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*Attorneys for Plaintiff California
Department of Pesticide Regulation*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ORIGINAL FILED

JUL 14 2010

LOS ANGELES
SUPERIOR COURT

**STATE OF CALIFORNIA DEPARTMENT
OF PESTICIDE REGULATION,**

Plaintiff,

v.

**TITO BALLING, INC. DBA CALIFORNIA
WATER SERVICES, et al.,**

Defendants.

Case No. BC 433811

~~PROPOSED~~ CONSENT DECREE
BETWEEN PLAINTIFF AND TITO
BALLING, INC. DBA CALIFORNIA
WATER SERVICES

Judge: Hon. Teresa Sanchez-Gordon
Dept.: 74

Plaintiff, the STATE OF CALIFORNIA DEPARTMENT OF PESTICIDE
REGULATION ("DPR"), and Defendant TITO BALLING, INC., DBA CALIFORNIA WATER
SERVICES ("CWS"), a California Corporation, (collectively referred to as the "Parties") enter
into this Consent Decree to settle the above-captioned action as set forth below.

1 INTRODUCTION

2 On or about January 2, 2009, DPR issued a Notice of Violation (“Notice of Violation”) to
3 CWS alleging violations of the Food and Agricultural Code.

4 On or about April 1, 2010, DPR filed a first amended complaint (“Complaint”) against CWS
5 and other defendants seeking civil penalties and injunctive relief for alleged violations of Food
6 and Agricultural Code sections relating to the sale, application or use of chlorine gas pesticide
7 products in California.

8 The Parties enter into this Consent Decree to avoid the costs and uncertainties of further
9 litigation and to further the public interest. For good and valuable consideration, the Parties
10 hereby agree as follows:

11 TERMS OF SETTLEMENT

12
13 1. This Consent Decree sets forth the Parties’ compromise and settlement of the disputed
14 claims in this action. The Parties believe that the resolution embodied in this Consent Decree is
15 fair and reasonable, and in the public interest.

16 2. **Jurisdiction and Venue.** The Parties agree that this Court has jurisdiction over the
17 subject matter of this action, and personal jurisdiction over the Parties, and that venue is proper.

18 3. **Civil Penalties.** CWS shall be liable to DPR for civil penalties in the amount of fifty
19 thousand dollars (\$50,000.00), to be allocated as follows:

20 a. CWS agrees to pay twenty thousand dollars (\$20,000.00) in civil penalties to be
21 paid to DPR within thirty (30) days following the effective date of this Consent Decree.

22 b. Against the total liability of \$50,000.00, CWS shall be credited thirty thousand
23 dollars (\$30,000), if CWS completes the terms of the Supplemental Environmental Project
24 (“SEP”) set forth in Attachment 1 to this Consent Decree, and incorporated herein by reference.

25 c. If CWS fails to comply with the SEP, DPR may move the Court for a
26 determination of non-compliance. If the Court determines that CWS failed to comply with the
27 SEP, CWS shall not be credited for the SEP and CWS shall immediately pay \$30,000.00 in civil
28 penalties to DPR.

1 d. All checks shall be made payable to "Cashier, Department of Pesticide
2 Regulation", and shall be delivered to:

3 Eric Walts, Staff Counsel
4 Department of Pesticide Regulation
5 1001 I Street
6 P.O. Box 4015
7 Sacramento, CA 95812-4015

8 4. **Admissions.** CWS admits to the violations alleged against CWS in the First through
9 Fourth Causes of Action of the Complaint only for the purposes of any subsequent action brought
10 pursuant to the Food and Agricultural Code if brought within four (4) years of the effective date
11 of the Consent Decree. CWS does not admit the allegation included in paragraph 92 that CWS
12 sold chlorine gas to growers for use at locations in Los Angeles County.

13 5. **Non-Compliance and Stipulated Penalties.**

14 a. If DPR determines that CWS fails to comply with paragraph 3 of the Consent
15 Decree, DPR shall notify CWS of the non-compliance. DPR may move this Court to enforce
16 compliance with the Consent Decree, and to award appropriate relief, including stipulated
17 penalties.

18 b. CWS shall pay stipulated penalties in the amount of \$3,000 for each violation of
19 paragraph 3 of the Consent Decree. Stipulated penalties shall begin to accrue on the day after the
20 complete and adequate performance is due or the day a violation occurs, and additional stipulated
21 penalties in the amount of \$3,000 shall continue to accrue each month for each violation until
22 correction of the noncompliance or completion of the activity.

23 c. If the time periods for compliance are extended pursuant to paragraph 6, CWS
24 shall pay stipulated penalties as set forth in subparagraph (b) in the event that CWS fails to make
25 timely payments to DPR as agreed upon in any time extension granted by DPR and/or the Court.

