

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

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

**FINDINGS**

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds that:

**Facility**

1. Waste Discharge Requirements (WDRs) Order 92-191, adopted by the Board on 25 September 1992, prescribes requirements for the Terra Bella Pistachio Facility (Facility) owned and operated by Setton Pistachio of Terra Bella, Inc. (Discharger). The WDRs authorize a daily maximum discharge of up to 1.5 million gallons per day of pistachio process wastewater to land.
2. The WDRs Order was originally issued to the Dole Dried Fruit and Nut Company. In August 1995, the Discharger informed Board staff that ownership of the Facility had changed and requested transfer of the WDRs Order.
3. The Facility is located in Section 3, T23S, R27E, MDB&M at 9370 Road 234 in Terra Bella, Tulare County.
4. The State of California has designated the unincorporated community of Terra Bella as a “disadvantaged community” in terms of pollution burden and socioeconomic disadvantage.<sup>1</sup>
5. Wastewater discharged from the Facility consists of pistachio processing wastewater (primarily generated from pistachio hulling, but also includes washwater generated from other processing activities), citrus washwater from a citrus packinghouse adjacent to the Facility, and stormwater runoff from the Facility and citrus packinghouse sites as well as from the unincorporated community of Terra Bella.
6. Wastewater from all sources is commingled in a gunite lined pond at the Facility site prior to being filtered and discharged to a 350-acre-foot lined effluent

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<sup>1</sup> According to the California Environmental Protection Agency’s (CalEPA) [California Communities Environmental Health Screening Tool](https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30) (https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30), the unincorporated community of Terra Bella has a score of 80-85 percent (second-highest bracket among disadvantaged communities).

treatment/storage pond (Treatment/Storage Pond), which is located approximately 3,000-feet southwest of the Facility. Wastewater effluent from the Treatment/Storage Pond is blended with irrigation well water in three irrigation mixing ponds prior to disposal via discharge to land application areas (LAAs). The Discharger also has the ability to bypass the Treatment/Storage Pond and discharge wastewater from the gunite lined pond directly to the irrigation mixing ponds.

7. The majority of the Facility's wastewater is generated during the pistachio harvesting season, which typically occurs between August and October of each year. The fourth quarter 2019 monitoring report submitted by the Discharger indicates that the 2019 harvesting season occurred between 31 August and 24 October 2019.
8. Monitoring data submitted by the Discharger indicates that during 2019, a total of approximately 58.1 million gallons of commingled wastewater was discharged into the Treatment/Storage Pond. Of this total, approximately 47.1 million gallons was generated during the 2019 pistachio harvesting season (based on flow monitoring data submitted by the Discharger between 5 September and 24 October 2019).
9. Although the Treatment/Storage Pond is lined, it was not designed and constructed as a Class II surface impoundment under California Code of Regulations, title 27. (See, e.g., Cal. Code Regs., tit. 27, §§ 20250, 20310-20375.) The Discharger has estimated that approximately 10 gallons of wastewater will seep from the Treatment/Storage Pond per day.

#### **Development of Revised Permit**

10. The Discharger's current operations differ significantly from those described in the existing WDRs Order. The Treatment/Storage Pond (constructed in 2017) is not described in the WDRs Order and was constructed, and continues to operate, without the express approval of the Central Valley Water Board.
11. On 23 January 2009, Board staff received a Report of Waste Discharge (ROWD) from the Discharger (dated 19 January 2009) requesting a flow limitation increase for the Facility to a daily maximum discharge of 3 million gallons per day and an annual maximum discharge of 60 million gallons per year and an increase in LAAs from 153 to 250 acres. Board staff did not respond to the 19 January 2009 ROWD.
12. On 16 December 2016, the Discharger submitted a ROWD (dated 15 December 2016) proposing a flow limitation increase of up to 124 million gallons per year, an increase in LAAs of up to 1,650 acres, and construction of a new lined 350 acre-foot effluent treatment/storage pond (the now existing Treatment/Storage

Pond) to, among other things, collect stormwater from the Facility and adjacent citrus packing house. The ROWD made no mention of stormwater from the surrounding residential community. Board staff did not respond to the 15 December 2016 ROWD within 140 days.<sup>2</sup>

13. Pursuant to Water Code section 13264, subdivision (a), a discharger is prohibited from initiating any new discharges of waste, or materially changing an existing discharge of waste, unless both of the following conditions are met:
  - a. At least 140 days have elapsed from the filing of the ROWD<sup>3</sup>; and
  - b. The proposed discharges will not create or threaten to create a condition of pollution or nuisance.

