

Rene' Larranaga
1204 West 5th Street

Alturas, Ca. 96101

basco01@frontiernet.net

530-233-6900

Petition for ACLO Order R5-2018-0001

The Regional Water Board acted on Feb. 1, 2018.

I believe the ACL Order is inappropriate and improper as I have a list of factors for your consideration.

- A. I am being punished twice for the same supposable wrong doing. First punishment for not belonging to a coalition was from NWCA who is a coalition which I was charged a penalty for 2016 and I joined in 2017. Now I am also being charged by Central Valley Regional Water Quality Control Board for not belonging to a coalition in 2016 nor 2017.
- B. When I entered the hearing procedures for ACL R5-2017-0553 , I was given 6 pages of rules on how I needed to meet the different time lines set forth by The Water Board. One rule in particular states that all designated parties shall submit any rebuttal evidence by Jan. 4, 2018 by 5:00 pm. The prosecutions team sent their rebuttal at 6:14pm Jan. 4, 2018. I have enclosed the cover page of their email with the time on it. I did not bring this up to the board for one I defended myself so I was fearful of poking the board or prosecution team before the hearing, but now wonder why I am punished by this ACL order for missing a timeline yet the prosecution team missed a time line and nothing came of it, seems to be double standards.
- C. Economic benefit totals 13,957 plus 10% using the Ben model. During the hearing the economic benefit was brought up by the prosecution team which means that policy only allows the board to lower the fine to the economic benefit. I argued that the Ben Model was not correct to use

H-4 Culpability : 1.3

Higher liabilities should result from intentional or negligent violation as opposed to accidental violations. I do admit that I did not open the mail and read the letters from Central Valley Regional Water Quality. I did not see myself belonging to a coalition so far away from me and even as I spoke to Brett Stevens he only gave me the option to either join Central Valley Regional Water Quality or monitor my own self which neither one seemed right to me. Once I ran into Jerry Kresge from Alturas, Ca. he told me about NECWA and that is when I called them in April 2017. I understand that all the information was in those packets that I received from Central Valley but by not opening them I was neither intentional nor negligent in my doings. I receive many letters from different organizations all the time from Restaurant organizations, Organic Hay organizations, Concrete organizations and usually discard them because as you know ones address is readily available to the public and this day and age their seems to be one scam after another and I have been burnt on occasions. Once I talked to Scott Perrou and I was clear on who he was and he explained to me who he was representing I immediately asked to have a meeting with his team in Rancho Cordova thus showing that I in the past was not being intentional nor negligent but accidental. The degree of culpability by your terms should be .5.

H-4 B Clean up and Cooperation

The factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. I am given a factor of 1.4 from a range of .75 and 1.5. B states CLEAN UP AND COOPERATION NOT CLEAN UP OR COOPERATION. Since there is two classifications and you state that clean up is not applicable here I should only worse case be charged by a .75 factor. On cooperation once I made contact with Scott Perrou I believe he would attest that I have been cooperative even by driving 600 miles to have a meeting with him, Sue, and Paul.

H-5 Step 6 ABILITY TO PAY AND CONTINUE IN BUSINESS

Central Valley Water Quality Control Board shows that the discharger has the ability to pay the total base liability based on property owned by discharger (APN022-510-036) value of \$322,814.00. You also show revenue generated from dischargers Grass sales about \$81,900.00 in 2016. I show this not to be true by showing my Crop yield from Bushey Custom Farming and showing my current property tax bill which I found out that the one that Central Valley used was wrong from the County. Thanks for bringing this to my attention you will see by my Tax bill enclosed that Modoc County made an error. Also you state that discharger owns a Concrete Business and Restaurant in Modoc County. I believe that I should not be punished for working 12-16 hours a day in trying to better myself by your statements in Step 6. So what you are telling me is that if I chose to not be ambitious and work hard and rather just did enough to get by you would look at my case differently? ACL order R5-2017-0002 Baldev S. and Kamaljit K. Batth in this case Step 6 ability to pay and continue in business. You show Fresno County Assessor's Office asset value for year 2014/15 value of \$4,204,815.00. Revenue generated from 268 acres of Grapes and 21 acres of Almonds yielded an estimated \$911,141.00 in revenue in 2015. Baldev and Batth liability amount = \$35,490.00 and which in comparing to mine of \$30,758.00 for 63 acres and yielding \$34,476.40 shows that one size does not fit all. My liability of \$30,758.00 equals to 89% of 2016 gross yield and in Baldev and Batth case their liability of \$35,490.00 equals to .04% of their 2015 gross revenue. This to me shows that the little guy doesn't stand a chance.

