



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

24 November 2015

M.C. Land Company
7297 Elder Ave
Hanford, CA 93230

CERTIFIED MAIL.
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ORDER APPROVING SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY, ORDER R5-2015-0537, FOR MC LAND COMPANY

The enclosed Order approves the settlement agreement (Stipulation) between the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) and M.C. Land Company.

The Order has been approved by the Central Valley Water Board's Executive Officer. On or about 13 October 2015, you endorsed the Stipulation by providing a signed copy to Board staff. To finalize the Stipulation and close your enforcement case with the Board, you must submit payment per the instructions provided in Stipulations 1 and 2 of the enclosed Order, and as described below:

- 1) **Twenty-three thousand dollars (\$23,000)** shall be paid to the State Water Board *Cleanup and Abatement Account*.
- 2) **Twenty-three thousand dollars (\$23,000)** shall be paid to the Rose Foundation for Communities and the Environment (Rose Foundation).
- 3) **Six hundred ninety dollars (\$690)** shall be paid to the Rose Foundation for the specific Supplemental Environmental Project described in Stipulation 3 of the enclosed Order.

Pursuant to the Order, you have 30 days from the date of the Executive Officer's approval to arrange payment.

If you have any questions regarding the enclosed settlement agreement, please contact David Sholes at (559) 445-6279, or via e-mail at David.Sholes@waterboards.ca.gov.

CLAY L. RODGERS
Assistant Executive Officer

Enclosure: Order R5-2015-0537

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0537
IN THE MATTER OF
M.C. LAND COMPANY

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 California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and M.C. Land Company (Discharger)(collectively known as 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.

Recitals

1. On 19 February 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to M.C. Land Company. The Directive required M.C. Land Company to obtain regulatory coverage for its irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could obtain coverage by joining the appropriate coalition(s), or by submitting a Report of Waste Discharge (RoWD).
2. On 12 March 2015, staff received a letter from M.C. Land Company requesting exemption from the program because its land in Kern County used a tail pit return system that resulted in no waste water being discharged from its orchard. On 24 March 2015, staff sent an email response stating that because there was still potential to discharge to waters of the state, the parcels would require regulatory coverage. M.C. Land Company did not respond to the email or obtain coverage by the 14 March 2015 deadline.
3. Because the Discharger failed to obtain regulatory coverage by the 14 March 2015 deadline, a Notice of Violation (NOV) was sent via certified mail to the Discharger on 7 April 2015.
4. M.C. Land Company neither obtained regulatory coverage nor contacted the Board in response to the NOV.
5. On 14 May 2015, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability (ACL) Complaint R5-2015-0524 in the amount of fifty one thousand eight hundred seventy dollars (\$51,870) against Discharger for failing to submit a RoWD as required under the Directive. Pursuant to Enforcement Policy section

VI.B (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the ACL amount, as outlined below, in consideration of hearing and/or litigation risk.

6. On 8 June 2015, the Discharger joined the Kern River Watershed Coalition Authority. Board records indicate that the Discharger enrolled 7 parcels comprised of 156 acres in the Kern River Watershed Coalition Authority. On 15 July 2015, the Discharger submitted a Notice of Intent (NOI) and the NOI processing fee to the Central Valley Water Board.
7. On 8 June 2015, the Discharger joined the Kings River Water Quality Coalition. Board records indicate that the Discharger enrolled 3 parcels comprised of 307 acres in the Kings River Water Quality Coalition. On 15 July 2015, the Discharger submitted a Notice of Intent (NOI) and the NOI processing fee to the Central Valley Water Board.

Regulatory Considerations

8. As of the date of the ACL Complaint, the Prosecution Team concluded that the Discharger violated Water Code section 13260 by failing to obtain regulatory coverage for a period of 61 days. The Central Valley Water Board may assess an ACL based on Water Code section 13261 for that violation.
9. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge water 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 Water Quality Control Board (Regional Board) a RoWD containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement.
10. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Water Code section 13260 when so requested by a Regional Board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
11. Water Code section 13261, subdivision (b)(1), states that civil liability may be administratively imposed by a Regional Board or the State Water Resources Control Board (State Water Board) in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 of the Water Code for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.
12. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board is required to 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. Attachment A, which is hereby fully incorporated into this Order by reference, describes the penalty calculation.