Under no circumstances will Water Code section 13264 permit a party to discharge waste in a manner that creates or threatens to create a condition of pollution or nuisance.

14. On 23 June and 6 October 2017, Board staff received a Pond Liner Work Plan and a revised Pond Liner Work Plan, respectively, for construction of a 350 acre-foot, 60-mil high density polyethylene (HDPE) geosynthetic lined pond.
15. On 17 November 2017, in response to the 15 December 2016 ROWD, the Board issued a technical reporting order (Wat. Code, § 13267) to the Discharger, explaining that additional information (including a monthly water balance, hydraulic and nutrient loading rates, a long-term agreement with nearby farmers, and CEQA documentation) was required to be submitted.

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<sup>2</sup> To the extent that the proposed project was not exempt from the California Environmental Quality Act, additional time may have been required prior to discharge per Water Code section 13264, subdivision (a)(2)(B)-(D).

<sup>3</sup> The minimum period of time actually required to elapse depends on: (1) the applicability of the California Environmental Quality Act (CEQA) to the proposed discharge and related project activity; (2) whether the regional board is acting as “lead agency” for the project under CEQA; (3) if the regional board is acting as “lead agency” under CEQA, (a) the date on which it assumed such responsibility and (b) whether the proposed project will require a negative declaration or environmental impact report; and (4) if another agency is acting as “lead agency” under CEQA, the date on which any CEQA documents were certified or approved. (See Wat. Code, § 13264, subd. (a)(2)(A)-(D).) Thus, when a proposed discharge is a “project” subject to CEQA, more than 140 days will be required before the discharges can be initiated.

16. By letter dated 27 November 2017, the Discharger notified Board staff that construction of the Treatment/Storage Pond was complete.
17. On 17 January 2018, the Discharger submitted a response to the 17 November 2017 technical reporting order requesting a time extension for submitting additional information.
18. On 4 September 2018, Board staff received a request from the Discharger for a revised Monitoring and Reporting Program (MRP) to reflect operational changes that had been made at the Facility and adjacent citrus packinghouse.
19. On 27 December 2018, the Board issued a Water Code section 13260 directive to the Discharger requiring the submission of an updated ROWD describing current Facility operations.
20. On 25 January 2019, the Board issued revised MRP R5-2019-0802 for the Facility and the adjacent citrus packinghouse. The revised MRP superseded the MRP orders previously issued for the Facility (MRP 92-191) and for the citrus packinghouse (MRP 94-302).
21. On 18 September 2019, the Discharger submitted a ROWD proposing a flow limitation increase of up to 140 million gallons per year (annual maximum) and up to 4 million gallons per day (daily maximum). The ROWD proposed changes in operations that included the addition of a new hulling plant and storage of wastewater in the Treatment/Storage Pond prior to discharge to 450 acres of LAAs.
22. On 18 October 2019, Board staff issued a letter to the Discharger explaining that the 18 September 2019 ROWD was incomplete, and that additional information was required to be submitted.
23. On 17 December 2019, the Discharger submitted a revised ROWD proposing an annual maximum flow limit of up to 140 million gallons per year and a daily maximum limit of up to 4 million gallons per day to the Treatment/Storage Pond. The ROWD also proposed an increase in LAAs to 473 acres.
24. On 16 January 2020, Board staff issued a letter to the Discharger explaining that the 17 December 2019 revised ROWD was also incomplete, and that additional information was required to be submitted.
25. On 16 April 2020, the Discharger submitted a revised ROWD proposing an annual maximum flow limit of up to 140 million gallons per year and a daily maximum limit of up to 4 million gallons per day. The ROWD also proposed increasing LAAs to a total of 1,015 acres.

26. On 15 May 2020, Board staff issued a letter to the Discharger explaining that the 16 April 2020 revised ROWD was incomplete, and that additional information was required to be submitted.
27. On 12 June 2020, the Discharger, through its attorney, submitted additional responses to the 13 May 2020 NOV notifying Board staff that the Discharger's proposal to increase LAAs to a total of 1,015 acres was being reduced to 892 acres.<sup>4</sup> Additionally, the Discharger notified Board staff of their decision to operate under the flow limitations proposed in their 19 January 2009 ROWD.