H-6 Step 8. Economic Benefit

Central Valley Regional Water Quality Control Board used the Economic benefit Model (Ben) 4 penalty and financial modeling program version 5.6.0. I believe that you used (Ben) program as if I would be monitoring water as a private discharger per Section 2200.6 (3) (A) tier 3. This is not the only program that could have been used. NECW Association had a program that would charge you \$2.00 an acre for past years. You show economic benefit from October 2014 thru September 2017 = \$13,777.00 yet using NECW association program shows \$2.00 an acre times 60 acres times 4 years = \$480.00. The difference of \$13,297.00 of economic benefit of which I did not receive

because almost no one in the state monitors their own water. The board instructed the prosecution team to research the economic benefit during the one hour lunch break. The prosecution teams discovery was that there was an alternative route to take as far monitoring my water and thus would have cost me \$500 plus 10% = \$550.00 of economic advantage. The board chair Dr. Longley then asked "is that the economic benefit now?" which the prosecution said "no we feel the Ben Model is the correct one to use." I disagree First the majority or almost everybody in the state uses a group to monitor water almost no one hires a firm exclusively to monitor their water. By this finding why would the prosecution team state that The Ben Model is the model to use? I am asking for another set of eyes and ears to hear my case for these reasons. My personal taxes also show that this is an unequitable punishment but I couldn't disclose that because it would have been surprise evidence.

5. I am aggrieved by being imposed this incredible fine of \$19,773.00 of which is completely not supported by policy nor by the revenue of business by this parcel.

6. I request that the state relook at my case with old and new evidence and give me a new hearing.

7. The rebuttal from the prosecution team should not have been allowed since it was past the deadline time of Jan. 4, 2018 at 5:00 pm.

8. I am the petitioner

9. Most of my statement was presented to The Regional Board except for the timeline issue, the economic benefit calculation and my personal taxes as explained above.

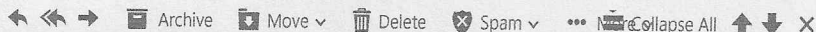
10. I will be making a summary of arguments for The State Board to hear in the near future along with a request for a hearing. As per instructions for filing Water Quality Petitions.

Prosecution Rebuttal: Look at Time.

basco01@frontiernet.net, search your mail



Compose



- Inbox
- Drafts (18)
- Sent
- Archive
- Spam (56)
- Trash (19)

Smart Views

- Important
- Unread
- Starred
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Folders

Recent

Prosecution Team's Rebuttal and Objections; ACL Complaint R5-2... (2)

Ciccarelli, Paul@Waterboards <Paul.Ciccarelli@Waterboards.ca.gov> Jan 4 at 6:14 PM
 To **Laputz, Adam@Waterboards**, **Lancaster, David@Waterboards**
 CC **Basco01@frontiernet.net**, **Altevogt, Andrew@Waterboards**,
McConnell, Sue@Waterboards, **Perrou, Scott@Waterboards**,
Elder, Bryan@Waterboards, **Stevens, Brett L. (CDPH-DFDCS-MCSB)**

Advisory Team:

In accordance with the Second Revised Hearing Procedure for Administrative Civil Liability (ACL) Complaint R5-2017-0553 issued to Rene Larranaga (Discharger), the Central Valley Water Board Prosecution Team submits all materials required for its rebuttal, objections to the Discharger's evidence submitted on 15/18 December 2017, and identification of 120 pages to be printed.

The following documents are attached:

1. Prosecution Team's Rebuttal Brief
2. Prosecution Team's Objections
3. Proposed ACL Order (in .docx format)
4. Attachment A to the Proposed ACL Order (in .docx format)
5. Binder Index w/ identification of 120 pages to be printed.

Please contact me if you have any questions or would like any of the Attachments in other formats (i.e., .pdf or .xlsx).

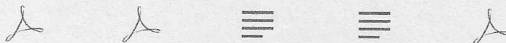
The Discharger is copied on this message.

