

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:

Rosemary A. Maciel Survivor's Trust)
Joseph G. Maciel Bypass Trust)
Former SIC Dairy #1)

Order No. R5-2015-0509

Settlement Agreement and Stipulation
for Entry of Order; Order

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and Rosemary A. Maciel Survivor's Trust and Joseph G. Maciel Bypass Trust (former owner) (the "Discharger") (Prosecution Staff and Discharger are collectively, the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The Rosemary A. Maciel Survivor's Trust and the Joseph G. Maciel Bypass Trust owned the former SIC Dairy #1 (Dairy), located at [REDACTED] Hanford, California, County of Kings. Mr. Joe Maciel is the Trustee of both trusts. On 3 October 2013, the Central Valley Water Board issued the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 ("Reissued General Order") and the Reissued General Order's corresponding Monitoring and Reporting Program. The Dairy is regulated by the Reissued General Order, which names the owner as "the Discharger."

2. On June 19, 2014, the Central Valley Water Board issued a letter detailing the forthcoming assessment of civil liability for the failure to comply with California Water Code (Water Code) section 13267 to the Discharger ("Prefiling Letter") (Exhibit A). The Prefiling Letter notified the Discharger that a 2012 Annual Report required under the Reissued General Order had not been submitted for the Dairy, which is a violation of Water Code section 13267. The Prefiling Letter also informed the Discharger that the Assistant Executive Officer of the Central Valley Water Board recommended imposing

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an administrative civil liability totaling \$9,282 for the alleged violation of the Reissued General Order.

3. The Facility was previously operated by Manuel Rosa (Operator). On or around April 2012, the Dairy's Operator ceased dairy operations and at present, there are no dairy operations at the Facility.

4. The Parties engaged in settlement negotiations and agree to settle the violation cited in the Prefiling Letter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The liability imposed in this Order is less than the liability determined using the penalty methodology in the State Water Board Enforcement Policy, as described in Attachment A. The adjustment is the result of settlement negotiations between the parties and is based on the inherent risks associate with an administrative hearing and potential subsequent litigation. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in Attachment A except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties incorporate Paragraphs 1 through 4 by this reference, as if set forth fully herein, and stipulate to entry of this Order as set forth below, and recommend that the Central Valley Water Board issue this Stipulated Order to effectuate the settlement.

5. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$4,641. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, FOUR THOUSAND SIX HUNDRED AND FORTY-ONE DOLLARS (\$4,641), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Office, Attn: ACL Payment, PO Box 1888, Sacramento, California 95812-1888, and shall send a copy of the check to Clay Rodgers, Central Valley Water Board, 1685 "E" Street, Fresno, California 93706-2007, and Vanessa Young, Office of Enforcement, State Water Resources Control Board (State Water Board), 1001 "I" Street, 16th Floor, Sacramento, California 95814.

6. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Prefiling Letter may subject it to further enforcement, including additional administrative civil liability.

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7. Party Contacts for Communications related to Stipulated Order:

For the Central Valley Water Board:

Clay Rodgers
Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, CA 93706-2007

For the Discharger:

Rosemary A. Maciel Survivor's Trust
Joseph G. Maciel Bypass Trust
c/o Joe Maciel
[REDACTED]
Hanford, CA 93230

8. Attorney's Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

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

10. Public Notice: The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

11. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning

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any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

12. No Waiver of Right to Enforce: The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

13. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

14. Modification: This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.

15. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. Notwithstanding objections on the admissibility of settlement discussions as evidence in a hearing, the Parties agree to waive any and all objections related to their efforts to settle this matter including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

16. Admission of Liability: In settling this matter, the Discharger admits to a violation of the Reissued General Order, and recognizes that this Stipulated Order may

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be used as evidence of a prior enforcement action consistent with Water Code section 13327.