### Summary of Applicable Requirements

28. Under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) (Wat. Code, § 13000 et seq.), WDRs "implement ... relevant water quality control plans..., and ... take into consideration ... the need to prevent nuisance...." (Wat. Code, § 13263, subd. (a).)
29. Section 3.1.16 of the Central Valley Water Board's operative Water Quality Control Plan for the Tulare Lake Basin (Basin Plan) provides as follows:
  - 3.1.16** Waters shall not contain taste- or odor-producing substances in concentrations that cause nuisance.
30. Section A.11 of the Standard Provisions & Reporting Requirements dated 1 March 1991 (Standard Provisions), incorporated as part of WDRs Order 92-191, further provides that:
  - A.11** Neither the treatment nor the discharge shall create a condition of nuisance or pollution....
31. Under the Porter-Cologne Act, and for the purposes of both the Basin Plan and WDRs Order 92-191, a **nuisance** is defined as any condition<sup>5</sup> that:
  - (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

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<sup>4</sup> In order to affirmatively authorize changes to the Discharger's discharge of wastewater on a permanent basis, a revision to the 1992 WDRs Order will be required.

<sup>5</sup> Contrary to the Discharger's assertions, there is no requirement that a condition persist for a minimum period of time before constituting a nuisance.

- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes.

(Wat. Code, § 13050, subd. (m).)

32. Discharge Specifications B.2 and B.4 of WDRs Order 92-191 further provide as follows:

**B.2** Objectionable odors originating at this facility shall not be perceivable beyond the limits of property owned or controlled by the Discharger.

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**B.4** As means of discerning compliance..., the dissolved oxygen content in the upper zone (1 foot) of any surface impoundment shall not be less than 1.0 mg/L.

- 33. Dissolved oxygen (DO) content does not constitute the exclusive means of determining compliance with the Discharge Specification against offsite objectionable odors, as such odors may nevertheless be generated in surface impoundments despite the presence of DO.
- 34. Violations of the Discharge Specifications may be established by credible complaints from members of the public.

### **Pistachio Processing Wastewater**

- 35. Untreated pistachio processing wastewater (particularly wastewater produced from hulling activities) contains an exceptionally high level of Biochemical Oxygen Demand (BOD). The more BOD wastewater has, the more organic material there will be for aerobic biological organisms to consume, resulting in the proliferation of such organisms. As the numbers of oxygen-consuming organisms increase, the amount of DO in the wastewater will decrease dramatically.
- 36. Lack of DO in high BOD wastewater will typically result in anaerobic decomposition of the organic material in the wastewater. Gases produced during the anaerobic decomposition process may be released into the atmosphere, resulting in the release of odors that people may consider to be objectionable.

37. Monitoring data submitted by the Discharger indicate that the average BOD of wastewater in the Treatment/Storage Pond during 2019 was 4,866 mg/L, and was as high as 7,700 mg/L.
38. Without sufficient treatment (or other means) to reduce the BOD of the wastewater generated and stored by the Discharger, the wastewater in the Treatment/Storage Pond is likely to produce objectionable odors and potentially create nuisance conditions.

### **Odor Complaints from Nearby Residents**

39. Board files indicate that Terra Bella residents have historically reported objectionable odor complaints against the Discharger to Board staff. Board files indicate that objectionable odor complaints have been received in September 1996, October 1997, October 1999, September 2004, November 2015, and September 2016.
40. On 18 June 2019 at approximately 9:30 AM, San Joaquin Valley Air Pollution Control District (Air District) staff informed Board staff that multiple objectionable odor complaints associated with the Discharger's operation had been recently submitted to the Air District by Terra Bella residents.
41. On 18 June 2019 at 11:30 AM, Board staff inspected the Facility and detected objectionable odors originating from the Discharger's Treatment/Storage Pond and irrigation mixing ponds outside of the Discharger's property boundaries. Board staff identified violations of Discharge Specification B.2 and Standard Provision A.11.
42. On 19 June 2019, Board staff received an objectionable odor complaint associated with the Discharger's operation via the CalEPA environmental complaint system. The complaint was referred to Board staff through the CalEPA system by the Tulare County Division of Environmental Health.
43. On 25 June 2019, Board staff issued a Notice of Violation (NOV) to the Discharger for violations identified during staff's 18 June 2019 inspection. The NOV required that, by 26 July 2019, the Discharger submit a written response describing actions taken or planned to address the violations and to prevent future violations from occurring. The Discharger submitted a response to the NOV on 17 July 2019. Corrective actions described in the response included discharging stored wastewater from the Treatment/Storage Pond, disposing of accumulated solids from irrigation mixing ponds, and hiring an environmental consultant.
44. On 27 June 2019, Air District staff issued an NOV to the Discharger for violation of the Air District's nuisance rule.

