Signed Original

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0587
IN THE MATTER OF
VINTAGE PRODUCTION CALIFORNIA LLC
KERN COUNTY

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 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 Vintage Production California LLC (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

1. On 8 March 2013, Central Valley Water Board staff viewed a video on the internet at http://www.youtube/watch?v=mxb671gbmkY purporting to show fluid discharging to an unlined oilfield surface impoundment (sump) near Shafter, in Kern County.

2. Next to the sump is a well drilled and operated by the Discharger and identified as Sill 2-14H (Well). The Discharger confirmed to the Prosecution Team that fluids from the well were discharged to a surface impoundment.

3. On 4 April 2013, the Executive Officer of the Central Valley Water Board issued an order pursuant section 13267 of the California Water Code (Section 13267 Order) to the Discharger. The Section 13267 Order required the Discharger to submit certain specified technical information by 6 May 2013.

4. On 6 May 2013, the Discharger submitted a technical report entitled *Response to CVRWQCB 13267 Directive Vintage Sill 2-14H Well Drilling Sump Shafter, California* (Response) to the Central Valley Water Board staff. On 19 June 2013, the Discharger submitted a second technical report entitled *Supplemental Report Response to CVRWQCB 13267 Directive Vintage Sill 2-14H Well Drilling Sump Shafter, California* (Supplemental Response) to the Central Valley Water Board staff.

5. After receiving and reviewing the Discharger's Response and Supplemental Response, the Prosecution Team was able to evaluate whether the materials discharged to the sump posed a threat to water quality, the number of days materials were discharged, and whether or not such Discharger's activities were included in the General Waiver Resolution R5-2008-0192 (Waiver Resolution), which covers the discharge of drilling muds and boring wastes.

6. Based on the Response, Supplemental Response, and an independent evaluation by the Central Valley Water Board staff, discharges occurred on September 30, 2012 through October 11, 2012. Therefore, according to the Central Valley Water Board staff's evaluation, the alleged violations occurred for 12 days.

7. On 23 July 2013, the Central Valley Water Board issued a Notice of Violation (NOV) for the discharge of fluids to the sump in violation of the Waiver Resolution and Water Code Section 13350. The NOV was based on the Central Valley Water Board staff's analysis of the Response and Supplemental Response, and a determination that the fluids discharged included potassium chloride (KCl) water, formation fluids (connate water among others), and linear fluid (fresh water, four percent KCl water, and four chemical additives).

Regulatory Considerations

8. The Central Valley Water Board staff has concluded that the Discharger has violated Water Code section 13350 for unpermitted discharges to land. The Central Valley Water Board may assess administrative civil liability based on CWC Section 13350 for such discharges.

9. Water Code Section 13350(a) states: "(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state ..."

10. Water Code Section 13350(e)(1) states: "The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars ($5,000) for each day the violation occurs."

11. Water Code Section 13351 states: "In determining the amount of civil liability to be imposed pursuant to this chapter, the superior court shall 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 such other matters as justice may require."

Settlement

12. The Parties have engaged in confidential settlement negotiations and agree to settle the matter 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 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 interests of the public.

13. The Parties are agreeing to the maximum penalty allowable under the Water Code (12 days at $5,000 per day). After consideration of the penalty calculation factors, found in the State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy*, the Parties agreed that the maximum daily penalty was appropriate in order to resolve their dispute and given the potential threat to water quality and considering the goal of deterring future violations.

14. To resolve the discharges by consent and without further administrative proceedings, the Parties have agreed to the imposition of $60,000 in liability against the Discharger.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **sixty thousand dollars ($60,000)**. The total amount shall be paid not more than 30 days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board by check to the State Water Board *Waste Discharge Permit Fund*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. A copy of the check shall be sent to Clay Rodgers, Regional Water Quality Control Board, Central Valley Region, 1685 E Street, Fresno, CA 93706.

2. **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 in the NOV may subject it to further enforcement, including additional administrative civil liability.

3. **Party Contacts for Communications related to Stipulated Order:**

   For the Central Valley Water Board:
   Clay Rodgers
   Central Valley Regional Water Quality Control Board
   Central Valley Region
   1685 E Street
   Fresno, CA 93706
   (559) 445-5116

Julie Macedo - Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

For the Discharger:
Pat Dennis - Counsel
Gibson Dunn & Crutcher
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7567

R. Michael Viayra, Jr.
Senior Counsel
Vintage Production California LLC
9600 Ming Avenue
Suite 300
Bakersfield, California 93311

4. **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.

5. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the NOV pursuant to Water Code section 13350. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.

6. **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 it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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 Central Valley 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 NOV 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.

12. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in the NOV and/or this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance;

however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

13. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

14. **Waiver of Right to Petition:** The Discharger hereby waives its 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 its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

15. **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, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any violation alleged herein.

16. **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, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

17. **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.

18. **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.

19. **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.

20. **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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: _____
Pamela C. Creedon
Executive Officer

Date: 11/13/2013

Vintage Production California LLC

By: _____
Alan E. White
President and General Manager

Date: 11/12/2013

Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327, 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.

2. 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 an administrative penalty. 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, the Central Valley Water Board finds that issuance of

this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

By: _____
Kenneth D. Landau
Assistant Executive Officer

Date: _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0587
IN THE MATTER OF
VINTAGE PRODUCTION CALIFORNIA LLC
KERN COUNTY

Order of the Central Valley Water Board

1. The terms and recitals of the Stipulation signed by Pamela C. Creedon, Executive Officer of the Central Valley Water Board (acting as head of the Board's Prosecution Team) on 13 November 2013 and signed by Alan E. White, President and General Manager of Vintage Production California, LLC on 12 November 2013 are fully incorporated herein and made part of this Order.

2. In adopting this Order, Kenneth D. Landau, Assistant Executive Officer of the Central Valley Water Board, acting under authority delegated by the Central Valley Water Board pursuant to Resolution R5-2009-0027, has considered, where applicable, each of the factors prescribed in Water Code section 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 concerning the dischargers discussed in the Stipulation or otherwise provided to the Board by the Parties and members of the public.

3. 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 administrative civil liability. 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." (Pub. Resources Code § 21065; Cal. Code Regs., tit 14, §§ 15060(c)(2),(3); 15378(a).) In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14, section 15321(a)(2), of the as an enforcement action by a regulatory agency.

4. Kenneth Landau, acting pursuant to authority delegated by the Central Valley Water Board, has independently considered all of the Findings delineated in the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order R5-2013-0587, as well as comments received from Mark Bradley, Diane Nygaard, the Center for Biological Diversity, and an anonymous caller.

IT IS HEREBY ORDERED by the California Regional Water Quality Control Board, Central Valley Region, that, pursuant to Water Code sections 13323 and 13350 and Government Code section 11415.60:

1. Vintage Production California LLC, shall be assessed administrative liability in the amount of sixty thousand dollars ($60,000), payable to the State Water Pollution

Cleanup and Abatement Account and due within 30 days of the issuance of this Order.

By: _____
Kenneth D. Landau
Assistant Executive Officer

Date: 20 February 2014

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review this action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.