. **Administrative Civil Liability:** Collins Pine hereby agrees to the imposition of an administrative civil liability totaling TWO HUNDRED TWENTY EIGHT THOUSAND DOLLARS (\$228,000) in mandatory minimum penalties to resolve the violations alleged in the Complaint. Specifically, within thirty (30) days of issuance of the Order, the Collins Pine agrees to remit, by check, TWO HUNDRED TWENTY EIGHT THOUSAND DOLLARS (\$228,000) payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. Collins Pine 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 Mayumi

¹ California Sportfishing Protection Alliance v. City of West Sacramento (E.D. Ca. 1995) 905 F.Supp. 792, 806.

Okamoto, Senior Staff Counsel, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Bryan Smith, Supervising Water Resource Control Engineer, Regional Water Quality Control Board, Central Valley Region, 364 Knollcrest Drive, Suite 205, Redding, California 96002.

7. As a component of this settlement and Stipulated Order, the Parties acknowledge that they share a common goal of achieving a zero discharge operation at the Chester Sawmill. In working towards this goal, the Parties understand that Collins Pine intends to replace its existing wet Electrostatic Precipitator (ESP) with a dry pollution control device, to be operational by January 1, 2017, which coincides with the final compliance date in Time Schedule Order No. R5-2015-0007. The Parties agree to memorialize the project schedule and final compliance deadline for dry ESP installation in a Cease and Desist Order pursuant to California Water Code section 13301 or Cleanup and Abatement Order pursuant to California Water Code section 13304 and present the order to the Central Valley Water Board at a future board meeting for approval, if necessary.
8. **Compliance with Applicable Laws:** Collins Pine 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:

Bryan Smith, Supervising Water Resource Control Engineer
Central Valley Regional Water Quality Control Board
364 Knollcrest Drive, Suite 205
Redding, California 96002.

Bryan.Smith@waterboards.ca.gov

(530) 226-3425

For Collins Pine:

Jess Brown, Environmental Manager
Collins Companies
29100 SW Town Center Loop West, Suite 300
Wilsonville, Oregon 97070
JBrown@CollinsCo.com
(530) 826-5250

With a copy to:

Barbara A. Brenner
1414 K Street, 3d Floor
Sacramento, CA 95814
Barbara@churchwellwhite.com

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 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 in the Complaint, including those in Paragraph 3. The Prosecution Team agrees to forego additional discretionary enforcement of all claims, violations or causes of action included in prior Notices of Violation issued to Collins Pine over the last five years, since January 1, 2010. The Prosecution Team further agrees to forego additional discretionary enforcement of claims, violations or causes of action over the last five years, since January 1, 2010 that were discovered by the Parties during the settlement process and could have been addressed by this Stipulated Order as of the effective date of this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the Collins Pine's payment of the administrative civil liability by the deadline specified in Paragraph 6 and the Parties' understanding as described in Paragraph 7.
12. **Public Notice:** Collins Pine 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. Collins Pine agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

13. **Addressing Objections Raised During Public Comment Period:** 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. 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.
14. **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.
15. **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.
16. **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.
17. **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, or its delegee.
18. **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, 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 in the Complaint and Paragraph 3, 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 resulting from settlement proceedings for 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.

19. **Evidence of History of Violation:** Collins Pine agrees that in the event of any future enforcement actions by the Central Valley Water Board, the Stipulated Order may be used as evidence of a prior enforcement action consistent with California Water Code sections 13327 and 13385.
20. **Waiver of Hearing:** Collins Pine has been informed of the rights provided by California 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 the Stipulated Order.
21. **Waiver of Right to Petition:** Collins Pine hereby waives its 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 waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
22. **Covenant Not to Sue:** Collins Pine 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 any Covered Matter.

23. **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 Collins Pine, 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 Collins Pine, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
24. **Collins Pine is Not Liable:** Neither Collins Pine, 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 Collins Pine, 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.
25. **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.
26. **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.
27. **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.
28. **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.

29. **Incorporation of Exhibits:** Exhibit 1 is hereby incorporated by reference.

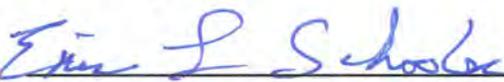
IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: 
Clint Snyder
Assistant Executive Officer

Date: 8/10/15

Collins Pine Company

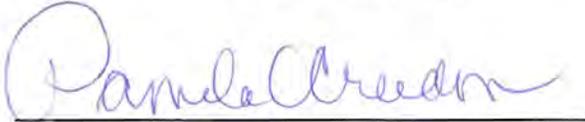
By: 
Eric L. Schooler
President

Date: 8/5/2015

Order of the Central Valley Water Board

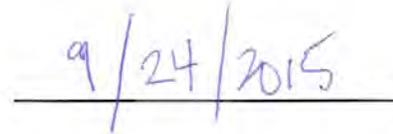
30. The Central Valley Water Board incorporates Paragraphs 1 through 29 by this reference.
31. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.
32. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint and alleged violations in Paragraph 3, Collins Pine hereby agrees to comply with the terms and conditions of this Order.
33. This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
34. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code sections 21065, 21080(a); sections 15060(c)(2) and (3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
35. Fulfillment of Collins Pine's obligations under the Stipulated Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint, allegations in Paragraph 3, and other Covered Matters in accordance with the terms of the Stipulated Order.

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 C. Creedon
Executive Officer

Date



Attachments:

Exhibit 1: Administrative Civil Liability Complaint R5-2014-0576