17. Waiver of Hearing: The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives their right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

18. Waiver of Right to Petition: The Discharger hereby waives their right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. Covenant Not to Sue: The Discharger agrees to a covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

20. Central Valley Water Board is Not Liable: Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

21. Authority to Bind: Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

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

23. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

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

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IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: Clay L. Rodgers
Clay L. Rodgers
Assistant Executive Officer

Date: 12/22/14

By: Joe Maciel
Trustee for the Rosemary A. Maciel Survivor's Trust and
Joseph G. Maciel Bypass Trust, Discharger

Date: 12/22/14

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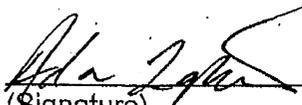
Order of the Central Valley Water Board

25. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code section 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Prefiling Letter or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

26. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a)(2). The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

27. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

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


(Signature)

Adam Laputz, Assistant Executive Officer
(Print Name and Title)

Date: 1-27-15

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EXHIBIT A
FORTHCOMING ASSESSMENT OF CIVIL LIABILITY (Prefiling Letter)



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

FILE

19 June 2014

Rosemarie Maciel (former owner)
c/o Joe Maciel
Former SIC Dairy #1
[REDACTED]
Hanford, CA 93230

CERTIFIED MAIL
7013 2250 0002 0464 3577

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT THE ANNUAL REPORT FOR 2012, FORMER SIC DAIRY #1, WDIID 5C16NC00029, 3772 10TH AVENUE, HANFORD, KINGS COUNTY

The Central Valley Regional Water Board (Central Valley Water Board) has requested that the State Water Resources Control Board, Office of Enforcement, assist it in bringing formal enforcement in administrative civil liability for failing to submit the annual report for 2012 required pursuant to Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and later replaced by Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Central Valley Water Board intends to proceed with formal enforcement by issuing an Administrative Civil Liability Complaint (Complaint); however, prior to prosecuting this case, we offer the opportunity to discuss the alleged violation, including the option of settlement.

The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required pursuant to section 13267 of the California Water Code that an Annual Report for the calendar year 2012 (2012 Annual Report) be submitted for regulated facilities by 1 July 2013. On 22 August 2013, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2012 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2012 Annual Report.

Failing to submit the annual report subjects you to civil penalties pursuant to section 13268 of the Water Code of up to one thousand dollars (\$1,000) for each day the violation occurs.

Further delay in submitting the annual report subjects you to ongoing penalties. The maximum penalty as of 19 June 2014 for this violation is three hundred fifty-three thousand dollars (\$353,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (353 total days of violation X \$1,000). Consistent with the State Water

Resources Control Board's Water Quality Enforcement Policy, the Assistant Executive Officer of the Central Valley Water Board intends to issue you a Complaint in the amount of nine thousand two hundred eighty-two dollars (\$9,282) for this violation. This recommended penalty amount is further explained in Attachment A. Please note, as long as you remain out of compliance, the Assistant Executive Officer reserves its authority to issue a Complaint in an amount that exceeds the penalty calculated in Attachment A.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violation and proposed penalty amount. If you wish to schedule an appointment to discuss this matter, contact Dale Essary at (559) 445-5093 no later than **3 July 2014**. If the Central Valley Water Board does not receive a response by this date, the Assistant Executive Officer will issue a complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board.

If you have any questions regarding this notice, please contact Dale Essary by phone at (559) 445-5093 or by email at Dale.Essary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising WRC Engineer

cc: Mr. Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Mr. Clay Rodgers, Central Valley Water Board, Fresno
Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Mr. David Boyers, Office of Enforcement, SWRCB, Sacramento
Kings County Planning Division, Hanford
Kings County Division of Environmental Health Services, Hanford

**Attachment A – Stipulated Order
Specific Factors Considered – Civil Liability
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Former SIC Dairy #1**

The Central Valley Water Board alleges that the Discharger failed to submit the 2012 Annual Report required to be submitted by 1 July 2013. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

(Failure to submit 2012 Annual Report): In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2012 Annual Report must be submitted for regulated facilities by 1 July 2013.