Sincerely,

*Paul D. Ciccarelli, Attorney
 Office of Enforcement
 State Water Resources Control Board
 801 K Street, 23rd Floor
 Sacramento, CA 95814
 Tel.: 916.322.3227
 Email: Paul.Ciccarelli@Waterboards.ca.gov*

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5 Attachments View all Download all



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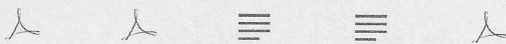
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2018-0001

IN THE MATTER OF

RENE LARRANAGA
MODOC COUNTY

This Order is issued pursuant to California Water Code¹ section 13323 to Rene Larranaga (Discharger) for failing to submit a Report of Waste Discharge (RoWD) required under Water Code section 13260.

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

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in California Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050(e).) The Central Valley Water Board is required to regulate discharges to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of Central Valley Water Board Order R5-2013-0100, Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-Party Group (Individual General Order), and Attachment E of Central Valley Water Board Order R5-2014-0030-R1, Waste Discharge Requirements General Order for Growers within the Sacramento River Watershed Area that are Members of the Third-Party Group (General Order), define "irrigated lands" as "Land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Modoc County, including the Discharger, that were likely discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program [FMMP] land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued requiring landowners to obtain regulatory coverage for lands irrigated for a commercial purpose.

¹ All references are to the California Water Code unless otherwise noted.

5. Evaluation of county assessor and FMMP data indicates that the Discharger owns approximately 60 acres of land irrigated for a commercial purpose in Modoc County, identified as Assessor's Parcel Number (APN) 022-510-036.
6. On 11 August 2014 and 9 September 2014, the Central Valley Water Board issued notices to the Discharger describing new water quality regulations and options available to comply with the regulations.
7. On 28 July 2015, Board staff reviewed aerial photography of Modoc County APN 022-510-036 and found evidence of commercial irrigated lands, with a likely crop type of hay.
8. On 30 December 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive letter (Directive) to the Discharger, sent via certified mail. The Directive was sent based on evidence that the subject parcel contained commercially irrigated land without regulatory coverage.
9. The Directive required the Discharger to obtain regulatory coverage for all commercial irrigated lands that he owns or operates within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could obtain regulatory coverage by enrolling in the General Order or Individual General Order. To enroll in the General Order, the Discharger was required to enroll in the Sacramento Valley Water Quality Coalition (Coalition or SVWQC) and submit a completed Notice of Intent (NOI) with a \$200 administrative processing fee to the Central Valley Water Board. To enroll in the Individual General Order, the Discharger was required to submit a completed NOI with the first year's annual fee to the Central Valley Water Board.
10. The Directive was delivered to the Discharger on 6 January 2016. The Discharger neither obtained regulatory coverage by 21 January 2016 nor contacted the Board.
11. Because the Discharger failed to respond to the Directive, a Notice of Violation (NOV) was sent to the Discharger via certified mail on 3 May 2016. The Discharger's representative received the NOV on 20 May 2016.
12. On 15 December 2016, Board staff attempted a "last chance" phone call to the Discharger. The recording on the answering machine confirmed that the number used by Board staff belonged to the Discharger. Board staff left a message for the Discharger, notifying him that Board staff would pursue enforcement if the Discharger did not obtain regulatory coverage for his irrigated lands. Board staff provided contact information, but the Discharger did not contact staff in response to the phone call.
13. On 10 February 2017, Board staff sent the Discharger a notification letter (Pre-ACL letter) via certified mail, explaining that an Administrative Civil Liability (ACL) Complaint would be issued if he did not obtain regulatory coverage and initiate settlement discussions by 3 March 2017.

14. The Discharger's representative received the pre-ACL letter on 23 February 2017.
15. On 3 March 2017, the Discharger contacted Board staff in response to receiving the pre-ACL letter. A settlement meeting, via conference call, was scheduled for 5 April 2017. A settlement was not reached because the Discharger did not make himself available to Board staff after the meeting was scheduled.
16. On 16 June 2017, Board staff sent the Discharger an offer to settle his administrative civil liability (Compressed ACL) that included a proposed settlement penalty. The Compressed ACL presented the Discharger with the options of accepting the settlement offer, contesting the alleged violation, or rejecting the offer. Board staff did not receive a response to the Compressed ACL.
17. On 8 July 2017, the Discharger enrolled in the Sacramento Valley Water Quality Coalition (Coalition). As of the date on which an ACL Complaint was issued, the Discharger had not obtained regulatory coverage under the General Order because the Discharger failed to submit a completed NOI and \$200 administrative processing fee to the Central Valley Water Board.
18. On 27 November 2017, the Central Valley Water Board received the Discharger's completed NOI to obtain regulatory coverage under the General Order and received the \$200 administrative processing fee.