Settlement

13. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation 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 Central Valley Water Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public.
14. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of \$46,000 against the Discharger.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an ACL totaling **forty-six thousand dollars (\$46,000)** to the Central Valley Water Board to resolve the alleged Water Code violation, specifically:
 - a. **Twenty-three thousand dollars (\$23,000)** shall be paid to the State Water Board *Cleanup and Abatement Account*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board *Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to David Sholes, Central Valley Water Quality Control Board, 1685 E Street, Fresno, California 93706.
 - b. **Twenty-three thousand dollars (\$23,000)** shall be paid to the Rose Foundation for Communities and the Environment (Rose Foundation). Out of that amount, twenty-one thousand three hundred ninety dollars (\$21,390) shall be distributed in its entirety by the Rose Foundation to the Central California Environmental

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Justice Network. The remaining one thousand six hundred ten dollars (\$1,610) shall be used for the Rose Foundation's Supplemental Environmental Project (SEP) Program Oversight. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board. Payment shall be provided to the Rose Foundation in the form of a single check payable to the Rose Foundation. Payment shall be sent to the following address: Rose Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, California 94612-2218. A copy of the check shall be sent to David Sholes at the address set forth above.

2. **Oversight Payment:** In addition to the ACL in Stipulation 1, the Discharger hereby agrees to pay **six hundred ninety dollars (\$690)** to the Rose Foundation for the SEP oversight for the specific SEP described in Stipulation 3. Attachment B, which is hereby incorporated into this Order by reference, describes the Rose Foundation's SEP Development and SEP Oversight activities in detail. A copy of the check shall be sent to David Sholes at the address set forth above.

3. **Supplemental Environmental Project:**
 - a. The Discharger and the Central Valley Water Board agree that the payment specified in Stipulation 1.b is a SEP, and that the amount specified (hereafter SEP amount) will be treated as a Suspended Administrative Civil Liability for purposes of this Stipulated Order. Upon the Discharger's full payment of its SEP obligations under this Stipulated Order, Central Valley Water Board staff shall send the Discharger a letter recognizing the satisfactory completion of its SEP obligations. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent waiver of the SEP Suspended Administrative Civil Liability.

 - b. Using the grant funds, the Central California Environmental Justice Network will conduct a one (1) year project to improve water quality pollution prevention efforts in Fresno and Kern Counties with an emphasis on community participation. The Central California Environmental Justice Network will work in conjunction with the Fresno Environmental Reporting Network (FERN) and the Kern Environmental Enforcement Network (KEEN), both existing resident reporting groups, to enhance residents' abilities to identify, monitor, and report potential threats to groundwater and surface watersheds. The Central California Environmental Justice Network will also create two "Water Watcher" resident groups in Lamont and Riverdale. A full Proposal for the Project—including a list of deliverables and timeline—is included as Attachment C, which is hereby incorporated into this Order.

4. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL 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 ACL Complaint may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

5. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:
Clay Rodgers – Assistant Executive Officer
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, California 93706
(559) 445-5102

Kailyn Ellison – Attorney
Office of Enforcement, State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, California 95812
(916) 445-9557

For the Discharger:
Jan L. Kahn, Esq.
Kahn, Soares & Conway, LLP
219 N. Douty Street
Hanford, California 93230
(559) 584-3337

6. **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.
7. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified in Stipulation 1.
8. **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 Assistant 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 it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

9. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
10. **No Waiver of Right to Enforce:** The failure of the Prosecution Team 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 this Stipulated Order. The failure of the Prosecution Team 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. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Order.
11. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
12. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
13. **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 the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408,

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Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also 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 to the extent that they 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
- b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

14. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
15. **Waiver of Right to Petition:** The Discharger hereby waives the 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 waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
16. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
17. **Water Boards 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 the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
18. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

19. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
20. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
21. **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.
22. **Counterpart Signatures:** This 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.

IT IS SO STIPULATED.



Clay Rodgers
Assistant Executive Officer
For the Central Valley Water Board Prosecution Team

10/15/15

Date



Name:
Title: PARTNER
M.C. Land Company

10/7/2015

Date

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HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for ACL. 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 (CEQA) 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); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.
3. 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 sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.



Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board

11-20-15
Date

ATTACHMENT A

Calculation of Penalty per SWRCB
Water Quality Enforcement Policy

Calculation of Penalty per SWRCB Water Quality Enforcement Policy

The proposed administrative civil liability was derived following the State Water Resources Control Board's ("State Board") Water Quality Enforcement Policy ("Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version 5.4.1" ("Penalty Calculation Worksheet"). The proposed 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.

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

Calculation of Penalty for Violation

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 Discharger has failed to submit a Notice of Intent ("NOI") to comply with the Report of Waste Discharge ("RoWD") requirements or enroll in the Kern River Watershed Coalition Authority and Kings River Water Quality Coalition ("Coalitions") for discharges from irrigated cropland despite evidence that the Discharger owns such cropland. Irrigated cropland can be a source of sediment, pesticide residue, nitrate, and other waste discharged to the 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.

Using Table 3 in the Enforcement Policy, staff has 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. This conclusion is, in part, based on the size of the Discharger's irrigated land parcels, which is approximately 480 acres total.

