

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0537
IN THE MATTER OF
SCHREINER BROTHERS FARMS PARTNERSHIP;
TRIANGLE PROPERTIES, INC.; AND
TEICHERT LAND CO.

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 Schreiner Brothers Farms Partnership; Triangle Properties, Inc.; and Teichert Land Co. (Dischargers)(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 Dischargers are the owner (Teichert Land Co.), property manager (Triangle Properties, Inc.), and tenant (Schreiner Brothers Farms Partnership) of the parcels located a quarter mile west of the Garden Highway on the north side of Sacramento Slough, California, which is Sutter County Assessor' parcel numbers 34-180-001 & 34-180-004 (the "Property"). Teichert Land Co. leased the Property, through its property manager Triangle Properties, Inc., to Schreiner Brothers Farms Partnership. Schreiner Brothers Farms Partnership used the Property for irrigated agriculture operations.
2. On 25 June 2012, Regional Water Board staff conducted a pollution surveillance inspection in the Sacramento River, Sacramento Slough, and East Canal in Sutter County. While conducting the inspection, staff observed sediment-laden water discharging from two discharge points on the Property. At the first discharger point, staff observed sediment-laden water discharging from the Property to the Sacramento River. At the second discharger point, staff observed sediment-laden water discharging from the Property to the East Canal.
3. The Dischargers obtained regulatory coverage for their waste discharges under Resolution No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands (Conditional Waiver) by enrolling in the Sacramento Valley Water Quality Coalition (Coalition). Discharging sediment-laden water violated the conditions of the Conditional Waiver.
4. On 27 August 2012, the Central Valley Water Board issued a Notice of Violation and Order, pursuant to Water Code¹ section 13267 (13267 Order) to the Dischargers. The

¹ All references to the Water Code refer to the California Water Code.

13267 Order required the Dischargers to comply with certain monitoring requirements and submit an Erosion and Sediment Control Plan (Plan).

5. The 13267 Order required the Dischargers to collect date-and-time-stamped photos of the discharge events and collect turbidity data for each discharge event.
6. On 26 September 2012, the Dischargers submitted the Plan. The Plan asked to submit monitoring reports biannually rather than monthly following an irrigation related discharge event.
7. On 17 December 2012, the Prosecution Team responded and declined the request to lower the frequency of submitting monitoring reports.
8. The 30 September 2013 Monitoring Report contained a log of the discharge events that occurred during the 2013 irrigation season. Based upon the data provided in the log, Central Valley Water Board staff counted 40 events in which turbidity and photographic evidence of discharge quality should have been collected and submitted in a Monitoring Report.
9. The Monitoring Reports were due the 15th of each month following an irrigation related surface water discharge. The first Monitoring Report was due on 15 July 2013; a second Monitoring Report was due on 15 August 2013; and a third Monitoring Report was due on 15 September 2013. Only the September 2013 Monitoring Report was received. However, it was received 15 days late, was incomplete, and did not meet the requirements of the 13267 Order.
10. The Dischargers' September 2013 Completion Report documented and provided some photographic evidence of management practices that were implemented to stabilize the site.
11. On 21 January 2014, the Prosecution Team mailed a letter to the Dischargers informing them of a forthcoming assessment of administrative civil liability (ACL) for the aforementioned violations. A settlement meeting was held on 11 February 2014. Though an initial agreement was reached, no formal settlement occurred.
12. The Dischargers subsequently used new technology, above and beyond what was required and at a considerable cost, estimated at thirty-three thousand dollars (\$33,000), to ensure the requirements of the 13267 Order would be met in the future. This new real-time *in situ* monitoring consisted of an automated system that collected continuous turbidity and photographic samples at the two discharge points.
13. In December 2014, Teichert Land Co. sold the Property.
14. Given that new facts subsequently came to light, including the fact that the Property was sold, the Dischargers were no longer farming the Property, the originally agreed upon Supplemental Environmental Project was no longer viable, and the requirements of the Irrigated Lands Regulatory Program had changed, the Prosecution Team no longer supported the initial agreement. On 3 July 2015, the Prosecution Team mailed another letter to the Dischargers informing them of this fact, in addition to a new proposed ACL amount and an invitation to begin settlement negotiations.