45. On 7 August 2019, Air District staff provided Board staff with complaint investigation forms for the period of 17 October 2018 through 3 August 2019. The forms indicated that Air District staff received 34 objectionable odor complaints associated with the Discharger's operation during that period, and Air District staff confirmed 19 of the 34 complaints.
46. On 15 August 2019 at approximately 10:00 AM, Board staff inspected areas surrounding the Discharger's properties to check for objectionable odors associated with the Discharger's operation. At the time of inspection, Board staff detected objectionable odors outside of the Discharger's property boundaries, a violation of Discharge Specification B.2.
47. On 30 August 2019, Board staff issued a Staff Enforcement Letter (SEL) to the Discharger requesting that, by 27 September 2019, the Discharger submit a response describing additional corrective actions taken or planned to address violations cited in the 25 June 2019 NOV issued by Board staff and to address ongoing objectionable odors. The Discharger submitted a response to the SEL on 27 September 2019 that included a list of corrective actions taken by the Discharger between October 2018 and September 2019.
48. On 3 October 2019, Board staff conducted an inspection of the Facility to evaluate compliance with WDRs Order 92-191. Board staff did not identify violations at the time of inspection.
49. On 15 November 2019, Board staff inspected areas surrounding the Discharger's properties to check for objectionable odors associated with the Discharger's operation. At the time of inspection, Board staff detected objectionable odors outside of the Discharger's property boundaries, a violation of Discharge Specification B.2.
50. On 23 December 2019, the Discharger submitted an Odor Control Plan (OCP) to Board staff. The 23 December 2019 OCP was a revision to an initial OCP submitted to Air District staff in October 2019. Corrective actions described in the OCP included increased wastewater screening and filtration, increased aeration, pH control, and bioaugmentation.
51. On 9 and 15 January 2020, Air District staff provided Board staff with complaint information data for the periods of 9 August through 19 December 2019, and for 24 December 2019 through 14 January 2020, respectively. The data indicated that, between 9 August 2019 and 14 January 2020, Air District staff received 84 objectionable odor complaints associated with the Discharger's operation. Air District staff confirmed 74 of the 84 complaints received during this period.
52. On 16 January 2020, Board staff issued an NOV to the Discharger for the violation identified during staff's 15 November 2019 inspection. The NOV



required that, by 18 February 2020, the Discharger submit a written response describing the Discharger's progress in implementing corrective actions described in the OCP and any additional corrective actions taken or planned to address the violation and prevent/minimize future violations.

53. On 18 February 2020, the Discharger, through its attorney, submitted a response to the 16 January 2020 NOV on behalf of the Discharger. The response included a description of the Discharger's implementation of corrective actions described in the OCP.
54. On 27 February 2020, Board staff conducted an inspection of the Facility to evaluate compliance with WDRs Order 92-191. Board staff did not identify violations at the time of inspection.
55. On 12 and 13 March 2020, Board staff conducted inspections of the Facility and surrounding areas to evaluate compliance with WDRs Order 92-191. At the time of the inspections, Board staff identified violations of Discharge Specification B.2 (for failure to keep objectionable odors within property boundaries), Provision E.1 and the Monitoring and Reporting Program (for failure to equip ponds with permanent markers for measuring freeboard), Water Code section 13264 (for initiating a new discharge without filing a report of waste discharge), Standard Provision A.4 (for changing the location of discharge without filing a report of waste discharge), Standard Provision A.7 (for failure to maintain outside slopes of the 350 acre-foot pond), and Standard Provision A.12 (for discharging waste outside of the designated disposal area).
56. On 15 March 2020 at 4:01 PM, Board staff received an objectionable odor complaint associated with the Discharger's operation from a Terra Bella resident. Board staff confirmed the complaint on 15 March 2020 at approximately 5:30 PM. This is a violation of Discharge Specification B.2.
57. On 25 March 2020 at 8:28 AM, Board staff received an objectionable odor complaint associated with the Discharger's operation from a Terra Bella resident. Board staff confirmed the complaint on 25 March 2020 at 12:03 PM. This is a violation of Discharge Specification B.2.
58. On 29 April 2020 at 7:13AM, Board staff received an objectionable odor complaint associated with the Discharger's operation from a Terra Bella resident. Board staff inspected areas surrounding the Facility on 29 April 2020 at 10:16 AM. Board staff did not identify violations at the time of inspection.
59. On 13 May 2020, Board staff issued an NOV to the Discharger for violations identified during staff's 12, 13, 15, and 25 March 2020 inspections. The NOV required that, by 12 June 2020, the Discharger submit a technical report

