

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

**IN THE MATTER OF:**

**[PROPOSED] CEASE AND DESIST ORDER R5-2020-XXXX  
REGARDING SETTON PISTACHIO OF TERRA BELLA, INC.  
TERRA BELLA PISTACHIO FACILITY  
TULARE COUNTY**

**STIPULATION FOR ENTRY OF CEASE AND DESIST ORDER R5-2020-XXXX**

**I. Introduction**

This Stipulation for Entry of Cease and Desist Order R5-2020-XXXX (Stipulation) and proposed Cease and Desist Order R5-2020-XXXX (Proposed CDO) is entered into by and between the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), and Setton Pistachio of Terra Bella, Inc. (Discharger) (collectively, Parties).

**II. Recitals**

1. The Discharger operates a pistachio processing facility (Facility) in Section 3, T23S, R27E, MDB&M at 9370 Road 234 in Terra Bella, Tulare County, California. In connection therewith, Discharger operates on its property a 350-acre-foot lined effluent treatment/storage pond (Treatment/Storage Pond), which is located approximately 3,000-feet southwest of the Facility. Wastewater from the facility is piped to the Treatment/Storage Pond where it is blended with irrigation well water in three irrigation mixing ponds prior to disposal via discharge to land application areas (LAAs).
2. Residents near the Facility have complained about odors from the Treatment/Storage Pond. Many such complaints were confirmed by Central Valley Water Board staff or San Joaquin Valley Air Pollution Control District staff.
3. Waste Discharge Requirements Order 92-191 (WDRs), adopted by the Board on 25 September 1992, prescribes requirements for Discharger's operations, including specifically providing (at Specification B.2.) that "Objectionable odors originating at this [F]acility shall not be perceivable beyond the limits of property owned or controlled by the Discharger."
4. The Discharger is alleged to have violated the WDRs, and is allegedly threatening to create nuisance conditions due to odors from the Treatment/Storage Pond. The specific alleged violations are described in the Proposed CDO, which is attached hereto and incorporated by reference.

5. Section 13301 of the California Water Code (Water Code) provides, in relevant part, that:

When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action...Cease and desist orders may be issued directly by a board, after notice and hearing.

6. Water Code section 13304, subdivision (a), provides, in relevant part, that:

A person ... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

7. The Parties have engaged in settlement negotiations and agree to present this Stipulation and Proposed CDO to the Central Valley Water Board for adoption as decision by settlement, pursuant to Government Code section 11415.60.

### **III. Stipulations**

The Parties stipulate as follows:

1. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code, including section 13301, and hereby waives its right to a hearing before the Central Valley Water Board. However, in the event the Proposed CDO is pulled from the consent calendar, or the Central Valley Water Board elects to conduct a hearing on the Proposed CDO, nothing herein shall prevent the Parties from presenting testimony or documents to the Board, subject to the limitations of Paragraph III.5.
3. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
4. **Interpretation:** This Stipulation and Proposed CDO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
5. **Advocating for Adoption of the Proposed CDO:** The Parties expect the Central Valley Water Board to consider adoption of the Proposed CDO within 90 days of execution of this Stipulation. The Parties agree to advocate in support of the Proposed CDO to the Central Valley Water Board by having a representative appear before the Central Valley Water Board (including via Zoom or another digital meeting platform as allowed by the Board) at the public meeting to consider adoption of the Proposed CDO, and to speak in support of the Proposed CDO, as allowed. If the Proposed CDO is on the consent calendar, the Parties agree to not request removal of the Proposed CDO from the consent calendar.

6. **Matters Covered:** This Stipulation and Proposed CDO concerns the issuance of a Cease and Desist Order pursuant to Water Code section 13301. As a result of Discharger's agreement to the terms stated therein, the Central Valley Water Board's Compliance and Enforcement Staff hereby agree that they shall not use their discretionary authority to pursue administrative or civil liability for any past alleged violations stated in the Proposed CDO. This Stipulation and Proposed CDO, however, does not preclude the Central Valley Water Board or any other state, local or federal agency from seeking to impose civil liability for any future violations or violations unrelated to the violations alleged in the Proposed CDO. In addition, this Stipulation and Proposed CDO does not preclude the Central Valley Water Board or any other state, local or federal agency from requiring cleanup pursuant to Water Code section 13304, or from taking any other action to abate the effects of the discharge, as allowed by law.
7. **Modification:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, and signed by all Parties. The Parties acknowledge that the Central Valley Water Board may make minor, non-substantive amendments to the Proposed CDO prior to adoption and without approval by the Parties, including assignment of a final order number. The Parties agree that any substantive revisions to the Proposed CDO must be agreed to by all Parties and approved by the Central Valley Water Board. Failure of any Party to agree to any substantive revisions of the Proposed CDO will render the terms of this Stipulation to be null and void.
8. **If the Proposed CDO Does Not Take Effect:** In the event that the Proposed CDO does not take effect because it is not approved by the Central Valley Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties agree that this Stipulation will be void and acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to issue a Cease and Desist Order, 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:

**STIPULATION FOR ENTRY OF CEASE AND DESIST ORDER**

- 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Central Valley Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the Central Valley Water Board members or their advisors participation in contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph, 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.
9. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Central Valley Water Board's adoption of the Proposed CDO for review by the State Water Board, and further waives its rights, if any, to appeal the same to any court, including any California Superior Court and/or any California appellate level court. The Discharger does not waive its right to petition the Central Valley Water Board's adoption of the Proposed CDO for review by the State Water Board if the Proposed CDO is modified substantively by the Central Valley Water Board, and further does not waive its rights, if any, to appeal the same to any court, including any California Superior Court and/or any California appellate level court if the Proposed CDO is modified substantively by the Central Valley Water Board or the State Water Board.
10. **The Discharger's 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 concerning any matter covered under Paragraph 6 of this Stipulation.
11. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
12. **No Authorizations or Approvals:** Nothing in this Stipulation, or in the Proposed CDO, shall be construed as affirmatively authorizing construction activities, discharges of waste, or any other proposed activities.

13. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation 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 Stipulation may be executed by facsimile or electronic signature, and any such facsimile or 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 facsimile or electronic signature were an original signature.
14. **Effective Date:** This Stipulation is effective and binding on the Parties upon execution. The Proposed CDO, as may be modified in accordance with Paragraph 7, shall be effective upon issuance by the Central Valley Water Board.

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board, Central Valley Region  
Prosecution Team**

Date: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
Clay Rodgers, Assistant Executive Officer

**Setton Pistachio of Terra Bella, Inc.**

Date: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
Lee Cohen, General Manager