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6 Attorneys for Plaintiffs  
*Clean Water Fund,*  
7 *Center for Environmental Health,*  
*and Association of Irrigated Residents*  
8  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF KERN  
12

13 **CLEAN WATER FUND, CENTER FOR**  
14 **ENVIRONMENTAL HEALTH, and**  
**ASSOCIATION OF IRRITATED RESIDENTS,**

15 Plaintiffs,  
16

17 v.

18 **VALLEY WATER MANAGEMENT**  
19 **COMPANY,**

20 Defendant.  
21

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT**

22  
23 **STIPULATED CONSENT JUDGMENT**

24 This Agreement for a Stipulated Consent Judgment (“Agreement”) between Clean Water Fund,  
25 Center for Environmental Health, and Association of Irrigated Residents (collectively “Plaintiffs”) and  
26 Valley Water Management Company (“Valley”) is effective on the date identified in Section 6 below  
27 and can be entered by the Kern County Superior Court. Valley and the Plaintiffs are referred to  
28 individually as a “Party” and together as the “Parties” to this Agreement. The Parties agree as follows:

1           1.       This Agreement is intended to fully resolve all claims, demands, and allegations that  
2 were or could have been set forth in the Notice of Violation of California Health and Safety Code  
3 section 25249.5 *et seq.* (also known as "Proposition 65") that Aqua Terra Aeris ("ATA"), counsel for  
4 the Plaintiffs, served by mail on Valley on October 2, 2015 ("the Notice") for all Proposition 65  
5 constituents at the Fee 34 and Race Track Hill facilities operated by Valley. The Notice, received by  
6 Valley on October 5, 2015, related to discharges of Proposition 65 chemicals to treatment and storage  
7 ponds, pits, percolation ponds, and spray fields described therein, but not limited to, the following  
8 facilities:

9                       Fee 34: Township 34, Section 295, Range 29E, Mount Diablo Base  
10                       Meridian Lat/Long - 35°21'17.86"N / 118°51'36.20"W Assessor's  
11                       Parcel Number: 388-050-254

12                       Race Track Hill: Township 29S, Section 24, Range 29E, Mount Diablo Base &  
13                       Meridian Lat/Long - 35°23'34.31"N / 118°49'16.22"W Assessor's  
14                       Parcel Number: 387-060-031

15           2.       This Agreement does not apply to Valley's Kern Front facility on the east side of Kern  
16 County, or to Valley's facilities on the west side of Kern County (McKittrick 1 1-1, and 1-3, Buena  
17 Vista 1 and 2, Broad Creek 1 and 2, Southeast Taft, Maricopa East and West). Valley contends that  
18 Proposition 65 does not apply to any of its produced water facilities because the facilities also do not  
19 discharge to a present source of drinking water at levels of concern under Proposition 65.

20           3.       The Parties enter into this Agreement to achieve full and complete settlement of the  
21 claims as stated in Paragraph 1 above (collectively, this "Matter") and for the purpose of avoiding  
22 prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any  
23 fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be  
24 construed as an admission by the Parties of any fact, issue of law, or violation of law. Nothing in this  
25 Agreement or any document referred to shall be construed as giving rise to any presumption or inference  
26 of admission or concession by the Parties as to any fault, wrongdoing, fact, or liability. This Paragraph  
27 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this  
28 Agreement.

//

1           4.       In consideration of the following covenants and conditions contained in this Agreement,  
2 the Parties have provided the releases set forth in Paragraph 5 below.

3           a.       **Fee 34 Oil Sump Upgrades.** Valley shall upgrade the currently unlined oil sumps  
4 at the Fee 34 facility (see Attachment A) to tank storage or lined ponds and the  
5 former sumps will be remediated according to the following schedule:

6           i.       Valley shall submit a draft site design and implementation plan along with  
7 a spill response and prevention plan/storm water management plan,  
8 designed to ensure no knowing discharge of Proposition 65 contaminants  
9 associated with oil sumps to ground water or surface water to Plaintiffs, no  
10 later than **July 30, 2016**.