describing corrective actions taken or planned to address the violations and prevent future violations.

60. On 9 and 12 June 2020, the Discharger, through its attorney, submitted responses to the 13 May 2020 NOV. The responses included technical reports prepared by the Discharger's engineering consultant that described corrective actions taken and planned by the Discharger to address the violations.
61. In the technical report submitted on 12 June 2020, the Discharger's consultant proposed corrective actions to address odor violations for the upcoming 2020 processing season. The proposed corrective actions and other infrastructure improvements are in the process of being implemented. However, there is insufficient data to support the conclusion that the odor problem has been fully resolved. To date, the Discharger has not provided sufficient engineering evaluations supporting their assertions.
62. On **DATE**, the Central Valley Water Board issued Revised Monitoring and Reporting Program R5-2019-0802-01 (MRP). Among other things, the new MRP now requires more frequent monitoring and reporting of parameters and constituents associated with the generation of nuisance odors.
63. Between 15 January and 16 June 2020, Air District staff received 26 objectionable odor complaints associated with the Discharger's operation. Air District staff confirmed 15 of the 26 complaints received during this period.
64. Between 30 January and 29 April 2020, Board staff received 15 objectionable odor complaints associated with the Discharger's operation. Board staff investigated 3 of the 15 complaints and confirmed 2 of the 3 complaints investigated during this period.
65. Based on its comments to Central Valley Water Board staff, the Discharger's position is as follows:
  - a. The Discharger denies that there are any nuisances generated by its Facility, and denies that any odors generated from the Facility affect a large number of persons, or exist for lengthy periods of time.
  - b. The Discharger also asserts that Terra Bella is a rural community with an agriculture-based economy, and that perceptible odors within such communities differ from those of more urban environments (e.g., Sacramento). It suggests that some odors may be coming from nearby pistachio fields, which have supposedly similar odors during the harvest season.

66. As noted above, Central Valley Water Board staff have investigated and confirmed numerous odor complaints from Terra Bella residents. Staff have personally observed offensive odors coming from the Treatment/Storage Pond in particular (i.e., not from nearby pistachio fields). Further, the nuisance odors at issue in this matter arise from conditions in industrial food processing wastewater, not ordinary farming activity. These conditions could be abated through application of proper treatment and engineering design.
67. Terra Bella is a “disadvantaged community.” The people of Terra Bella have no less right to be free of nuisance conditions than those of any other community in California.

### **Legal Authority**

68. This Order is issued pursuant to Water Code section 13301, which provides in relevant part as follows:

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..., 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.
69. This Order is also issued pursuant to Water Code section 13304, subdivision (a), which 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.
70. As discussed in the findings above, in the absence of effective corrective action, high-BOD wastewater discharged to the Treatment/Storage Pond has resulted in, and will continue to result in, the generation of strong odors that are routinely perceivable by persons beyond the limits of property under the Discharger’s ownership or control.

71. The Treatment/Storage Pond is used as part of the Discharger's overall process for treatment and disposal of wastewater. Accordingly, any odors generated from the Treatment/Storage Pond are occurring during, and/or as a result of, the treatment and disposal of waste.
72. Although the actual severity and duration of these odors will depend on various environmental conditions (e.g., temperature, wind speed/direction, etc.), they are consistently indecent and offensive to the senses of a considerable number of nearby Terra Bella residents. As such, these objectionable odors have and will continue to interfere with the residents' comfortable enjoyment of life and property.
73. Based on the foregoing, the discharge of wastewater to the Treatment/Storage Pond will violate or threaten to violate Discharge Specification B.2 and Standard Provision A.11 of WDRs Order 92-191.
74. The issuance of this Order is justified because corrective actions taken and proposed by the Discharger have not adequately demonstrated that those actions are reasonably expected to eliminate the generation of offensive odors in violation of Discharge Specification B.2 and Standard Provision A.11.
75. The ability to continue discharging waste, either into its Treatment/Storage Pond or nearby land application areas, is a privilege and is not a vested right and may be revoked by the Central Valley Water Board. (Wat. Code, § 13263, subd. (g).)
76. This Order is also issued pursuant to Water Code section 13300, which provides in relevant part as follows:

Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

77. The monitoring and reporting activities required under this Order are authorized pursuant to Water Code section 13267, subdivision (b)(1), which provides that:

[T]he regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.

78. The monitoring and reporting requirements imposed under this Order are necessary to ensure compliance with this Order, WDRs Order 92-191, and any revisions to those Orders.
79. The burden of submitting reports under this Order is reasonable relative to the need for their submittal, as described in the findings above. Specifically, the Board knows of no other more cost-efficient means of obtaining the necessary data to be able to assess the issues at the Treatment/Storage Pond and assess the efficacy of the steps taken to resolve those issues.
80. This Order does not specify the particular manner in which the Discharger shall achieve compliance with the provisions of the existing WDRs Order, particularly Discharge Specification B.2 and Standard Provision A.11. (See Wat. Code, § 13360, subd. (a).)

### **Other Regulatory Considerations**

81. The issuance of this Order constitutes an enforcement action, which is categorically exempt from procedural requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), in accordance with the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15321.)
82. The Discharger and interested persons were notified of the Central Valley Water Board's intent to issue this Order and were provided an opportunity to submit their written views and recommendations at a public hearing.
83. A truncated public comment period is necessary to allow this Order to be issued at the start of the upcoming 2020 pistachio processing season (i.e., when most of the Discharger's wastewater will be generated).

84. At a public meeting, the Central Valley Water Board heard and considered all comments pertaining to the discharge regulated under this Order.

### **REQUIRED ACTIONS**

**IT IS HEREBY ORDERED**, pursuant to Water Code sections 13267, 13304 and 13301, that the Discharger (including its agents, employees and corporate affiliates) shall comply with the following.

#### **A. Directives to Cease & Desist**

1. The Discharger shall immediately cease and desist its generation of objectionable odors as described in the findings, to achieve compliance with Discharge Specification B.2 of WDRs Order 92-191.
2. The Discharger shall immediately cease and desist (and otherwise abate) all nuisance conditions existing in, or arising from discharges to the Treatment/Storage Pond, and any other wastewater impoundments at the Facility, to achieve compliance with Standard Provision A.11 of WDRs Order 92-191.
3. Non-compliance can be established by credible objectionable odor complaints received by Board staff, information received from Air District staff, and/or by continuous odor monitoring data submitted by the Discharger.

#### **B. Pond Improvements**—The Discharger shall submit the following reports proposing various improvements to the Treatment/Storage Pond and any other wastewater impoundments at the Facility.

1. By **21 August 2020**, the Discharger shall submit for Board staff review and concurrence a Pond Compliance Plan to be immediately implemented in the event that DO concentrations in any pond containing wastewater violate the limits in the WDRs, or upon detection of odors that violate Discharge Specification B.2 or Standard Provision A.11 in the WDRs Order. At a minimum, the plan shall:
  - a. Describe the quantity and dosing rates for all chemicals/additives that may be added to the wastewater system and/or the ponds to bring the discharge back into compliance in a timely manner.
  - b. Propose a method for ceasing wastewater discharge into wastewater ponds until wastewater in the ponds is in compliance with the WDRs. The method may include tanking and hauling of all

generated waste to a permitted disposal facility or the use of temporary on-site storage in above ground tanks.