VIOLATION

19. On 18 September 2017, the Assistant Executive Officer of the Central Valley Water Board issued ACL Complaint R5-2017-0553 to the Discharger in the amount of thirty thousand seven hundred fifty-eight dollars (\$30,758) for his failure to submit a RoWD or failure to obtain regulatory coverage under the General Order or Individual General Order as required by Water Code section 13260. As of the date of the ACL Complaint, the applicable report or fee was 606 days past due.

REGULATORY CONSIDERATIONS

20. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).
21. Water Code section 13260, subdivision (a), requires that any "person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system," shall file with the appropriate regional board a report of waste discharge containing such information and data as may be required by the regional board. The Central Valley Water Board

implements Water Code section 13260 in the area where the Discharger's lands are located.

22. Pursuant to Water Code section 13260, subdivision (d)(1)(A), each person required to submit a report under subdivision (a) shall submit a fee according to an established fee schedule.
23. Pursuant to Water Code section 13261, subdivision (a), "A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
24. Water Code section 13261, subdivision (b)(1), states:

Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.
25. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
26. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13327.
27. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Order. The proposed administrative civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
28. **Maximum and Minimum Penalties.** As described above, the statutory maximum under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. As of the date of the ACL Complaint, the Discharger was out of compliance for 606 days, thus

resulting in a maximum penalty of \$606,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to timely enroll under Order R5-2014-0030-R1 is \$13,957 (see Attachment A for how this was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$15,353).

29. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
30. Issuance of this ACL Order is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).
31. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
32. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
33. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Rene Larranaga shall be assessed an administrative civil liability in the amount of nineteen thousand seven hundred seventy-three dollars (\$19,773).
2. Payment shall be made no later than 30 days from the date on which this Order is issued by check payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this ACL Order written upon it.

I, Pamela C. Creedon, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region on 1 February 2018.

Original signed by

PAMELA C. CREEDON, Executive Officer

Attachment A: Penalty Calculation Methodology

The administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy). The administrative civil liability takes into account such factors as Rene Larranaga's (hereafter Discharger) culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Each factor of the Enforcement Policy and its corresponding score for the violation is presented below:

Step 1. Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering the potential for harm and the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Staff determined that the potential for harm is moderate because the characteristics of the violation present a substantial threat to beneficial uses, and the circumstances of the violation indicate a substantial potential for harm.

The Discharger failed to timely submit a Report of Waste Discharge (RoWD) or enroll under an applicable General Order¹ for discharges from irrigated cropland despite evidence indicating that the Discharger irrigates cropland. Irrigated cropland can be a source of sediment, pesticide residue, nitrate, and other waste discharges to waters of the state. Unregulated discharges of such wastes can present a substantial threat to beneficial uses and/or indicate a substantial potential for harm to beneficial uses. Board staff investigated the Discharger's irrigated parcels and found a potential for wastes to discharge to surface waters. The Discharger testified, however, that no pesticides or fertilizers are applied to the parcel in question. This finding decreases the potential for harm.

The Discharger undermined the regulatory program because it failed to file a RoWD or timely enroll under an applicable General Order. Dischargers regulated under an applicable General Order either conduct monitoring or contribute to monitoring efforts to identify water quality problems associated with their operations. Regulated

¹ The following General Orders are applicable to the Discharger: 1) General Order R5-2013-0100, *Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-Party Group* (Individual General Order); and 2) Order R5-2014-0030, *Waste Discharge Requirements General Order for Growers Within the Sacramento River Watershed that are Members of a Third-Party Group*.

dischargers also report on the practices they engage to protect water quality. By failing to provide monitoring results or information on its practices, the Discharger impaired the Central Valley Water Board's efforts to assess potential impacts and risks to water quality, and circumvented the Central Valley Water Board's ability to take enforcement actions to address problems.

Additionally, the regulatory program is compromised when staff resources are directed to bringing dischargers into enrollment compliance rather than being available for outreach and assistance with General Order compliance. Since the violation thwarts the Central Valley Water Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This, in turn, presents a threat to beneficial uses and indicates a substantial potential for harm.

