

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

In the matter of:

**K&A FARMS LLC
BLANCO RANCH
MONTEREY COUNTY**

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

ORDER NO. R3-2022-0006

SECTION I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team), and K&A Farms LLC¹ (individually, K&A Farms) (collectively, the Parties) and is presented to the Central Coast Water Board, or its delegate, for adoption as an order by settlement pursuant to California Water Code (Water Code) section 13323 and California Government Code (Government Code) section 11415.60.

SECTION II: RECITALS

1. Irrigated agricultural discharges have been regulated by the Central Coast Water Board for over 15 years, since the adoption of the first agricultural order in 2004.² On March 8, 2017, the Central Coast Water Board adopted the third Agricultural Order *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* Order No. R3-2017-0002 (Agricultural Order 3.0). Agricultural Order 3.0 requires that owners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater in the central coast region comply with Agricultural Order 3.0.

2. Pursuant to Water Code section 13267, Agricultural Order 3.0 required that Tier 2 and Tier 3 dischargers submit Total Nitrogen Applied reports (TNA Reports) annually by March 1.

¹ The electronic Notice of Intent (eNOI) submitted for the relevant ranch identified the permittee as "K@A Farms LLC." However, based on publicly available information and discussions with K&A Farms representatives, the Central Coast Water Board determined the correct entity name is "K&A Farms LLC."

² The first agricultural order was adopted on July 9, 2004, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2004-0117 (Agricultural Order 1.0). Agricultural Order 1.0 expired on July 9, 2009, and the Central Coast Water Board renewed Agricultural Order 1.0 several times (Order No. R3-2009-0050 on July 9, 2009; Order No. R3-2010-0040 on July 8, 2010; Order No. R3-2011-0208 on March 29, 2011; Order No. R3-2011-0017 on September 30, 2011). The second Agricultural Order was adopted on March 15, 2012, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Agricultural Order 2.0).

3. On January 31, 2011, K&A Farms submitted an eNOI and enrolled Blanco Ranch (AGL020004847) under Agricultural Order 1.0. K&A Farms' January 31, 2011 eNOI stated Blanco Ranch was comprised of 194 acres³ on Monterey County Assessor's Parcel Number 414-013-011. Blanco Ranch is a Tier 2 ranch. K&A Farms was automatically enrolled in Agricultural Order 2.0 and then Agricultural Order 3.0 when those Orders were adopted.

4. On March 3, 2021, the Central Coast Water Board issued a notice of violation to K&A Farms for failure to submit the 2017, 2018, and 2019 TNA Reports required by Agricultural Order 3.0. On April 16, 2021, the Central Coast Water Board issued a notice of violation to K&A Farms for failure to submit the 2020 TNA Report. In addition to issuance of these notices of violation, Central Coast Water Board staff conducted the following outreach with growers, including K&A Farms, regarding the requirement to submit TNA reports:

- a. E-mails on March 30, 2017, and January 4, 2018, reminding growers to submit 2017 TNA report due on March 1, 2018.
 - b. Opportunity to attend grower workshops on May 22, 2017, in Salinas and May 26, 2017, in Santa Maria to assist growers with submitting 2017 TNA report.
 - c. E-mail on March 2, 2018, notifying growers of an extension to April 2, 2018, granted by the Central Coast Water Board Executive Officer, to submit 2017 TNA report.
 - d. E-mails on October 18, 2018, February 12, 2019, and March 11, 2019, notifying growers of failure to submit 2017 TNA report.
 - e. E-mails on October 18, 2018, and February 12, 2018, reminding growers to submit 2018 TNA report due on March 1, 2019.
 - f. E-mails on November 18, 2019, February 12, 2019, February 21, 2020, and March 11, 2019, notifying growers of failure to submit 2018 TNA report.
 - g. E-mails on December 19, 2019, and January 31, 2020, reminding growers to submit 2019 TNA report due on March 1, 2020.
 - h. E-mails on March 13, 2020, and June 25, 2020, notifying growers of failure to submit 2019 TNA report.
 - i. E-mails on December 15, 2021, January 12, 2022, and February 16, 2022, reminding growers to submit 2020 TNA report.
5. Central Coast Water Board staff communicated with K&A Farms on April 21, 2021, December 8, 2021, December 13, 2021, January 6, 2022, and January 10, 2022, to assist K&A Farms with its TNA reporting. K&A Farms

³ On December 13, 2021, K&A Farms submitted an updated eNOI, identifying that Blanco Ranch is comprised of 97.4 irrigated acres of land.

Settlement Agreement and Stipulated Administrative Civil Liability
Order No. R3-2022-0006
K&A Farms LLC

submitted its completed 2017 TNA Report on January 12, 2022, and its completed 2018, 2019, and 2020 TNA Reports on January 13, 2022.

6. On December 1, 2021, the Central Coast Water Board Prosecution Team issued a letter notifying K&A Farms of the forthcoming assessment of administrative civil liabilities.

7. For purposes of settlement, the Prosecution Team alleges K&A Farms failed to submit the 2020 TNA Report by the March 1, 2021 deadline set forth in Agricultural Order 3.0.⁴ K&A Farms' failure to submit the 2020 TNA Report subjects K&A Farms to administrative civil liability under Water Code section 13268.

8. Pursuant to Water Code section 13268, subdivision (a), a person who fails to submit technical or monitoring reports required under Water Code section 13267 is subject to administrative civil liability under Water Code section 13268, subdivision (b) "in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

9. The Parties have engaged in confidential settlement negotiations and agree to settle the alleged violation without administrative or civil litigation and to present this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

10. To resolve the alleged violation listed in Section II, paragraph 7 by consent, the Parties have agreed to the imposition of an administrative civil liability of **thirty-eight thousand two hundred twenty-five dollars (\$38,225)** against K&A Farms. The administrative civil liability amount is the liability amount the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (Enforcement Policy),⁵ as shown in Attachment A, which is incorporated herein by reference.

