

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-026

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On July 11, 2014, the Executive Ethics Board (Board) initiated a complaint alleging that ██████████, a former land manager with the Department of Natural Resources (DNR), may have violated the Ethics in Public Service Act by accepting employment with Yakima Valley Orchards and Allen Brothers (YVO) where he manages several leases between the company and DNR.

2. [REDACTED] was employed with DNR as a Lands Manager in charge of most of DNR's orchards and vineyard leases. Several of those leases were with YVO. [REDACTED] resigned from DNR on November 1, 2013 and immediately went to work for YVO as their Chief of Orchard Operations.

3. According to [REDACTED] DNR position description, his job duties were to provide leadership and expertise in all phases of lease development, administration, and management of the South East Regions, Orchards and Vineyard Program. This included managing all facets of the leases from implementation, rental rate adjustments, amendments, renewals and collections. In addition, he was to work with lessees to bring delinquent accounts current and deal with any compliance issues with the lease.

4. [REDACTED] DNR Manager, Randy Niessner (Mr. Niessner), indicated that Mr. [REDACTED] was responsible for ensuring contract compliance and that payments were being made as specified in the contract. All payments would be monitored through accounting. Mr. Niessner further indicated that [REDACTED] monitored and reported compliance of the lease agreements by the lessee.

5. Prior to leaving DNR, [REDACTED] managed three leases between DNR and YVO. At the time of [REDACTED]'s resignation from DNR, YVO owed DNR approximately \$208,415.79. The overdue funds were received from YVO in June and July of 2014.

6. [REDACTED] current position with YVO is identified as the Chief of Orchard Operations. Mr. Niessner advised Board staff that [REDACTED] in his position with YVO, is involved in the management of the same DNR leases that he managed as a DNR employee.

7. According to information from DNR, DNR currently has four leases with YVO and Allen Orchards. [REDACTED] was responsible for the management of these leases while at DNR.

<b>Company Name</b>	<b>Contract</b>	<b>Start Date</b>	<b>End Date</b>	<b>Contract Amount</b>
Allen Bros LLC	C1200082497	04/01/2009	12/31/2034	Over \$10,000.00
Yakima Valley Orchards	C1200076032	04/04/2004	12/31/2028	Over \$10,000
Yakima Valley Orchards	C1200076033	04/04/2004	12/31/2028	Over \$10,000
Yakima Valley Orchards	C1200A74300	01/01/2013	12/31/2037	Over \$10,000

### **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, restricts former state employees from accepting certain offers of employment. RCW 42.52.080(1) states:

No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization..

2. Based on the stipulated facts above, [REDACTED] left state service and accepted employment with a company that he administered a contract with during his last two years of state service in violation of RCW 42.52.080 (1).

3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

### **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, an aggravating factors is that [REDACTED] was in a position of trust within DNR. These types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor the [REDACTED] is no longer employed by the state of Washington.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of seven hundred and fifty dollars (\$750.00).

12. The civil penalty in the amount of seven hundred and fifty dollars (\$750.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

**II. CERTIFICATION**

I, [REDACTED] hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

[REDACTED]

7-23-2015

Respondent

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

8/10/15  
Date

**II. ORDER**

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓

ACCEPTED in its entirety;

\_\_\_\_\_

REJECTED in its entirety;


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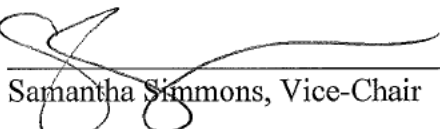
MODIFIED. This stipulation will become the order of the Board if the


Respondent approves\* the following modification(s):

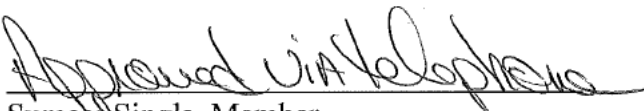
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DATED this 11<sup>th</sup> day of September 2015

  
Anna Dudek Ross, Chair

  
Samantha Simmons, Vice-Chair

  
Lisa Marsh, Member

  
Sumeer Singla, Member

\* I,                     , accept/do not accept (circle one) the proposed modification(s).

                    , Respondent                      Date