15. On 18 November 2015, the Parties reached a tentative settlement agreement, as codified in a Stipulated Administrative Civil Liability Order, and posted the tentative settlement agreement for a thirty day public comment period.
16. Following the close of the public comment period, the Advisory Team expressed concern regarding the tentative settlement agreement, asked the Parties for additional information, and met with the Parties via teleconference on 22 March 2016 to discuss the case.
17. On 13 April 2016, the Advisory Team notified the Parties that the tentative settlement agreement was rejected because it only addressed reporting violations and not the underlying discharges.
18. The Prosecution Team subsequently added two discharge violations and re-negotiated with the Dischargers.
19. During further settlement negotiations, the Dischargers and the Prosecution Team agreed to the imposition of the ACL amount indicated below.

Regulatory Considerations

1. The Prosecution Team has concluded that the Dischargers violated Water Code section 13350 by discharging sediment-laden water in violation of the Conditional Waiver and Water Code section 13267 by failing to collect turbidity and photographic evidence of irrigation events, and failing to submit 2013 Monitoring Reports summarizing irrigation events as required by the 13267 Order. The Central Valley Water Board may assess an ACL based on Water Code sections 13350 and 13268 for these violations.
2. Water Code section 13350, subdivision (a) provides that “[a] person who...in violation of a...waiver condition...discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”
3. Pursuant to Water Code section 13350, subdivision (e), “a regional board may impose civil liability administratively...either on a daily basis or on a per gallon basis, but not on both.”
4. Pursuant to Water Code section 13350, subdivision (e)(1) “[t]he civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.”
5. Pursuant to Water Code section 13350, subdivision (e)(2) “[t]he civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.”
6. Water Code section 13267, subdivision (a) provides that “[a] regional board, in establishing or reviewing any water quality control plan or waste discharge requirements,

or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.”

7. Water Code section 13267, subdivision (b)(1) provides that

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposed to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters 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 Water Code section 13268, any person who fails or refuses to furnish a technical or monitoring report as required by Water Code section 13267, subdivision (b), may face an ACL in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
9. Pursuant to Water Code section 13327, 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, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. Attachment A, which is hereby fully incorporated into this Order by reference, describes the penalty calculation.

Settlement

1. The Parties have engaged in confidential settlement negotiations and agree to settle the 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 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.

2. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of one hundred thousand dollars (\$100,000) against the Dischargers.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an ACL totaling **one hundred thousand dollars (\$100,000)** to resolve the alleged Water Code violations, specifically:
 - a. A combined total of **fifty thousand dollars (\$50,000)** shall be paid as follows:
 - i. **Forty-three thousand dollars (\$43,000)** shall be paid to the State Water Board *Waste Discharge Permit Fund*. 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 *Waste Discharge Permit Fund*. The Dischargers shall indicate on the check the number of this Order. The Dischargers shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Wesley Ouimette, Central Valley Water Quality Control Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670-6114.
 - ii. **Seven thousand dollars (\$7,000)** 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 Dischargers shall indicate on the check the number of this Order. The Dischargers shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Wesley Ouimette, Central Valley Water Quality Control Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670-6114.
 - b. **Fifty thousand dollars (\$50,000)** shall be paid to the Rose Foundation for Communities and the Environment (Rose Foundation) no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the

Central Valley Water Board. Of that amount, forty-six thousand five hundred dollars (\$46,500) shall be distributed in its entirety by the Rose Foundation to the South Yuba River Citizens League (SYRCL). The remaining three thousand five hundred dollars (\$3,500) shall be used for the Rose Foundation's Supplemental Environmental Project (SEP) Program Oversight. 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. Payment shall be provided to the Rose Foundation in the form of a single check payable to the Rose Foundation. Payment shall be sent to the following address: Rose Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, California 94612-2218. A copy of the check shall be sent to Wesley Ouimette at the address set forth above.