26 d. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in
27 any way limiting the ability of DPR to seek any other remedies or sanctions available by virtue of
28 CWS's violation of this Consent Decree.

6. **Request for Extension of Time.** At least thirty (30) days prior to the expiration of a
time period in the Consent Decree, CWS may apply to DPR, in writing, for an extension of any of

1 the time periods specified in this Consent Decree. If DPR does not timely approve an extension,
2 CWS may apply to the Court for an extension.

3 **7. Matters Covered by Consent Decree.** This Consent Decree, upon entry by the Court,
4 shall constitute a complete, final and binding resolution and settlement of all claims, violations or
5 causes of action alleged in the Complaint, and of all claims, violations or causes of action which
6 could have been asserted by DPR against CWS, based on the facts alleged in the Complaint,
7 DPR's Notice of Violation ("NOV") issued to CWS on January 2, 2009, or DPR's Investigation
8 Report of CWS dated April 21, 2008"), including violations of Food and Agricultural Code
9 sections 11701, 11732, 12101, 12973, 12991, and 12992, and California Code of Regulations
10 section 6724 ("Covered Matters.")

11 **8.** Except as provided in paragraph 9 (Reservation of Rights) of this Consent Decree and
12 expressly conditioned on CWS's full compliance with the terms of the Consent Decree, DPR
13 covenants not to file any other complaint, whether judicial or administrative, against CWS for the
14 Covered Matters. This covenant not to sue extends only to CWS and does not extend to any
15 other person.

16 **9. Reservation of Rights.** This Consent Decree has no effect on the ability of DPR to
17 enforce the terms of the Consent Decree, or to pursue or file separate or additional action for any
18 violation of statutes or regulations which is not a Covered Matter.

19 **10.** Except as expressly provided in paragraph 8 of this Consent Decree, nothing in this
20 Consent Decree shall constitute or be construed as satisfaction or release from liability for any
21 conditions or claims arising as a result of past, current or future acts or operations of CWS.

22 **11.** Nothing in this Consent Decree is intended, nor shall it be construed, to preclude any
23 other state or county government agency from taking appropriate enforcement actions or
24 otherwise exercising its authority under any law, statute or regulation.

25 **12.** Nothing in this Consent Decree shall relieve CWS from the obligation to comply with
26 applicable laws and regulations.

27 **13.** CWS covenants not to sue or pursue civil or administrative claims against DPR or other
28 agencies of the State related to the Covered Matters.

1 14. **Entry of Judgment.** Pursuant to Code of Civil Procedure section 664.6, this Consent
2 Decree may be entered by the Court without further notice to the Parties. By entering this
3 Consent Decree, the Court finds that this Consent Decree results in a full, fair and final resolution
4 of the claims alleged in the Complaint.

5 15. **Retention of Jurisdiction.** Pursuant to Code of Civil Procedure section 664.6 and at
6 the parties' joint request, the Court shall retain jurisdiction of this matter and over the parties to
7 enforce this Consent Decree until CWS fully performs its obligations specified in this Consent
8 Decree.

9 16. **Service of Complaint.** CWS agrees to waive formal service of process of the
10 Complaint, including service of a summons. The parties agree that CWS need not file an answer
11 to the Complaint in this action unless or until the court expressly declines to enter the Consent
12 Decree.

13 17. **Appeal Rights Waived.** CWS waives its right to a hearing on any claims, violations
14 or causes of action alleged in the Complaint prior to the entry of the Consent Decree by this
15 Court. CWS also waives the right to appeal, to attempt to set aside or vacate, or otherwise to
16 attack, directly or collaterally, this Consent Decree.

17 18. **Notice.** All submissions and notices required by this Consent Decree shall be sent to:

18 a. For DPR:

19 Eric Walts, Staff Counsel
20 Department of Pesticide Regulation
21 1001 I Street
22 P.O. Box 4015
23 Sacramento, CA 95812-4015

24 b. For CWS:

25 Theresa A. Dunham
26 Somach Simmons & Dunn
27 500 Capitol Mall, Suite 1000
28 Sacramento, CA 95814

 Erik Balling
 California Water Services
 P.O. Box 343
 Coalinga, CA 93210

1 19. **Compliance with Applicable Laws.** CWS shall carry out its obligations under this
2 Consent Decree in compliance with all local, state, and federal requirements.