11          ii.       Valley shall submit a copy of the final Fee 34 design and implementation  
12 plan to Plaintiffs no later than **November 1, 2016**, and begin  
13 implementation once the plan and schedule are approved by the Central  
14 Valley Regional Water Quality Control Board ("Regional Board").

15          b.       **Fee 34 Pilot Test.** Valley shall implement an approximately 60-day pilot test of a  
16 multi-step wastewater treatment system, culminating with reverse osmosis  
17 treatment.

18          i.       Pilot treatment system will be designed and installed with the intent that  
19 the treated water will meet or be below Proposition 65 safe harbor levels  
20 and any applicable Basin Plan objectives for the "noticed Proposition 65  
21 constituents" (i.e., benzene, ethylbenzene, toluene, and naphthalene)  
22 (hereinafter "Limits").

23          ii.       Valley shall submit draft site design plans for the 340 barrel/day pilot  
24 project and a brine handling plan for the pilot test to Plaintiffs **within five**  
25 **(5) days of the Effective Date** of the Agreement.

26          iii.       Valley shall begin the pilot test of treatment system no later than **July 20,**  
27 **2016**, and monitor results weekly for the noticed Proposition 65  
28 constituents as well as other pollutants requested by the Regional Board.

1 Within five (5) business days of receipt of lab data, all monitoring results  
2 will be provided to Plaintiffs at an address to be provided by Plaintiffs'  
3 counsel within two (2) weeks of the Effective Date. Upon express request,  
4 Valley shall submit one split sample per month to Plaintiffs, adhering to  
5 all necessary preservation methods and holding time limits for the subject  
6 constituents. Following 24 hours' notice during business hours from  
7 Plaintiffs, Valley shall obtain one additional sample per month for the  
8 constituents described, above, from its independent sampling contractor.

9 iv. Valley shall provide a report to Plaintiffs on the effectiveness of the pilot  
10 test no later than **October 20, 2016**. Valley shall also provide Plaintiffs  
11 with a copy of Valley's Report of Waste Discharge setting forth  
12 subsequent plans for the Fee 34 and Racetrack Hill facilities.

13 1. If the effectiveness report demonstrates that the pilot treatment  
14 system is acceptable to Valley for full-scale implementation to  
15 treat all produced water at the Fee 34 facility, then Valley shall  
16 proceed to contract and install a full-scale treatment facility to be  
17 installed as soon as possible, but no later than **November 15, 2017**.  
18 Valley shall also provide a brine disposal plan to Plaintiffs prior to  
19 operation of the full-scale treatment facility.

20 2. If the report demonstrates that the pilot treatment system is  
21 ineffective at reducing chemical concentrations to below Limits or  
22 otherwise unacceptable to Valley, then Valley shall provide to  
23 Plaintiffs a plan by **November 30, 2017**, for design modifications  
24 or an alternative implementation plan and schedule to meet such  
25 Limits no later than January 1, 2018.

26 3. By **January 1, 2018**, Valley shall have either implemented a  
27 project as described in Paragraphs 4.b.iv.1 and 4.b.iv.2, above, to  
28 meet the applicable Limits, or cease discharge at Race Track Hill.

1 Following the full implementation of such project, Valley will  
2 continue to monitor and report sample results related to project  
3 implementation for a period of twelve months, for the noticed  
4 Proposition 65 constituents as well as other pollutants requested by  
5 the Regional Board, or for a period of nine consecutive months  
6 where there is no showing of contaminants above the Limits. Upon  
7 express request, Valley shall also submit one split sample per  
8 quarter to Plaintiffs, adhering to all necessary preservation  
9 methods and holding time limits for the subject constituents.  
10 Following 24 hours' notice during business hours from Plaintiffs,  
11 Valley shall obtain one additional sample per quarter for the  
12 noticed Proposition 65 constituents from its independent sampling  
13 contractor. All monitoring results described herein will be  
14 provided to Plaintiffs within five (5) business days of receipt of lab  
15 data.