Deviation from Requirement

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements.

The deviation from the requirement is major. During the period of non-compliance, the Discharger disregarded the regulatory requirements and rendered those requirements ineffective. The Discharger undermined the efforts of the Central Valley Water Board's Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for its waste discharges. A discharger's regulatory coverage is foundational to the Board's efforts to protect water quality. The Orders adopted by the Board specify the expectations and requirements for water quality protection, which do not apply until a discharger is covered by an appropriate Order. The requirements in the applicable Orders are rendered ineffective when a discharger has not gone through the process to obtain coverage under an applicable Order.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for violations with a moderate potential for harm and a major deviation from requirement. The Central Valley Water Board Prosecution Team (Prosecution Team) used a factor of 0.45 because it determined that the Discharger's irrigated lands have the potential to discharge to surface waters, but these potential discharges would not contain pesticides or fertilizers (see Table 3 on p. 16 of the Enforcement Policy).

Multiple Day Violations: On 30 December 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger, which required it to obtain regulatory coverage within 15 calendar days or face a potential administrative civil liability. The Discharger received the Directive on 6 January 2016. To avoid formal enforcement, the Discharger was required to obtain regulatory coverage no later than 21 January 2016. The Discharger failed to meet this deadline.

The Discharger joined the Sacramento Valley Water Quality Coalition (Coalition) on 8 July 2017, after it received a pre-Administrative Civil Liability (pre-ACL) letter and a

Compressed ACL from the Assistant Executive Officer. As of the date of the ACL Complaint, the Discharger had not submitted a Notice of Intent for General Order R5-2014-0030 to the Central Valley Water Board, and was in violation of the Directive for 606 days.

Violations under Water Code section 13261 are assessed on a per day basis. However, the violations at issue qualify for the alternative approach to penalty calculation under the Enforcement Policy (Page 18). Under that approach, for violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used.

Here, the Central Valley Water Board finds that the Discharger's failure to submit a RoWD or NOI and join a coalition is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Discharger's failure to submit a RoWD or NOI has detrimentally impacted the environment on a daily basis, since obtaining regulatory coverage does not result in an immediate evaluation of, or changes in, practices that could be impacting water quality. There is no daily detrimental impact to the regulatory program because information that would have been provided by the Discharger pursuant to the regulatory requirements would have been provided on an intermittent, rather than daily basis.

The above finding justifies use of the alternate approach to penalty calculation for multiple day violations. The minimum number of days of violation to be assessed under the alternate approach in this case is 26. The nature of this case, including the current and near future irrigated acreage of the parcels, warrants using 26 days as the appropriate days of violation for the penalty calculation.

Initial Liability Amount

The initial liability amount for the violation calculated on a per-day basis is as follows:

$$\text{\$1,000/day} \times 26 \text{ days} \times 0.45 = \text{\$11,700}$$

Step 4. Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's history of violations. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the amount for each violation to determine the revised amount for that violation.

a) *Culpability*: 1.3

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was given the score of 1.3, which increases the fine. The Discharger received two notices describing the new water quality regulations and options available to comply prior to receiving the Directive to obtain regulatory coverage. The Discharger did not comply with the Directive despite a follow up Notice of Violation and "last chance" phone message from Board staff.

The multiple notices indicate that the Discharger had knowledge of the regulatory requirements and acted intentionally, or at least negligently, in ignoring the requirement to obtain regulatory coverage. Therefore, a culpability factor of 1.3 is warranted.

b) *Cleanup and Cooperation*: 1.3

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a score of 1.3, which increases the fine.

Central Valley Water Board staff provided the Discharger multiple opportunities and ample time to resolve the violation prior to issuance an ACL Complaint. After the Discharger failed to respond to a follow up Notice of Violation, Board staff sent the Discharger a notification letter (Pre- ACL) informing him that an ACL Complaint would be issued if he did not obtain regulatory coverage and initiate settlement discussions. The Discharger received the Pre-ACL, but failed to participate in settlement discussions. Board staff then made another attempt to resolve the violation and resulting ACL through issuance of a Compressed ACL (Attachment G of the ACL Complaint), which included a proposed settlement penalty. In response to the Compressed ACL, the Discharger joined a coalition but failed to submit a Notice of Intent and administrative processing fee to the Board, and failed to engage the Prosecution Team to resolve the ACL proposed in the Compressed ACL. The Discharger obtained regulatory coverage under the General Order on 27 November 2017 when the Board received the complete NOI and two hundred dollar processing fee.

