



## California Rural Legal Assistance, Inc.

Rural Roots, Justice for All

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March 20, 2025

Central Valley Regional Water Quality Control Board  
1685 E. Street,  
Fresno, CA 93706-2007

Submitted electronically: [centralvalleyfresno@Waterboards.ca.gov](mailto:centralvalleyfresno@Waterboards.ca.gov)

**RE: Comments on Setton Pistachio of Terra Bella, Inc., Terra Bella Pistachio Facility  
Rescission R5-2020-0038**

Dear Board Members and staff of the Central Valley Regional Water Quality Control Board (Board):

The California Rural Legal Assistance (CRLA) submits these comments on behalf of Terra Bella Voice for Change in response to the proposal to rescind the Terra Bella Pistachio Facility Cease and Desist Order R5-2020-0038 (Order or CDO).

CRLA is a non-profit law firm with more than fifty years of experience representing rural, low-income Californians. The Unincorporated Communities Justice Program of CRLA specializes in land use, environmental, and civil rights law. Terra Bella Voice for Change is a community-based organization representing the needs of the disadvantaged residents of Terra Bella, an unincorporated community with approximately 2,910 residents in Tulare County. Terra Bella's residents are majority *Latine*<sup>1</sup> of Mexican origin with median household income of \$23,852.<sup>2</sup> Many community members are farmworkers who have been unfairly burdened by odors from the Terra Bella Pistachio Facility (Facility), which is owned and operated by Setton Pistachio (Setton). Terra Bella Voice for Change and residents of Terra Bella have been advocating to ameliorate odors from the Facility for years.

We urge the Central Valley Regional Water Quality Control Board to deny the proposal to rescind the Cease and Desist Order R5-2020-0038 as Setton is in violation of the Order. First, Setton has violated and currently violates the Order, as residents of Terra Bella continue to endure odors originating from the Facility and Treatment/Storage Pond (Pond). Second, although the CDO prohibits Setton from using the Pond, Setton has recently used or is currently using the Pond. The Board must investigate the Facility's use of the Pond and take appropriate actions to reduce the odors. Finally, we urge the Board collaborate with Tulare County, and Setton to ensure that the odor reduction mitigation measures outlined in Setton's Odor Mitigation Plan are implemented and are effective. Until Setton demonstrates compliance with the Order and its own

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<sup>1</sup> *Latine* is a gender neutral alternative to Latino or Latina. It is used to reflect a more diverse and respectful approach to identity within a community.

<sup>2</sup> United States Census Bureau, American Community Survey 2023 (last accessed March 20, 2025).



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Odor Mitigation Plan to minimize objectionable and foul odors, the Board must not lift the Order.

**I. The Board must not rescind the Cease and Desist Order R5-2020-0038 because Setton violates Sections A.1 and A.2 of the Order. Residents continue to detect objectionable odors originating from Setton’s Treatment/Storage Pond.**

**A. Setton continues to violate Section A.1 of the Cease and Desist Order**

Section A.1 of the Cease and Desist Order R5-2020-0038 states: “The discharger shall immediately cease and desist its generation of objectionable odors.”<sup>3</sup> This requirement originates from the Discharge Specification B.2 of the Waste Discharge Requirements Order (WDR) 92-191, which provides that objectionable odors originating at the Facility shall not be perceivable beyond the boundaries of the property owned or controlled by the discharger.<sup>4</sup>

On or around March 1 and 2, 2025, a number of residents filed complaints about a sewage-like odor emanating from discharges in the Setton Pond, which constitutes a violation of section A.1 of the CDO. Based on these complaints alone, Setton is in violation of Section A.1 of the Order and the WDR because it is creating or has recently created objectionable odors.

Setton has also failed to comply with the CDO and the WDR due to the high volume of complaints made regarding the Facility’s odors. The San Joaquin Valley Air Pollution Control District (Air District)’s Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) provides technical assistance in evaluating the significance of odor emissions. An odor is significant when there are more than one confirmed complaint per year averaged over a three-year period, or three unconfirmed complaints per year averaged over a three-year period.<sup>5</sup> The Board has used GAMAQI to demonstrate the presence of objectionable odors.<sup>6</sup> In 2024, the Air District received four “unconfirmed complaints” regarding odor issues.<sup>7</sup> Setton has exceeded the threshold of significance for odor levels outlined in the GAMAQI, which further highlights Setton’s ongoing failure to comply with the CDO and WDR.

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<sup>3</sup> Central Valley Regional Water Quality Control Board, Cease and Desist Order R5-2020-0038, P 6, (2020) (referencing Waste Discharge Order 92-191, Discharge Specification B.2); (Hereafter, CDO).

<sup>4</sup> Id.

