

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2018-0501

IN THE MATTER OF

WATERWORKS AQUATIC MANAGEMENT, INC.

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 Waterworks Aquatic Management, Inc. (Discharger)(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

1. The Discharger engages in algae and aquatic weed control application resulting in discharges of residual algaecides, aquatic herbicides, and degradation byproducts to waters of the United States. These discharges are regulated under the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications, Order No. 2013-002-DWQ (Aquatic Pesticide Permit).
2. The Discharger manages at least forty (40) commercial and residential water features ranging from large lakes and ponds to small ornamental fountains. The Discharger uses algaecides and aquatic herbicides for weed control in these water features that directly or indirectly discharge to waters of the United States.
3. The Discharger is responsible for maintenance of lakes, including Wexford Lakes, at Wexford Homeowner Association, a part of Treelake Village, including algae and aquatic weed control. On 10 November 2016, Central Valley Water Board staff issued a Notice of Noncompliance (NON) to Wexford Homeowner Association contending that an intermittent discharge, originating at Wexford Lakes, flowed to Linda Creek. The NON was based on a complaint that discharges from Wexford Lakes were flowing to Linda Creek. The NON required the Discharger to apply for coverage under the Aquatic Pesticide Permit.
4. The California Department of Fish and Wildlife (CDFW) contacted Central Valley Water Board staff inquiring about the Discharger's operations in the central valley. CDFW requested the Discharger's Notice of Applicability (NOA) under the Aquatic Pesticide Permit

for the Discharger's application sites. The Discharger did not have coverage under the Aquatic Pesticide Permit and therefore no NOAs existed for any of the sites on which the Discharger engaged in algae and aquatic weed control applications.

5. On 13 July 2017, the Central Valley Water Board received the Discharger's application package for coverage under the Aquatic Pesticide Permit. Based on the information submitted by the Discharger, on 30 August 2017, the State Water Board issued a NOA for discharges from Treelake Village. However, the Discharger failed to list all projects that it maintains and applies algaecides and aquatic herbicides for weed control.
6. Provision II. C of the Aquatic Pesticide Permit requires that Dischargers obtain coverage by submitting (1) A Notice of Intent (NOI), (2) An application fee, and (3) An Aquatic Pesticide Application Plan (APAP). Once received, the State Water Resources Control Board (State Water Board) will either will issue a NOA or deny the application. Once the Discharger has received a NOA it is authorized to discharge in accordance with the other requirements of the Aquatic Pesticide Permit.
7. Since the Discharger should have applied for coverage under the Aquatic Pesticide Permit on 1 December 2013, the first known date of application, the Discharger was in violation for 1319 days.

Regulatory Considerations

8. The Prosecution Team concluded that the Discharger violated Water Code section 13376 for failure to obtain regulatory coverage for a period of 1319 days.
9. The Central Valley Water Board may assess a penalty of up to \$10,000 per day of violation based on California Water Code (Water Code) section 13385(a)(1) for a violation of Water Code section 13376.
10. Pursuant to Water Code section 13385, subdivision (a)(1), a person that violates a NPDES permit, such as those in the Aquatic Pesticide Permit, is subject to administrative civil liability under Water Code section 13385, subdivision (c) in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation.
11. Pursuant to Water Code section 13385(e), in determining the amount of civil liability, the Central Valley Water Board is required to take into consideration the nature, circumstance, extent, and gravity of the violation or violations. Attachment A, which is hereby fully incorporated into this Order by reference, describes the penalty calculation.

Settlement

12. The Parties agree to settle this 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. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violation 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.
13. To resolve the Discharger's alleged violation for failure to obtain coverage under the Aquatic Pesticide Permit, the parties have agreed that Discharger will pay a **\$38,539** penalty.

Stipulations

The Parties stipulate to the following:

14. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability (ACL) totaling **thirty-eight thousand five-hundred thirty nine dollars (\$38,539)** to the Central Valley Water Board to resolve the alleged violation. The ACL shall be paid to the State Water Board Cleanup and Abatement Account. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board Cleanup and Abatement Account. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check shall be sent to Kari Holmes, Central Valley Water Quality Control Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.
15. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands the payment of an ACL 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 may be subject to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislations or regulations.

16. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Kari Holmes
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA
95670

Catherine Hawe – Attorney
Office of Enforcement, State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, CA
95814

For the Discharger:

Tripp Goldsberry - Attorney
2725 Riverside Blvd, Suite 2300
Sacramento, CA
95818

17. **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.
18. **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 this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Discharger as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified in paragraph 14.
19. **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 Assistant 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 Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
20. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this 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.

21. **No Waiver of Right to Enforce:** The failure of the Prosecution Team 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 this Stipulated Order. The failure of the Prosecution Team 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. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Order.
22. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
23. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
24. **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 the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also 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 to the extent that they 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - B. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

25. **Waiver of Hearing:** The Discharger 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.
26. **Waiver of Right to Petition:** The Discharger hereby waives the 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 the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
27. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
28. **Water Boards 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 the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this 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 Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
29. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
30. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
32. **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.
33. **Counterpart Signatures:** This 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.

R5-2018-0501
Waterworks Aquatic Management, Inc.

Original signed by

Andrew Altevogt
Central Valley Water Board Prosecution Team

3/5/2018

Date

Original signed by

Kevin Towle
Waterworks Aquatic Management, Inc.

3/9/2018

Date

ORDER OF THE CENTRAL VALLEY WATER BOARD

1. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.
2. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e), and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy as shown in Exhibit A, which is incorporated herein by this reference. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations set forth in the Stipulated Order, 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.
3. 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, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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.

By: Original signed by Patrick Pulupa incoming Executive Officer for
Pamela C. Creedon, Executive Officer

Date: 4/24/2018

Attachment A: Penalty Calculation Methodology
Attachment B: Economic Benefit of Noncompliance