16 c. **Fee 34/Racetrack Monitoring.** Valley shall continue to sample quarterly from its  
17 monitoring wells in and around the Fee 34 and Race Track Hill for the noticed  
18 Proposition 65 constituents and other pollutants requested by the Regional Board.  
19 All monitoring results will be provided to Plaintiffs within five (5) business days  
20 of receipt of lab data. Following 24 hours' notice during business hours from  
21 Plaintiffs, Valley shall obtain two additional samples per year for the constituents  
22 described above from its independent sampling contractor.

23 d. **Monetary Payments.** Valley shall make a total settlement payment of \$198,470  
24 ("Total Settlement Payment") to Plaintiffs' counsel within ten (10) days of the  
25 Effective Date ("Duc Date"). The Total Settlement Payment shall be allocated as  
26 follows:

27 i. \$80,000 shall be considered a civil penalty pursuant to California Health  
28 and Safety Code §25249.7(b)(1). Plaintiffs shall remit 75% (\$60,000) of

1 this civil penalty to the Office of Environmental Health Hazard  
2 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic  
3 Enforcement Fund in accordance with California Health and Safety Code  
4 § 25249.12(c). Plaintiffs will retain the remaining 25% (\$20,000) of the  
5 civil penalty to be split among them.

6 ii. \$103,470 shall be considered reimbursement of attorneys' fees for Aqua  
7 Terra Aeris Law Group.

8 iii. \$15,000 shall be in consideration of Plaintiffs' expert witness or other  
9 legal fees and costs incurred in review of the deliverables under, and  
10 monitoring compliance with, this Agreement.

11 5. Binding Effect; Claims Covered and Released:

12 a. Waiver and Release of Liability. Plaintiffs, acting in the public interest and on  
13 behalf of themselves and their respective owners, principals, shareholders,  
14 officers, directors, employees, agents, parents, subsidiaries, successors, assigns,  
15 and legal representatives fully release Valley and its respective owners, principals,  
16 shareholders, members, managers, officers, directors, employees, agents, parents,  
17 subsidiaries, successors, assigns, and legal representatives (collectively the  
18 "Releasing Parties") from any and all claims for violations of law alleged to be  
19 caused by discharges to land or waters from the Fee 34 and Race Track Hill  
20 facilities from October 2, 2014 up through and including the Termination Date of  
21 this Agreement.

22 b. The Releasing Parties further waive and release any and all claims they may have  
23 against each other from all actions or statements made or undertaken in the course  
24 of seeking or opposing enforcement of Proposition 65 in connection with the  
25 Notice.

26 c. It is possible that other claims not known to the Parties arising out of the facts  
27 alleged in or related to the Notice have occurred, or will develop and be  
28 discovered. Plaintiffs on behalf of themselves only, and Valley on behalf of itself

1 only, acknowledge that this Agreement is expressly intended to cover and include  
2 all such claims associated with Valley's produced water disposal activities at the  
3 Fee 34 and Race Track Hill facilities up through and including the Termination  
4 Date, including all rights of action therefore, and further acknowledge that the  
5 claims released in this section may include unknown claims, and nevertheless  
6 waive California Civil Code section 1542 as to any such unknown claims.

7 California Civil Code section 1542 reads as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
9 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
10 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
11 WHICH IF KNOWN BY HIM OR HER MUCH HAVE MATERIALLY  
12 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11 d. The Parties acknowledge and understand the significance and consequences of  
12 this specific waiver of California Civil Code section 1542.

13 6. Report of Settlement and Effective Date. Within five (5) days after both Parties execute  
14 this Agreement, Plaintiffs will submit electronically to the California Attorney General's Office a Report  
15 of Settlement and a signed copy of this Agreement, along with electronic notice to Valley's counsel.  
16 The Parties acknowledge and agree that the Parties shall provide as much information as is requested by  
17 the California Attorney General, or any other governmental agency, regarding this Matter, its settlement,  
18 and this Agreement. This Agreement shall be deemed effective after the final signed copy of this  
19 Agreement has been entered by a court, which should occur after a Report of Settlement has been  
20 submitted to the California Attorney General and Parties have received notice that the Agreement has  
21 been approved or not be objected to ("Effective Date"). In the event that an objection is received from  
22 the California Attorney General or any other governmental agency, the Parties shall use best efforts to  
23 resolve any such objection prior to the entry of a court order on this matter.