Cleanup is not applicable here.

c) *History of Violations*: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger was given the score of 1.0 because the Discharger does not have a history of enforcement actions.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

a) *Total Base Liability Amount: \$19,773.* (Initial Liability (\$11,700) x Adjustments (1.3)(1.3)(1.0)).

Step 6. Ability to Pay and Continue in Business

As per the Enforcement Policy, “[t]he ability of a discharger to pay an ACL is determined by its revenues and assets.” The Discharger has the ability to pay the Total Base Liability Amount based on the value of the Discharger’s property and estimated revenue from crops. According to the Modoc County Assessor’s Office, the property owned by the Discharger (APN 022-510-036) has an assessed value of \$171,814. The Discharger estimates that the 60 acres of alfalfa hay generated \$34,476 in revenue in 2016. The Discharger also owns a concrete business and a restaurant in Modoc County.

The result of the above preliminary investigation of publicly available information provides an initial showing that the Discharger has sufficient revenue and assets to pay the proposed liability. The initial showing shifts the burden of proof for this factor to the Discharger to produce sufficient evidence that he lacks an ability to pay.

There are no factors under this category that warrant an adjustment.

Step 7. Other Factors as Justice May Require

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made.

The costs of investigation and enforcement are “other factors as justice may require,” and could be considered in relation to the Total Base Liability Amount to increase the Final Liability Amount. The Prosecution Team has incurred a significant amount of staff costs associated with the investigation and enforcement of the violation. While staff costs could be added to the penalty, the Prosecution Team, in its discretion, elected not to pursue staff costs in this matter.

There are no factors under this category that warrant an adjustment.

Step 8. Economic Benefit²

Economic Benefit: \$13,957

The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. Economic benefit was calculated

² Order R5-2013-0100 includes an estimate of average annual costs per acre related to that Order. The average annual costs are not used in this economic benefit analysis, since the costs represent an average cost, if the Order were applied Central Valley-wide. The cost estimates made in this analysis are based on the circumstances and facts related to these Dischargers, rather than a broad class of dischargers.

using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)³ penalty and financial modeling program, version 5.6.0. BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit in this case. The benefit is calculated by identifying the regulation at issue, the appropriate compliance action, the date of noncompliance, the compliance date, and the penalty payment date.

Under the Irrigated Lands Regulatory Program, an individual may choose to comply with the program by either filing an NOI to get regulatory coverage as an "individual grower," or filing a NOI for regulatory coverage under a third-party group Order and joining a coalition. Because the Central Valley Water Board cannot force a Discharger to join a coalition, the economic benefit calculation is based on the assumption that General Order R5-2013-0100 (Individual General Order) applied to the Discharger during its period of non-compliance.

In this case, 14 compliance actions were identified for the Discharger for fiscal years 2014 – 2017, including \$4,236 in avoided annual permit fees, \$6,246 in avoided groundwater monitoring, \$6,411 in avoided surface water monitoring, and \$3,840 in avoided annual monitoring reports. In addition, the Discharger delayed completion of the required Farm Water Quality Plan until after their eventual enrollment in the Sacramento Valley Water Quality Coalition. The cost of the plan is estimated at \$4,800 and is assumed to have been completed at the time of their enrollment (8 July 2017). Details regarding each compliance action and their associated non-compliance date are included in Exhibits 14 and 15. For the purposes of computing the economic benefit using BEN, the penalty payment date is assumed to be the tentative date of hearing, 1 February 2018. Based on the specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$13,957.

Step 9. Minimum and Maximum Liability Amounts

a) *Minimum Liability Amount: \$15,353*

The Enforcement Policy recommends that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Discharger's economic benefit obtained from the violation is \$13,957. Therefore, the minimum liability is \$15,353.

b) *Maximum Liability Amount: \$606,000*

The maximum administrative liability amount is the maximum amount allowed by Water Code section 13261, which is \$1,000 for each day in which the violation occurs. The Discharger was in violation for 606 days, which results in a maximum liability of \$606,000.

³ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount for failure to timely submit a RoWD as required under WaterCode section 13260 is **nineteen thousand seven hundred seventy-three dollars (\$19,773)**.