3 20. **Government Liabilities.** The State of California shall not be liable for any injury or
4 damage to persons or property resulting from acts or omissions by CWS or its directors, officers,
5 employees, agents, representatives or contractors in carrying out activities pursuant to this
6 Consent Decree, nor shall the State of California be held as a party to or guarantor of any contract
7 entered into by CWS, its directors, officers, employees, agents, representatives or contractors in
8 carrying out activities required pursuant to this Consent Decree.

9 21. **Payment of Costs and Fees.** The Parties shall each pay their own fees, attorneys fees,
10 costs, and all other costs of litigation incurred prior to and as of the effective date of the Consent
11 Decree.

12 22. **Parties Bound.** This Consent Decree shall apply to and be binding upon the CWS,
13 and its officers, directors, agents, employees, contractors, consultants, receivers, trustees,
14 successors, and assignees, including but not limited to individuals, partners, and subsidiary and
15 parent corporations, and upon DPR and any successor agency of the State of California that may
16 have responsibility for and jurisdiction over the subject matter of this Consent Decree.

17 23. **Signatories.** Each signatory to this Consent Decree certifies that he or she is fully
18 authorized by the party he or she represents to enter into this Consent Decree, to execute it on
19 behalf of the party represented, and to legally bind that party.

20 24. **Integration.** This Consent Decree constitutes the entire agreement between the Parties
21 regarding the matters covered herein and expressly supersedes any and all prior oral or written
22 judgments, agreements, covenants, representations and warranties (express or implied)
23 concerning the subject matter of this Consent Decree. This Consent Decree and all of its
24 provisions shall be deemed to have been drafted equally by all parties hereto.

25 25. **Counterparts.** This Consent Decree may be executed in counterparts, and such
26 counterparts together constitute the original document.

27 26. **Modification.** This Consent Decree may be modified only upon written consent by
28 the Parties and the modification shall not take effect until approved by the Court.

1 27. **Effective Date.** The effective date of this Consent Decree shall be the date upon which
2 this Consent Decree is entered by the Court.

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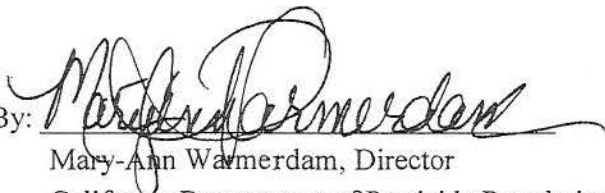
4 **IT IS SO AGREED AND STIPULATED.**

5

6 **FOR PLAINTIFF STATE OF CALIFORNIA**
7 **DEPARTMENT OF PESTICIDE REGULATION**

8

9 Dated: APR 30 2010

By: 
Mary-Ann Warner, Director
California Department of Pesticide Regulation

10

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13 **FOR DEFENDANT TITO BALLING, INC.**
14 **DBA CALIFORNIA WATER SERVICES**

15

16

Dated: _____

By: _____
Erik Balling
California Water Services
P.O. Box 343
Coalinga, CA 93210

17

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21 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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23

24 Dated: _____

JUDGE OF THE SUPERIOR COURT

25

26 LA2008602173

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28

1 27. **Effective Date.** The effective date of this Consent Decree shall be the date upon which
2 this Consent Decree is entered by the Court.

3
4 **IT IS SO AGREED AND STIPULATED.**

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6 **FOR PLAINTIFF STATE OF CALIFORNIA**
7 **DEPARTMENT OF PESTICIDE REGULATION**

8
9 Dated: _____

By: _____

Mary-Ann Warmerdam, Director
California Department of Pesticide Regulation

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13 **FOR DEFENDANT TITO BALLING, INC.**
14 **DBA CALIFORNIA WATER SERVICES**

15
16 Dated: 4/28/2010

By: Erik Balling

Erik Balling
California Water Services
P.O. Box 343
Coalinga, CA 93210

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21 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

22
23 Dated: 7-14-10

Teresa Sanchez-Gordon

JUDGE OF THE SUPERIOR COURT

TERESA SANCHEZ-GORDON

24
25 LA2008602173

ATTACHMENT 1

Supplemental Environmental Project California Water Services Guidance for Growers Using Chlorine Gas

As part of the stipulation to settle the *Department of Pesticide Regulation v. California Water Services* case (LASC No. BC 433811), Tito Balling, Inc. dba California Water Services (hereinafter referred to as “CWS”) proposes to conduct the following Supplemental Environmental Project (“SEP”) to assist growers in complying with applicable California regulations for the use of chlorine gas pesticide products. The SEP proposed herein constitutes an Environmental Compliance Promotion project in accordance with *CAL/EPA RECOMMENDED GUIDANCE ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS* (October 2003). Specifically, the SEP proposed by CWS will assist growers in identifying and complying with applicable regulatory requirements through the preparation of a guidance document prepared in cooperation with the Department of Pesticide Regulation (“DPR”), and through the preparation of county-specific templates and individual California Accidental Release Prevention Plans (“Cal-ARP Plans”) for CWS’ grower customers using chlorine gas.