- c. Propose a disposal plan for wastewater stored in ponds that is not in compliance with the limits specified in the WDRs.
  2. By **28 August 2020**, the Discharger shall submit for Board staff review and concurrence a pond modification and aeration system improvement report that describes proposed improvements for the Treatment/Storage Pond and its aeration system necessary for maintaining compliance with the WDRs. At a minimum, the report shall include descriptions of the following:
    - a. Proposed improvements to the Treatment/Storage Pond and its aeration system;
    - b. Design calculations (prepared and stamped by an appropriately licensed professional) demonstrating that the proposed aeration system will be adequately sized for the Treatment/Storage Pond; and
    - c. How the Treatment/Storage Pond and aeration system will be operated, maintained, and monitored to ensure compliance with the WDRs.
  3. Within **60-days** of receiving Board staff concurrence of the pond modification and aeration system improvement report, the Discharger shall submit a technical report certifying that improvements for the Treatment/Storage Pond and its aeration system have been completed in accordance with the pond modification and aeration system improvement report approved by Board staff.
- C. Operations & Maintenance Plan**—By **14 October 2020**, the Discharger shall submit an Operations and Maintenance Plan for the entire wastewater and stormwater collection, treatment, and disposal systems. The plan shall include the following:
  1. An identification and description of all system components, including solids segregation and storage, solids disposal, wastewater/stormwater collection and conveyance, chemical pre-treatment, flow monitoring, wastewater ponds/impoundments, aeration systems, other treatment systems and disposal areas, etc.; and
  2. Specification of inspection frequencies for each identified component;

3. Discussions of all collection system, treatment system, and disposal system operation and maintenance activities necessary to ensure that the Facility remains in compliance with the WDRs Order.

**D. Curtailment of Discharges**—In the event that the Discharger fails to comply with any of the requirements of this Order the Executive Officer has the discretion to direct in writing that all further wastewater discharges to the Treatment/Storage Pond be curtailed within fifteen (15) calendar days (or a later date of the Executive Officer's choosing). Upon curtailment, the Discharger shall only recommence such discharges upon written approval from the Executive Officer.<sup>6</sup>

**E. General Reporting Provisions**—All documents submitted under this Order shall comply with the following provisions.

1. All technical reports and workplans that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering or geologic sciences (Technical Reports), shall be prepared by, or under the supervision of, a California-licensed civil engineer or professional geologist (Licensed Professional), and shall be signed and stamped by the same individual. Information in the Technical Report shall be presented in a manner that clearly attributes it to the responsible Licensed Professional. (Bus. & Prof. Code, §§ 6735, 7835, 7835.1.)
2. All documents submitted under this Order shall be signed by a duly authorized representative (senior Facility manager or corporate officer), and include the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

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<sup>6</sup> Nothing in this section shall be construed as limiting the Central Valley Water Board's ability to take alternative forms of enforcement against the Discharger. For example, the Board may instead elect to impose administrative civil liability (Wat. Code, § 13350) or seek injunctive relief (*id.*, §§ 13331, 13340).



3. All documents submitted under this Order shall be submitted electronically via e-mail to: [centralvalleyfresno@waterboards.ca.gov](mailto:centralvalleyfresno@waterboards.ca.gov). The following information shall be included in the body of the e-mail: Attention Russell Walls, Setton Pistachio of Terra Bella, Inc., Terra Bella Pistachio Facility, CDO R5-2020-XXXX, CIWQS Place ID 256376.
  4. **Extensions**—Except as provided herein, the submittal deadlines in this Order shall not be extended.
    - a. If, for any reason, the Discharger is unable to perform an activity or submit a report under this Order (and materials incorporated herein), the Discharger may submit a written request for an extension to the Executive Officer.
    - b. To be considered, an extension request must set forth a definite period of extension (no indefinite extensions) and include justification for the delay.
    - c. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. Untimely requests may be disregarded.
    - d. An extension is not valid unless granted by means of a revision to this Order, or a letter from either the Executive Officer or those granted written signature authority therefrom. All requests not approved in writing with reference to this Order are denied. Central Valley Water Board technical staff lack authority to approve any extensions under this Order.
- F. Duration of Order**—This Order shall remain in effect until it is rescinded by the Central Valley Water Board.

## ENFORCEMENT

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

### **ADMINISTRATIVE REVIEW**

Any person aggrieved by this Central Valley Water Board action may petition the State Water Board for review in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et seq. The State Water Board must receive the petition by 5:00 PM on the 30th day after the date of this Order; if the 30th day falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 PM on the next business day. [Copies of the law and regulations applicable to filing petitions](#) are available on the Internet (at the address below) and will be provided upon request.

([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality))

### **CERTIFICATION**

I, PATRICK PULUPA, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on \_\_\_\_ August 2020.

**Tentative**

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PATRICK PULUPA,  
Executive Officer