24 7. Termination. This Agreement shall terminate on **August 1, 2018**, or upon the satisfaction  
25 of all requirements of this Agreement, whichever is earlier.

26 8. Headings. The headings used in this Agreement are for convenience of reference and  
27 shall not be used to define any provision.

28 9. No Admission. This Agreement is the direct result of a compromise of disputed

1 allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an  
2 admission of liability by Valley, nor shall the payment of any sum of money or civil penalties in  
3 consideration for the execution of this Agreement constitute or be construed as an admission of any  
4 liability by Valley, which expressly denies any such liability or wrongdoing.

5 10. Delays in Schedule Implementation. In the event implementation by Valley of the  
6 remedial measures set forth in Paragraph 4 of this Agreement (excepting Paragraph 4.d.) does not occur  
7 by the agreed to dates, despite the timely good faith efforts of Valley to acquire any necessary approvals  
8 and/or permits, or due to factors unforeseen at the time this Agreement was entered into, Valley agrees  
9 to notify Plaintiffs in writing as soon as practicable after the anticipated delay becomes apparent, and in  
10 any case except in a case of force majeure described below, not less than twenty (20) days prior to any  
11 deadline set forth in Paragraph 4, and shall describe the reasons for the anticipated delay.

12 11. Force Majeure. Valley shall not be deemed in default or breach of this Agreement by  
13 reason of any event that constitutes a force majeure. For purposes of this Agreement, a force majeure is  
14 defined as any event arising from causes beyond the reasonable control of Valley or its contractors that  
15 delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of  
16 terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority,  
17 necessary public agency approvals, or other causes beyond Valley's reasonable control.

18 12. Entire Agreement in Writing. This is an integrated Agreement. This Agreement contains  
19 the entire agreement between the Parties with regard to the settlement of this Matter, and supersedes all  
20 prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set  
21 forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time  
22 only by an agreement in writing executed by the Parties.

23 13. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the  
24 Parties and their respective owners, principals, shareholders, members, managers, officers, directors,  
25 employees, agents, parents, subsidiaries, successors, assigns, and legal representatives.

26 14. Negotiated Agreement. No inference, assumption, or presumption shall be drawn, and no  
27 provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of  
28 the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this



1 Agreement. It is conclusively presumed that the Parties participated equally in the preparation and  
2 drafting of this Agreement.

3 15. Severability. If any provision, term, or section of this Agreement is found to be invalid,  
4 illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full forces  
5 and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is  
6 found to be unenforceable, then such provision, term, or section may be modified so that the  
7 unenforceable provision, term, or section is enforceable to the greatest extent possible.

8 16. Interpretation and Applicable Law. This Agreement shall be deemed to have been  
9 entered into in the State of California, and governed and interpreted by the laws of the State of  
10 California, regardless of the physical locations of the individuals executing this Agreement at the time of  
11 execution.

12 17. Continuing Jurisdiction. The Court entering the Stipulated Consent Judgment in this  
13 matter shall retain jurisdiction to enforce, modify, or terminate the Consent Judgment.

14 18. Parties' Acknowledgment of Terms. By signing this Agreement, the Parties  
15 acknowledge that they have consulted an attorney with respect to the terms and conditions of this  
16 Agreement or have made the decision not to consult an attorney on this Matter. The Parties further  
17 acknowledge that they fully understand this Agreement and the effect of signing and executing this  
18 Agreement.

19 19. Representations and Warranties. This Agreement is given voluntarily, free of undue  
20 influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee,  
21 representative, or attorney of or for any Party, has made any statement or representation to any other  
22 Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any  
23 statement, representation, or promise of any other Party, nor of any officer, agent, employee,  
24 representative, or attorney of or for any Party, in executing this Agreement or in making the settlement  
25 provided herein, except as expressly stated in this Agreement.