I. Preparation of Compliance Guide for Use of Chlorine Gas by Growers

CWS will prepare a draft guidance document that identifies and summarizes applicable pesticide and Cal-ARP laws and regulations that apply to growers intending to use chlorine gas pesticide products. The guide will inform growers of the requirements that must be met prior to taking delivery and/or of using chlorine gas pesticide products. CWS will provide a draft “mock-up” version of the draft guidance document to DPR for review and approval. DPR will review the materials to ensure that the requirements summarized by CWS are accurate.

Topics to be included in the guidance document are as follows: use of properly labeled pesticides; use of chlorine gas pesticide products in accordance with label; requirements for the submission of Cal-ARP Plans; minimum site requirements for the storage of chlorine gas; personal protective equipment; leak reporting and response procedures; and sources of chlorine industry reference manual. The guidance document will also reference applicable laws and regulations including but not limited to the Cal-ARP requirements set forth in Title 19 of the California Code of Regulations, sections 2735.1 through 2785.1, and DPR’s requirements set forth in Food and Agricultural Code section 12973, Title 3 of the California Code of Regulations, sections 6000 through 6920, as appropriate.

CWS proposes to conduct Part I of the SEP in the following manner.

TASK/ACTION	SCHEDULED DUE DATE
Begin Preparation of Draft Guidance Manual	Immediately upon Notice of the Effective Date of the Consent Decree
Submit to DPR for Review	8 months from the Effective Date of the Consent Decree
Revise Draft Guidance Manual per DPR's Comments & Suggestions	120 days after receiving revisions from DPR
Publish Final Guidance Manual, distribute to CWS' grower customers, provide final copy to DPR	60 days after completing revisions to Draft Guidance Manual

II. Preparation of Cal-ARP Plans

California regulations require Cal-ARP Plans to be prepared for the use of chlorine gas. (See Cal. Code of Regs., tit. 19, §§ 2735.1 to 2785.) In accordance with these requirements, CWS has previously paid for the development of a Cal-ARP template to be used by CWS in the preparation of individual Cal-ARP Plans for its grower customers. CWS has also previously spent significant amounts of time and resources preparing County specific templates for the Counties of Kings and Fresno, at the request of each County. Finally, CWS has previously assisted, and currently assists, its grower customers with the preparation of individual Cal-ARP Plans, utilizing the templates previously developed by and for CWS. CWS will continue to assist its grower customers in complying with all applicable regulatory requirements associated with the preparation and implementation of Cal-ARP Plans. As Part II of the SEP, CWS proposes to maintain and revise as necessary the Cal-ARP templates, and proposes to prepare, maintain and revise as necessary individual grower Cal-ARP Plans without charge until December 31, 2010. As part of this SEP, CWS has prepared or will prepare a minimum of 47 Cal-ARP Plans for its grower customers without charge.

No later than January 30, 2011, CWS will submit to DPR a written certification that it has complied with Part II of the SEP (Preparation of Cal-ARP Plans). CWS will also maintain documentation supporting the certification (e.g., Cal-ARP templates and copies of individual Cal-ARP Plans) and documentation of the costs of assisting customers with Cal-ARP compliance, for two years from the Effective Date of the Consent Decree.¹ Such documentation must be made available to DPR upon request. If DPR requests such documentation, CWS may submit the documents to DPR as confidential proprietary business information. If, pursuant to the California Public Records Act, DPR determines that CWS' documents are confidential documents, they will not be considered public documents and will not be made available or disseminated by DPR to the public.

¹ Documentation of costs may include documentation of the amount of time spent preparing and/or revising Cal-ARP plans for individuals, multiplied by the cost per hour that would be assessed to an individual for the preparation and/or revision of the Cal-ARP plan.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **State of California Department of Pesticide Regulation v. Calandri, John A., et al.**

No.: **BC 433811**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 23, 2010 I served the attached **Consent Decree Between Plaintiff and Tito Balling, Inc. dba California Water Services (signed by the judge 7/14/10)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Richard Z. Zimmer, Esq.
Clifford & Brown
1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301

Dale Dorfmeier, Esq.
Petrie, Dorfmeier & Morris LLP
2014 Tulare Street, Suite 830
Fresno, CA 93721

Teresa A. Dunham
Somach, Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 23, 2010, at Los Angeles, California.

Olivia Padilla
Declarant



Signature