By failing to file a RoWD or to enroll under an applicable General Order, the Discharger has undermined the regulatory program. Dischargers regulated under an applicable General Order either conduct monitoring or contribute to monitoring efforts to identify water quality problems associated with their operations. In addition, dischargers report on the practices in which they engage to protect water quality. By failing to provide that information, the Discharger frustrates the Central Valley Regional Water Quality Control Board's ("Central Valley Water Board" or "Board") efforts to assess potential impacts and risks to water quality, and circumvents the Board's ability to take necessary enforcement actions to address problems.

The greater the size of the operation, the greater the potential risk, since any practices being implemented by the Discharger that are detrimental to water quality may impact a

much greater area. Moreover, the regulatory program is compromised when staff resources are directed to bringing dischargers into compliance rather than being available for outreach and assistance with regulatory compliance. Since the violation thwarts the 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.

The deviation from the requirement is major. M.C. Land Company has undermined the efforts of the Central Valley Waters Board's Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for waste discharges and rendering that requirement ineffective. 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 the 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 of becoming subject to the Order.

On 19 February 2015, the Central Valley Water Board issued a Directive Letter pursuant to California Water Code section 13260 ("Directive"), which required M.C. Land Company to obtain regulatory coverage within 15 calendar days of receipt or face a potential civil liability. The Directive was received on 27 February 2015; hence, regulatory coverage was required by 14 March 2015.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for those violations in which the potential for harm is moderate and the deviation from requirement is major. Based on the above factors, a per day factor of 0.7 is appropriate. (See pg. 16 of the Enforcement Policy).

Step 4. Adjustment Factors

a) *Culpability*: 1.3

The Discharger was given the score of 1.3 for the Culpability factor. Central Valley Water Board staff sent notices on 21 February 2014 and 28 April 2014 to M.C. Land Company for their parcels in Kings and Tulare County describing the new water quality regulations and the required actions to comply therewith. Letters were also sent on 21 March 2014 and 11 July 2014 for their parcels in Kern County. M.C. Land Company also received the 13260 Directive and Notice of Violation requiring the Discharger to obtain coverage. Despite knowledge of the regulatory requirements, which is exemplified by the notices described above and the 12 March 2015 M.C. Land Company Letter, M.C. Land Company failed to come into compliance. The six notices and failure to come into compliance suggest M.C. Land Company acted intentionally in ignoring the requirement to get regulatory coverage, resulting in a multiplying factor of 1.3.

b) *Cleanup and Cooperation: 1.5*

The Discharger was given the score of 1.5 for the Cleanup and Cooperation factor. The Central Valley Water Board issued the Discharger a Notice of Violation in an effort to allow the Discharger to address the violation prior to the issuance of a complaint. The Discharger did not respond and cooperate with the Central Valley Water Board despite being awarded ample time in which to do so. Despite opportunities to come into compliance, the Discharger did not make any attempt to cooperate with the Central Valley Water Board after denial of the requested exemption. Cleanup is not applicable in this case.

c) *History of Violations: 1.0*

The Discharger was given the score of 1.0, as there is no evidence that M.C. Land Company has a history of violations.

Multiple Day Violations: On 19 February 2015, the Discharger was sent a Directive, which required him to obtain regulatory coverage within 15 calendar days of receiving the Directive or face a potential civil liability. The Directive was received by the Discharger on 27 February 2015. Thus, regulatory coverage was required by 14 March 2015. As of 14 May 2015, the date on which this Complaint was issued, the Discharger was 61 days late in meeting that requirement.

Violations under Water Code section 13260 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy (pg. 30). 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 NOI 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 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.

Moreover, the Discharger's failure to submit a NOI results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is associated predominately with costs of permit fees and submitting an annual monitoring report, which are outlined below.

Either of the above findings justifies use of the alternate approach to penalty calculation for multiple day violations. The minimum number of days to be assessed in this case under the alternate approach is 8. However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent, and because the Discharger's inaction undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 38 days of violation.

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.

- a) *Total Base Liability Amount: \$51,870.* (Initial Liability (\$1,000/day x 38 days x 0.7) x Adjustments (1.3)(1.5)(1.0)).

BASE LIABILITY AND FACTORS APPLIED TO THE VIOLATION

The Base Liability Amount for the Violation is **\$51,870**. The following factors apply to the Base Liability Amount for the violation.

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." (pg. 19.) The Discharger has the ability to pay the Base Liability Amount. The value of the Kern, Kings, and Tulare County properties owned by the Discharger is a significant asset. According to the Kern, Kings, and Tulare County Assessor's offices, the 2013-2014 assessed value of the parcels was listed as \$2,760,673. In 2014, the Discharger's ownership of approximately 480 acres of almonds, pistachios, and alfalfa generated an estimated \$2,720,711.18 in revenue¹. Therefore, there are no factors under this category that warrant an adjustment.

