

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:)
)
Carlos Estacio) **Order No. R5-2014-0579 (Final)**
)
dba San Isidro Jersey Dairy)
)
) **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 Carlos Estacio (San Isidro Jersey Dairy)(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. Carlos Estacio (dba San Isidro Jersey Dairy) owns and operates San Isidro Jersey Dairy located at 4413 South Prairie Flower Road, Turlock, CA 95380. 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. San Isidro Jersey Dairy is regulated by the General Order and the General Order names the owner/operator as "the Discharger."
2. On 28 September 2009, the Region Board issued a 13267 Order requiring the Discharger to submit a Monitoring Well Installation and Sampling Plan (MWISP) by 19 December 2009. The Discharger was then sent a Notice of Violation on 29 January 2010 for failing to submit the MWISP by the required due date. Regional Board staff sent a Pre-Complaint letter for failing to submit the MWISP. The Discharger complied with the General Order requirement by joining a coalition.
3. On 2 September 2010, Regional Board staff issued an NOV for failing to submit the 2009 Annual Report by 1 July 2010. Regional Board staff sent a Pre-Complaint letter for failing to submit the 2009 Annual Report. The Discharger finally submitted the report on 31 October 2011.

4. On 30 September 2011, the Prosecution Team of the Central Valley Water Board issued a Notice of Forthcoming Assessment of Civil Liability (“Pre-Complaint Letter”) to the Discharger for two violations: 1) failing to file the 2009 Annual Report and 2) failing to submit an MWISP as required by a 13267 Order. The Pre-Complaint Letter recommended imposing an administrative civil liability totaling \$15,900 for alleged violations of the General Order.

5. The Prosecution Team and owner (hereinafter “Parties”) engaged in settlement negotiations and agreed to settle the violations cited in the 30 September 2011 Pre-Complaint letter without 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 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 in the Pre-Complaint Letter except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

6. To resolve the violations alleged in the Pre-Complaint Letter by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$7,300 in liability against the owner/operator.

Section III: STIPULATIONS

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$7,300. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, SEVEN THOUSAND THREE HUNDRED DOLLARS (\$7,300), 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 the State Water Resources Control Board, Division of Administrative Services, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888, and shall send a copy to Attn: Della Kramer, Central Valley Water Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670.

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 herein 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:

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

For the Respondents:

Carlos Estacio
San Isidro Jersey Dairy
4413 South Prairie Flower Road
Turlock, California 95380

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 herein, 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 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 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 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 the 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.

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 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.

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

19. Waiver of Hearing: The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives his 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 his 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 his 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 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.

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.


Order R5-2014-XXXX
Stipulated Administrative Civil Liability Order
Carlos Estacio – San Isidro Dairy

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: 
Andrew Altevogt
Assistant Executive Officer
Lead Prosecutor

Date: 10/9/14

By: 
Carlos Estacio

Date: 10-8-14

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 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.

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 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 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. LADDAL, ASSISTANT EXECUTIVE OFFICER
(Print Name and Title)

Date: 17 NOVEMBER 2014

Attachment A
Specific Factors Considered – Civil Liability
CARLOS ESTACIO, OWNER AND OPERATOR
San Isidro Jersey Dairy

The Regional Board alleges that the Discharger failed to submit a Monitoring Well Installation and Sampling Plan (MWISP) required to be submitted by 10 December 2009 and the 2009 Annual Report required to be submitted on 1 July 2010. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violations are non-discharge violations. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

I. Violation No. 1: Failure to submit a MWISP

Pursuant to Water Code section 13267, technical and monitoring reports must be submitted at the request of the Regional Board. Discharger was directed by letter dated 28 September 2009 to submit a MWISP for installation of monitoring wells at his dairy. On 28 December 2010, Discharger submitted a request to be allowed to join a coalition instead of submitting a MWISP; he had joined the coalition on 28 December 2010. Discharger never submitted a MWISP, but his membership in the coalition was eventually allowed as a substitute.

Calculation of Penalty for Failure to Submit a MWISP

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is for the violation is 0.30.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the MWISP did not increase the amount of pollution discharged or threatened to discharge into waters of the state. The submission of a MWISP is a means through which the Regional Board can direct the installation of monitoring wells to evaluate the impact of a Discharger's activities on underlying groundwater. Failing to timely submit the MWISP to the Regional Board delays the installation of monitoring wells and hinders the Regional Board's ability to assess impacts to groundwater from dairy activities; such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to

submit the MWISP has been rendered ineffective. The failure to submit the required technical report undermines the Regional Board's efforts to assess water quality impacts from dairy activities and require the implementation of appropriate protective measures.

Initial Liability

A failure to submit a MWISP requested under Water Code section 13267 is punishable under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a MWISP by 10 December 2009 as required by letter dated 28 September 2009; as of the date the Discharger joined the coalition (28 December 2010), the MWISP was 383 days late. Therefore the Per Day Assessment is calculated as (0.3 factor from Table 3) x (383 days) x (\$1,000 per day). The Initial Liability value is \$114,900.