26 20. Counterparts. This Agreement may be signed in counterparts, and each counterpart as  
27 well as any facsimile, email, copy, or electronic copy of this this Agreement shall be deemed to be an  
28 original.

1           21.    Authority. Each of the individuals that execute this Agreement represents and warrants  
2 they have the authority to execute this document and bind the respective Parties to the terms and  
3 conditions of this Agreement, and have read, understand, and agree to all terms and conditions in this  
4 Agreement.

5           IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their  
6 duly authorized representatives.

8 BY: \_\_\_\_\_  
9       Russell Emerson, Manager  
10       Valley Water Management Company

DATE: May 4, 2016

11 BY:   
12       Clean Water Fund

DATE: 5/6/16


14 BY: \_\_\_\_\_  
15       Center for Environmental Health

DATE: \_\_\_\_\_

17 BY: \_\_\_\_\_  
18       Association of Irritated Residents

DATE: \_\_\_\_\_

20 **Approved as to Form:**

21  
22 BY:   
23       Melissa Thorne,  
24       Attorney for Valley Water Management Company


DATE: May 4, 2016

26 BY: \_\_\_\_\_  
27       Jason Flanders,  
28       Attorney for Plaintiffs

DATE: May 4, 2016

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11  
12 BY: \_\_\_\_\_           DATE: \_\_\_\_\_  
13       Clean Water Fund

14  
15 BY: \_\_\_\_\_           DATE: \_\_\_\_\_  
16       Center for Environmental Health

17  
18 BY: \_\_\_\_\_           DATE: \_\_\_\_\_  
19       Association of Irrigated Residents

20 **Approved as to Form:**

21  
22 BY:            DATE: May 4, 2016  
23       Melissa Thorne,  
24       Attorney for Valley Water Management Company

25  
26 BY: \_\_\_\_\_           DATE: May 4, 2016  
27       Jason Flanders,  
28       Attorney for Plaintiffs

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10       Valley Water Management Company


DATE: May 4, 2016

11 BY: \_\_\_\_\_  
12       Clean Water Fund

DATE: \_\_\_\_\_


13 BY: \_\_\_\_\_  
14       Center for Environmental Health

DATE: \_\_\_\_\_

15   
16  
17 BY: \_\_\_\_\_  
18       Association of Irrigated Residents

DATE: May 4, 2016

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20 Approved as to **Form:**

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22 BY: \_\_\_\_\_  
23       Melissa Thorne,  
24       Attorney for Valley Water Management Company

DATE: May 4, 2016

25  
26 BY: \_\_\_\_\_  
27       Jason Flanders,  
28       Attorney for Plaintiffs

DATE: May 4, 2016

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8 BY: \_\_\_\_\_  
9 Russell Emerson, Manager  
10 Valley Water Management Company

DATE: May 4, 2016

11 BY: \_\_\_\_\_  
12 Clean Water Fund

DATE: \_\_\_\_\_


14 BY:  \_\_\_\_\_  
15 Center for Environmental Health

DATE: 4 May 2016

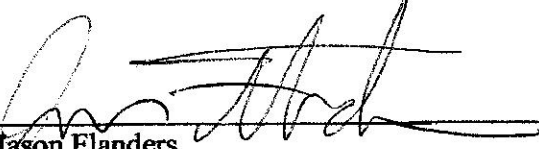
17 BY: \_\_\_\_\_  
18 Association of Irrigated Residents

DATE: \_\_\_\_\_

20 Approved as to Form:

21  
22 BY:  \_\_\_\_\_  
23 Melissa Thorne,  
24 Attorney for Valley Water Management Company

DATE: May 4, 2016

25  
26 BY:  \_\_\_\_\_  
27 Jason Flanders,  
28 Attorney for Plaintiffs

DATE: May 4, 2016

1 **IT IS SO ORDERED**

2  
3 BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
4 Judge of the Kern County Superior Court

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