<sup>5</sup> San Joaquin Valley Air Pollution Control District, Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) adopted March 19, 2015, P. 102, at [https://valleyair.org/transportation/ceqa\\_guidance\\_documents.htm](https://valleyair.org/transportation/ceqa_guidance_documents.htm) (last accessed March 20, 2025).

<sup>6</sup> Central Valley Regional Water Quality Control Board, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R5-2021-0516, P. 14 (2021).

<sup>7</sup> San Joaquin Valley Air Pollution District Complaint, Complaint S-2410-005 (October 1, 2024); S-2410-010 (October 2, 2024); S-2410-011 (October 2, 2024); S-2410-70 (October 16, 2024).



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### **B. Setton continues to violate Section A.2 of the Cease and Desist Order.**

Section A.2. of the CDO states: “[T]he Discharger shall immediately cease and desist (and otherwise abate) all nuisance conditions existing in or arising from discharges to the Treatment/Storage Pond for wastewater, and any other wastewater impoundments at the Facility.”<sup>8</sup> Under the Porter-Cologne Act, and for the purposes of the WDR 92-191, a nuisance is defined as any condition that:

- 1) is injurious to health, or is indecent or offensive to the sense or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;
- 2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; and
- 3) occurs during or as a result of, the treatment or disposal of waste.<sup>9</sup>

As stated above, in 2024 and 2025, residents stated that sewer-like odors emanated from the Setton’s discharges into the Pond. Because the objectionable odors were emanating from the Pond, Setton clearly has not ceased and desisted all nuisance conditions. This persistent odor has prevented the residents of Terra Bella from comfortably and freely enjoying their property. For example, the odors have prevented residents from using outdoor spaces, such as gardening or enjoying time outside with their children. This is especially concerning because the ongoing odors impact the environmental health of community members, particularly those who are already socially and economically underprivileged.<sup>10</sup> Therefore, Setton is not in compliance with Section A.2. of the CDO. Because Setton’s discharges is causing or has caused nuisance conditions, the Board should not rescind the Order.

### **II. The Board must investigate Setton’s discharge into the Treatment/Storage Pond and take appropriate enforcement action.**

As discussed above, residents stated that recent odors emanated from the Pond. Given the sewer-like odor of this discharge in the Pond, Setton likely violated section A.2 of the CDO. We urge the Board to investigate and stop this discharge immediately.

Relatedly, we are concerned about the lack of transparency and the absence of a plan by Setton to inform the nearby Terra Bella community about its use of the Pond. Our concern stems from Setton’s historic and ongoing emission of strong, foul odors despite the CDO’s odor prohibition and prohibition to use the Pond for waste discharge. We are also concerned given Setton’s blatant history of disregard for agency enforcement efforts related to the odor and its

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<sup>8</sup> CDO P. 14 (referencing Standard Provision A.11 of WDRs Order 92-19).

<sup>9</sup> Wat. Code, Section 13050, subd.(m).

<sup>10</sup> United States Census Bureau, American Community Survey 2023 (last accessed March 20, 2025) (Terra Bella is predominantly low-income and Latine).



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impacts of the odor on the community. Setton has previously denied enforcement agents access to the Facility to investigate odor complaints made by residents.<sup>11</sup> Setton's emission of odors and disregard for enforcement led the San Joaquin Valley Air Pollution Control District to file a lawsuit to enjoin the Facility from emitting odor nuisances, among other claims, and to collect penalty fees, and the case is ongoing since 2023.<sup>12</sup>

Due to Setton's recent and likely ongoing odorous discharges into its Pond and its record of noncompliance with the CDO, the WDR, and nuisance abatement requirements, the Board must thoroughly investigate Setton's use of the Pond now. Additionally, the Board must stop any illegal discharges immediately and take any other appropriate enforcement action.

### **III. Because the Facility regularly emits objectionable odors, the Board must work with Setton and Tulare County to ensure that odor reduction mitigation measures approved under the Wastewater Land Application Expansion Project are implemented and are effective.**

Given the Facility's ongoing emission of foul odors, Setton has failed to demonstrate that their mitigation measures, such as the Odor Control Plan, designed to address nuisance odors prevent nuisance odors. We are concerned about these ongoing and possible future odors especially given Setton's increase in annual wastewater discharge and pistachio processing. We request that the Board work with the Tulare County to ensure that Setton is effectively implementing its Odor Control Plan to minimize foul odors.