Step 4. Adjustment Factors

Multiple Day Violations

The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical report, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 18 days of violation. A calculation of initial liability totals \$ 5,400 (0.3 per day factor X 18 adjusted days of violation X \$1,000 per day penalty).

a) *Culpability*: 1.2

Discussion: The Discharger was assessed a score of 1.2.

Carlos Estacio (the Discharger) is fully responsible for failure to submit the MWISP alleged. The requirement to submit a MWISP upon request of the Regional Board was part of the General Order. Further, the Discharger was issued a Notice of Violation on 29 January 2010 and a Pre-Complaint letter on 13 October 2010, which requested that the report be submitted as soon as possible to minimize liability. The Discharger failed to submit the MWISP, and is therefore culpable for failure to comply with the program.

b) *Cleanup and Cooperation*: 1.2

Discussion: The Discharger was assessed a score of 1.2. Despite the fact that the Dischargers received multiple notices regarding the requirements to submit a MWISP, including an NOV dated 29 January 2010 and a follow up letter dated 13 October 2010, the Discharger failed to submit the required document. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations*: 1

Discussion: The Discharger was assessed a score of 1 because there is no prior formally adjudicated action against the Discharger.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount: **\$7,776** = (Initial Liability (\$5,400) x Adjustments (1.2)(1.2)(1).

II Violation No. 2: Failure to submit 2009 Annual Report

In accordance with Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), a 2009 Annual Report must be submitted for regulated facilities by 1 July 2010. The Discharger submitted this report on 31 October 2011.

Calculation of Penalty for Failure to Submit 2009 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.30.

Attachment A

Stipulated Administrative Civil Liability Order No. R5-2014-0579

Carlos Estacio – San Isidro Jersey Dairy

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2009 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the state. The submission of an annual report is a means through which the Regional Board can evaluate a Discharger's compliance with regional board orders. Failing to timely submit the Annual Report to the Regional Board hinders the Regional Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the annual report has been rendered ineffective. The failure to submit the required technical reports undermines the Regional Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the General Order.

Initial Liability

A failure to submit annual reports is punishable under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit an annual report for 2009 on 1 July 2010 as required by the General Order and the Monitoring and Reporting Program; the report was submitted on 31 October 2011. Based on the date the report was submitted, the report was 487 days late. Therefore the Per Day Assessment is calculated as (0.3 factor from Table 3) x (487 days) x (\$1,000 per day). The Initial Liability value is \$146,100.

Step 4. Adjustment Factors

Multiple Day Violations

The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. Additionally, the economic benefit cannot be measured on a daily basis where the submission of the annual report is a one-time cost.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 22 days of violation. A calculation of initial liability totals \$ 6,600 (0.3 per day factor X 22 adjusted days of violation X \$1,000 per day penalty).

a) *Culpability*: 1.2

Discussion: The Discharger was assessed a score of 1.2.

Carlos Estacio (the Discharger), is fully responsible for failure to submit the annual report alleged. The requirement to submit an annual report is a requirement of the General Order. Further, the Discharger was issued a Notice of Violation on 2 September 2010, which requested that the Discharger submit the annual report as soon as possible to minimize liability. The Discharger failed to submit the 2009 annual report or any of the associated documents until 31 October 2011, and is therefore culpable for his failure to comply with the regulatory program.

b) *Cleanup and Cooperation:* 1.1

Discussion: The Discharger was assessed a score of 1.1. Despite the fact that the Dischargers received multiple notices regarding the requirements set forth in the General Order, including notice through the General Order and an NOV, the Discharger continued to violate the General Order. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations:* 1

Discussion: The Discharger was assessed the score of 1 which neither increases nor decreases the fine.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

a) *Total Base Liability Amount:* **\$8,712** (Initial Liability (\$6,600) x Adjustments (1.2)(1.1)(1)).

The follow penalty methodology steps apply to all violations alleged herein.

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that if the Regional Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

- a) *Adjusted Combined Total Base Liability Amount: \$16,488*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) Discharger owns the dairy, a significant asset, 2) Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted at this time.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$16,488 +\$0 (Staff Costs) = \$16,488.*

- b) *Discussion:* No adjustment to the Total Base Liability Amount has been made based on “other factors as justice may require”.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$2,821*

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the MWISP, and from not collecting and analyzing the samples required to generate a complete annual report. In addition, the Discharger delayed the expenditure of money to prepare the annual report. This benefit is based on the estimated cost of \$5,000 for producing the two reports. The adjusted total base liability amount of \$16,488 is more than at least 10% higher than the economic benefit amount (\$2,821) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount: \$3,103*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team’s estimate of the Discharger’s economic benefit obtained from the alleged violation is \$2,821.

- b) *Maximum Liability Amount: \$870,000*

Attachment A

Stipulated Administrative Civil Liability Order No. R5-2014-0579

Carlos Estacio – San Isidro Jersey Dairy

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (870 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the MWISP and 2009 Annual Report is **\$16,488**.