

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

In the matter of:	)	
	)	
<b>Toms Sierra Company, Inc.</b>	)	<b>Order No. R5-2013-0583</b>
<b>dba Sierra Energy</b>	)	
	)	
	)	
	)	<b>Settlement Agreement and Stipulation</b>
	)	<b>for Entry of Order; Order</b>
	)	

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**Section I: INTRODUCTION**

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 Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and Toms Sierra Company, Inc. doing business as Sierra Energy (hereafter "Respondent") (Collectively hereafter "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.

**Section II: RECITALS**

1. The Respondent owns and operates the Tom's Sierra Quincy bulk fuel plant located at 188 Crescent Street in Quincy, Plumas County. The plant distributes bulk fuel and oils from nine aboveground storage tanks (ASTs) ranging in size from 3,000 to 20,000 gallons in capacity.
2. On 21 February 2011, a release of kerosene occurred at the facility. According to file records, an SST Oil Company tanker truck filling the kerosene AST mistakenly overfilled the tank resulting in a release to secondary containment. A valve, which drains the subject secondary containment structure to Clear Stream (adjacent to the northern boundary of the property), was found to be open and allowed the discharge of red-dye kerosene from 21 February 2011 to 22 February 2011 to Clear Stream, a water of the State of California and Water of the United States.
3. On 26 April 2013, the Prosecution Team of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2013-0536 for \$20,000. The ACLC alleged that the Respondent had violated section 301 of the Clean Water Act and Water Code section 13385(a)(5) for two days by discharging red-dye kerosene from the secondary containment structure into an adjacent v-ditch and thence into Clear Stream.

4. The Parties engaged in settlement negotiations and agree to settle the violations cited in the 26 April 2013 ACLC 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 Prosecution Staff 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 in the ACLC except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

5. To resolve the violations alleged in the ACLC by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$20,000 in liability against the Respondent.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The Respondent hereby agrees to the imposition of an administrative civil liability totaling \$20,000. Pursuant to the terms of the accompanying Payment Agreement executed herewith Respondent agrees to remit the total sum of TWENTY THOUSAND DOLLARS, payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Respondent shall send the original signed checks to Clint Snyder, Central Valley Water Board, 364 Knollcrest Drive, Suite 205, Redding, CA 96002, and shall send a copy to Ellen Howard, Office of Enforcement, State Water Resources Control Board, 1001 "I" Street, 16<sup>th</sup> Floor Sacramento, California 95814.

7. **Compliance with Applicable Laws:** The Respondent 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 Complaint may subject it to further enforcement, including additional administrative civil liability.

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

**For the Central Valley Water Board:**

Clint Snyder  
Regional Water Quality Control Board  
364 Knollcrest Drive, Suite 205  
Redding, CA 96002

**For the Respondent:**

Brad Barnett  
Sierra Energy  
1020 Winding Creek Road, Suite 100  
Roseville, CA 95678

**9. 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.

**10. Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the owner or operator as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5.

**11. Public Notice:** The Respondents understand 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 in which event it shall have no binding legal effect upon any Party. The Respondent agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

**12. 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.

**13. No Waiver of Right to Enforce:** The failure of the Prosecution Staff 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 Staff 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.

**14. 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.

**15. 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.

**16. 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 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 Complaint 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. No Admission of Liability:** The Parties enter into this Stipulated Order for the purpose of avoiding prolonged and costly litigation. Nothing in this Stipulated Order shall be construed as, and Respondent expressly does not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Stipulated Order constitute or be construed as an admission by Respondent of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Stipulated Order. Respondent recognizes that any violation of this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

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

**19. Waiver of Right to Petition:** The Respondent 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 their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

**20. Covenant Not to Sue:** The Respondent 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 arising out of or relating to any Covered Matter.

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

**22. 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.

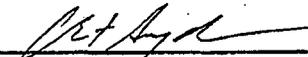
**23. No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**24. 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.

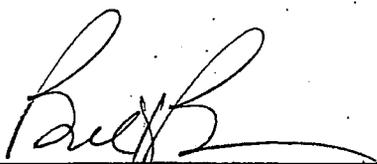
**25. Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Staff  
Central Valley Region

By:   
Clint Snyder  
Assistant Executive Officer

Date: June 24, 2013

By:   
Brad Barnett  
Sierra Energy

Date: 7-16-2013

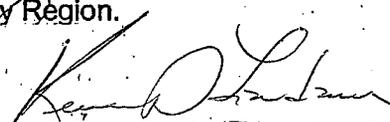
**Order of the Central Valley Water Board**

26. 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. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

27. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

28. 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 section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.



(Signature)

KENNETH D. LANDAU -  
ASSISTANT EXECUTIVE OFFICER

(Print Name and Title)

Date: 1 OCTOBER 2013