In 2022, Setton expanded its production capacity to process up to 122 million pounds of pistachios per year. The increase of production capacity led to a higher discharge of process wastewater from the Facility.<sup>13</sup> In 2024, Tulare County approved Setton's Wastewater Land Application Expansion Project (LAAP). The project added 89 acres of land application areas to expand Setton's wastewater treatment disposal. In the Environmental Impact Report (EIR) for the LAAP, Setton updated its 2022 Odor Control Plan, which included additional measures requiring Setton to track complaints, identify objectional odors during the harvest season, and the installation of a subsurface drip irrigation system to mitigate odors from the increased wastewater discharge. Despite improvements to the Odor Control Plan, residents continue to identify objectionable odors.

CRLA has previously identified potential reasons why these and other odor mitigations measures have failed to be effective. First, the mitigation measure for Setton to track complaints is uncertain and unenforceable. Under Setton's EIR for the LAAP, a qualified technician is required to take daily measurements during the harvest season (August to October) using a field

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<sup>11</sup> San Joaquin Unified Air Pollution Control District, Complaint Investigation S 2210-069, Oct. 23, 2022 page 1 Exhibit D (other complaints filed in Exhibit E, Fifth and Sixth Causes of Action).

<sup>12</sup> San Joaquin Unified Air Pollution Control District v. Setton Pistachio of Terra Bella Inc., Tulare County Superior Court Case No. PCU298746.

<sup>13</sup> Setton Pistachio, Setton Pistachio Treated Wastewater Land Application Expansion Project Draft Environmental Impact Report, P. 13 (2024) (Hereafter, EIR).



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olfactometer, specifically between 12 pm to 4 pm, when temperatures are the highest.<sup>14</sup> If the olfactometer identifies objectionable odors when the reading exceeds seven or higher, it would indicate the Facility is generating adverse odors.<sup>15</sup> Setton would determine if the source of the nuisance odors is from the wastewater holding ponds and provide treatment during the harvest season.<sup>16</sup> However, if the reading of the olfactometer is below seven, no further action is required.<sup>17</sup> Setton's approach to tracking odor complaints does not provide clear guidance on response timeframes, specific timelines for resolutions, or remedies for addressing the complaints. Setton's mitigation measures also do not provide solutions for addressing complaints outside the hours of 12 pm to 4 pm or during the off-season. Nor do they specify how Tulare County will be notified of nuisance odors. Given Setton's history of disregarding the law and enforcement efforts and the ongoing foul odors emitted from the Facility, we are also concerned about Setton's commitment to taking actions to mitigate odors after the olfactometer detects them at levels above the threshold set in the Odor Control Plan.

We urge the Board to work with the Tulare County and Setton to ensure that it is effectively implementing its mitigation measures under the Odor Control Plan and provide guidance, timeframes, specific timelines for resolutions, or remedies for addressing the complaints during the off-season.

Additionally, the Board must investigate whether the subsurface drip irrigation system, also required under Setton's Odor Control Plan, has been installed and is working properly to minimize odors. The subsurface drip irrigation system is designed to apply wastewater to additional land application areas to address potential odor issues associated with increased wastewater from Setton's expanded production.<sup>18</sup> Specifically, Setton must install subsurface pipelines connecting the existing subsurface drip irrigation system to the additional land areas.<sup>19</sup>

Based on available information, we believe the subsurface drip irrigation system has not yet been installed. CRLA has a reason to believe the installation has not occurred because residents have reported seeing standing water in the groves and observing Setton using the Pond.<sup>20</sup> Additionally, residents have witnessed Setton using truck-mounted spray irrigation systems. This means that Setton has increased its annual wastewater discharge without upgrading its system to mitigate the odors as required under the LAAP. The Board must work with Setton to ensure that the existing subsurface drip irrigation system is updated to cover the new land application areas. Furthermore, the fact that the San Joaquin Valley Air Pollution Control District received four odor complaints during the 2024 harvest indicates that the Odor Control

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<sup>14</sup> Id. at 17.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> EIR at 41.

<sup>19</sup> Id.

<sup>20</sup> San Joaquin Valley Air Pollution District Complaint, Complaint S-2410-005 (October 1, 2024); S-2410-010 (October 2, 2024); S-2410-011 (October 2, 2024).



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Plan has been largely ineffective, and it is too early to determine whether the additional updates to the Odor Control Plan will be effective this upcoming harvest season.

Given the persistent and unresolved odor issues from the Facility, Setton's mitigation measures have proven inadequate. The Board must refrain from rescinding the order. Instead, the Board must ensure that Setton complies with the CDO and immediately addresses the ongoing odor nuisance. The Board must also work with Tulare County ensure that Setton is held responsible for implementing an effective Odor Control Plan to mitigate odor nuisances in the community.

#### **IV. Conclusion**

CRLA appreciates this opportunity to comment. If you have questions about these comments, please feel free to contact our Leticia Casillas Luquin at 559-441-8721 or by email at [lluquin@crla.org](mailto:lluquin@crla.org).

*Sincerely,*

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