Calculation of Penalty for Failure to Submit 2012 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2012 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. The submission of an Annual Report is a means through which the Central Valley Water Board can evaluate a Discharger's compliance with the Reissued General Order. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

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Initial Liability

The failure to submit annual reports is violation subject to civil liability under Water Code section 13268(b)(1) in an amount not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2012 Annual Report by 1 July 2013 as required by the Reissued General Order and the accompanying Monitoring and Reporting Program (MRP). A pre-filing settlement letter (Prefiling Letter) issued to the Discharger on 19 June 2014 establishes a total of 353 days in which the Discharger has been out of compliance for failure to submit the 2012 Annual Report, and is the basis for determining the recommended civil liability amount.

Step 4. Adjustment Factors

The Enforcement Policy allows for multi-day violations to be consolidated provided certain findings can be made. The Enforcement Policy also describes three factors related to the Discharger's conduct that should be considered for modification of the initial liability amount: the Discharger's culpability, the Discharger's efforts to clean up or cooperate with regulatory authorities after the violation, and the Discharger's history of violations. After each of these factors is considered for the violation alleged, the applicable factor should be multiplied by the proposed liability amount for the violation.

a) Multiple Day Violations

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to submit the annual report does not result in an economic benefit that can be measured on a daily basis. The Discharger only receives an economic benefit for the one-time cost of submitting the report to the Central Valley Water Board, and does not result in an economic benefit for every day the Discharger fails to submit the report. Therefore, the alternative approach to calculating the penalty for multiple day violations may be used.

The Prosecution Team recommends applying this alternative approach. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total number of days of violation is

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revised to 17. A calculation of initial liability totals \$5,950 (0.35 per day factor X 17 adjusted days of violation X \$1,000 per day penalty).

b) *Culpability: 1.2*

Discussion: The Discharger was assessed a score of 1.2, which increases the liability amount. The Discharger is enrolled under the Reissued Dairy General Order and is therefore responsible for submitting the 2012 Annual Report. The Discharger's obligation to submit annual monitoring reports is a requirement of the Reissued General Order. In addition, Central Valley Water Board staff issued a Notice of Violation (NOV) notifying the Discharger of its obligation to submit the past-due 2012 Annual Report. The Discharger continues to be in noncompliance. A reasonably prudent discharger enrolled under in the Reissued Dairy General Order would timely submit mandatory reports. A factor of 1.2 is appropriate where the Discharger has been enrolled under the Reissued Dairy General Order and Central Valley Water Board staff previously provided the Discharger the opportunity to submit the past-due report.

c) *Cleanup and Cooperation: 1.3*

Discussion: The Discharger was assessed a score of 1.3, which increases the liability amount. The Discharger was issued a NOV on 29 August 2014, which requested that the report be submitted as soon as possible to minimize the ongoing accumulation of penalties. A factor of 1.3 is appropriate where the Discharger was unresponsive to the NOV, and has shown no cooperation with Central Valley Water Board staff to submit the annual report. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

d) *History of Violations: 1*

Discussion: The Discharger was assessed a score of 1 which neither increases nor decreases the fine. The Central Valley Water Board has no documentation of past violations.

Step 5. Determination of Total Base Liability Amount

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

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- a) *Total Base Liability Amount: \$9,282* (Initial Liability (\$5,950) x Adjustments (1.2)(1.3)(1).

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

- a) *Adjusted Total Base Liability Amount: \$9,282*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$9,282 + \$0 (Staff Costs) = \$9,282.*
- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$989*

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2012 Annual Report. This is based on the Discharger's cost to produce one annual report (\$989). The adjusted Total Base Liability Amount of \$9,282 is more than at least 10% higher than the economic benefit amount (\$989) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount: \$1,088*

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Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$989. Therefore, the minimum liability amount is \$1,088.

b) *Maximum Liability Amount:* **\$353,000**

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (353 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2012 Annual Report is **\$9,282**.