11. The Prosecution Team has determined that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

⁴ K&A Farms also failed to submit the 2017, 2018, and 2019 TNA Reports by the annual March 1 deadline. However, for the purposes of this settlement only, the Central Coast Water Board Prosecution Team is only pursuing enforcement for K&A Farms' failure to submit the 2020 TNA Report for Blanco Ranch.

⁵ State Water Board, 2017 Water Quality Enforcement Policy, effective October 5, 2017, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

SECTION III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Jurisdiction:** The Parties agree the Central Coast Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

2. **Administrative Civil Liability:** K&A Farms hereby agrees to the imposition of **thirty-eight thousand two hundred and twenty-five dollars (\$38,225)** in administrative civil liability to resolve the violation set forth in Section II, paragraph 7. K&A Farms must submit payment by check or other authorized method of payment⁶ in the amount of **thirty-eight thousand two hundred twenty-five dollars (\$38,225)** no later than 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order. Payment must be made payable to the “State Water Pollution Cleanup and Abatement Account,” reference “Order No. R3-2022-0006 CAA Payment,” and be submitted to:

State Water Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

K&A Farms must provide a copy of the check or payment confirmation via e-mail to the State Water Board, Office of Enforcement to Vaneeta.Chintamaneni@waterboards.ca.gov, and the Central Coast Water Board to Tamara.Anderson@waterboards.ca.gov.

3. **Party Contacts for Communications related to Stipulated Order:**
 - a. **For the Central Coast Water Board:**

Thea Tryon
Assistant Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Thea.Tryon@waterboards.ca.gov
(805) 542-4776

Tamara Anderson
Enforcement Coordinator
Central Coast Regional Water Quality Control Board

⁶ For more information see the State Water Board’s website at the following address:
https://www.waterboards.ca.gov/make_a_payment/

Settlement Agreement and Stipulated Administrative Civil Liability
Order No. R3-2022-0006
K&A Farms LLC

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tamara.Anderson@waterboards.ca.gov
(805) 549-3334

b. **For K&A Farms:**

Kent Christensen
K&A Farms LLC
1233 La Canada Way
Salinas, CA 93901
kandafarms@yahoo.com
(831) 595-2143

4. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party agrees to bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
5. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 2.
6. **Public Notice:** K&A Farms understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Coast Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board or its delegate. K&A Farms agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.
7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board, or its delegate, has the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Coast Water Board requires a public hearing 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 and/or this Stipulated Order as necessary or advisable under the circumstances.

8. **No Waiver of Right to Enforce:** The failure of the Central Coast 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 Central Coast Water Board to enforce any such provision shall not preclude later enforcement of the same or any other provision of this Stipulated Order. If K&A Farms fails to comply with this Stipulated Order, the Central Coast Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.
9. **Effect of this Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Central Coast Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.
10. **Compliance with Applicable Laws:** K&A Farms 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. Nothing in this Stipulated Order shall excuse K&A Farms from meeting any more stringent requirements, which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
11. **Covenant Not to Sue:** K&A Farms covenants not to sue or pursue any administrative or civil claim(s) against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
12. **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. The Parties are represented by counsel in this matter.
13. **Modification:** The Parties must not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.
14. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
15. **Necessity for Written Approvals:** All approvals and decisions of the Central Coast Water Board, or its delegate, under the terms of this Stipulated Order must be communicated to K&A Farms in writing. No oral advice, guidance, suggestions, or comments from Central Coast Water Board employees or

officials regarding submissions or notices shall be construed to relieve K&A Farms of its obligation to obtain any final written approval this Stipulated Order requires.

16. **If the Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), 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 the following:

- a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein 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.

17. **Waiver of Hearing:** K&A Farms has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption. However, K&A Farms may appear at any Central Coast Water Board hearing where approval of this settlement is discussed, and if the settlement is not adopted and the matter proceeds to the Central Coast Water Board or State Water Board for a hearing, K&A Farms does not waive its right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.

18. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Central Coast Water Board or its delegate, K&A Farms hereby waives its right to petition the Central Coast Water Board's adoption of this Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate-level court.

19. **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.

20. **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.

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

22. **Counterpart Signatures; Electronic Signature:** 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. Further, this Stipulated Order may be executed by electronic signature, and any such electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature were an original signature.

23. **Effective Date:** This Stipulated Order becomes effective and binding on the Parties upon the date the Central Coast Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

Settlement Agreement and Stipulated Administrative Civil Liability
Order No. R3-2022-0006
K&A Farms LLC

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION, PROSECUTION TEAM**

*Original Signed by Thea S. Tryon
On April 13, 2022*

By: _____

Thea S. Tryon
Assistant Executive Officer
Central Coast Water Board

Settlement Agreement and Stipulated Administrative Civil Liability
Order No. R3-2022-0006
K&A Farms LLC

IT IS SO STIPULATED.

K&A FARMS LLC

*Original Signed by Kent Christensen
On April 5, 2022*

Date: _____

By: _____

Kent Christensen
Manager
K&A Farms LLC

ORDER OF THE CENTRAL COAST WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

2. In accepting this Stipulated Order, the Central Coast Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy. The Central Coast Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.

3. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that 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 section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.

4. The Executive Officer of the Central Coast Water Board is authorized to refer this matter directly to the Attorney General for enforcement if K&A Farms fails to perform any of its obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, Central Coast Region.

Matthew T. Keeling
Executive Officer
California Regional Water Quality Control Board
Central Coast Region

Attachment A: Factor Consideration and Penalty Calculation Methodology