2. **Oversight Payment:** In addition to the ACL in Stipulation 1, the Dischargers hereby agree to pay **one thousand five hundred (\$1,500)** to the Rose Foundation for the SEP oversight for the specific SEP described in Stipulation 3. Attachment B, which is hereby incorporated into this Order by reference, describes the Rose Foundation's SEP Development and SEP Oversight activities in detail. 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 to the Rose Foundation at the address set forth above. A copy of the check shall be sent to Wesley Ouimette at the address set forth above.
3. **Supplemental Environmental Project:**
 - a. The Dischargers and the Central Valley Water Board agree that the payment specified in Stipulation 1.b is a SEP, and that the amount specified (hereafter SEP amount) will be treated as a Suspended Administrative Civil Liability for purposes of this Stipulated Order. Upon the Dischargers' full payment of its SEP obligations under this Stipulated Order, Central Valley Water Board staff shall send the Dischargers a letter recognizing the satisfactory completion of its SEP obligations. This letter shall terminate any further SEP obligations of the Dischargers and result in the permanent waiver of the SEP Suspended Administrative Civil Liability.
 - b. Using the grant funds, the SYRCL will fund the *Growing Green: Reducing Water Quality Impacts from Marijuana Grows in the Yuba Watershed Project*. The project focuses on promoting education about water quality and watershed health to cannabis farmers in disadvantaged communities (DACs) within the Yuba River watershed. The project will work directly with DACs to research and develop Best Management Practices (BMPs) pertaining to cannabis grow operations. Once BMPs are developed, SYRCL will conduct outreach, hold BMP workshops, and disseminate educational materials to local farmers and interested community members. This proposal is specifically targeted at creating Cannabis BMP webinars which will be available for free online to reach a widespread audience and have a large impact on the ongoing issue of pollution sourced from

unregulated cannabis farms. While the project's focus is the Yuba watershed, the materials, results, and outcomes will be applicable to communities and watersheds throughout the Central Valley and beyond. A full Proposal for the Project—including a list of deliverables and timeline—is included as Attachment C, which is hereby incorporated into this Order.

4. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand that 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 in the ACL Complaint may subject them to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

5. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:
Andrew Altevogt – Assistant Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670-6114
(916) 464-4656

Kailyn Ellison – Attorney
Office of Enforcement, State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, California 95812
(916) 445-9557

For the Dischargers:
Claus Suverkropp
Larry Walker Associates
707 4th Street, Ste 200
Davis, California 95616
(530) 753-6400

6. **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.
7. **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 Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the Dischargers' full payment of the ACL by the deadline specified in Stipulation 1.

8. **Public Notice:** The Dischargers 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 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 Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
9. **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.
10. **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.
11. **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.
12. **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.
13. **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.
14. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives their right to a hearing before the Central Valley Water Board.
15. **Waiver of Right to Petition:** The Dischargers 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.
16. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, Dischargers shall and do 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.
17. **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 Dischargers or their 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 Dischargers, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.

18. **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.
19. **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.
20. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
21. **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.
22. **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.

Original signed by

19 July 2016

Andrew Altevogt
Assistant Executive Officer
For the Central Valley Water Board Prosecution Team

Date

Original signed by

7 July 2016

Name: Eric Scheiner
Title: Partner
Schreiner Brothers Farms Partnership

Date

Original signed by

11 July 2016

Name: Dana M. Davis
Title: Vice President
Triangle Properties, Inc.

Date

Original signed by

14 July 2016

Name: Judson T. Riggs
Title: President
Teichert Land Co.

Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. 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 ACL. 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 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.
3. 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, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Dischargers discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.

Original signed by

Pamela C. Creedon
Executive Officer

14 September 2016

Date