Step 7. Other Factors as Justice May Require

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

¹ Information provided by the 2013 Kern, Kings and Tulare County Agricultural Crop Reports, available at http://www.kernag.com/caap/crop-reports/crop10_19/crop2013.pdf, <http://www.countyofkings.com/home/showdocument?id=6095>, and <http://agcomm.co.tulare.ca.us/default/index.cfm/standards-and-quarantine/crop-reports1/crop-reports-2011-2020/2013-crop-report-pdf/>

Step 8. Economic Benefit²

Economic Benefit: \$2,869

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's ("US EPA") Economic Benefit Model ("BEN")³ penalty and financial modeling program, unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN version 5.4.1. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit of failing to apply management techniques that are required under a regulatory program. The benefit is calculated by identifying the regulation at issue, the associated management practices (or 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" under 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), or filing an NOI for regulatory coverage under a third-party group Order and joining the Coalition. As of the date this Complaint was issued, the Discharger has not chosen to join the Coalition. The Central Valley Water Board cannot compel the Discharger to join the Coalition, but can "prescribe requirements although no discharge report has been filed." (Wat. Code, § 13263(d).) The Central Valley Water Board would prescribe such requirements by issuing a Notice of Applicability to the Discharger as an individual discharger under General Order R5-2013-0100 after holding a hearing. Economic benefit was, therefore, calculated based on the assumption that General Order R5-2013-0100 ("Individual General Order") will apply to the Discharger.

The economic benefit was calculated based on avoided costs. Avoided costs are the costs of those compliance activities the Discharger would have conducted had they come into compliance earlier.

The economic benefit in this case has been calculated based on the verifiable costs associated with obtaining regulatory coverage under the Individual General Order.

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 this Discharger, rather than a broad class of Dischargers.

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>; the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.

The State Water Resources Control Board charged a permit fee of \$2,692 plus \$3.40 per acre for farms 101 to 500 acres⁴ during the 2014-15 billing year. M.C. Land Company has approximately 480 acres, which results in an annual permit fee of \$4,324 for the 2014-2015 billing year. M.C. Land Company has avoided paying this permit fee for the last year. Because an annual monitoring report would be due by 1 May 2015, M.C. Land Company has also avoided costs of preparing that report which are estimated at \$960, reflecting \$120 per hour of preparation multiplied by 8 hours of preparation.

As shown in the attached summary, the estimated economic benefit associated with avoided costs is \$2,351 associated with permit fees and \$518 for annual monitoring report preparation and submittal. The total estimated economic benefit is therefore \$2,869.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$3,156*

The Enforcement Policy requires that the minimum liability amount imposed not be 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 violations cited herein is \$2,869. This number plus ten percent results in a Minimum Liability of \$3,156.

b) *Maximum Liability Amount: \$61,000*

Discussion: As of 14 May 2015, the Discharger is 61 days late in meeting that requirement. The maximum liability under Water Code section 13261, subdivision (b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of sixty one thousand dollars (\$61,000).

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for failure to submit a NOI to comply with the RoWD requirements under Water Code section 13260 is fifty one thousand eight hundred seventy dollars **\$51,870**.

⁴ See section 2200.6 of the 2014-15 Fee Schedules at http://www.waterboards.ca.gov/resources/fees/docs/fy1415_fee_schedule.pdf.

M.C. Land Company									
Compliance Action (Determine the actions required to comply with or prevent the violation)	One-Time Nondepreciable Expenditure			Annual Cost		Non-Compliance Date	Compliance Date	Penalty Payment Date	Benefit of Noncompliance (EPA)
	Amount	Date ¹	Delayed? ²	Amount	Date ¹				
2014 Permit Fee ³	\$4,324	7/1/2014	n			3/11/2015	7/30/2015	7/30/2015	\$2,351
2015 AMR preparation/submittal	\$960	9/1/2014	n			5/1/2015	7/30/2015	7/30/2015	\$518
Totals	\$5,284								\$2,869
Cost Index for Inflation: ECI								Date of run:	5/12/2015 14:04
Income Tax Schedule:		For-Profit							
Source: USEPA BEN Model:		Version 5.4.1							
		Analyst MMRansom							
¹ Date of the cost estimate.									
² Enter "y" if delayed, and "n" if avoided.									
³ Data Documentation available.									

ATTACHMENT B

The Rose Foundation for Communities and the Environment's
Disadvantaged Community SEP Program Development and Oversight Work Breakdown

SEP Development (Conducted in Partnership with Disadvantaged Communities) – 70% of Total Efforts:

1. (5%) Maintain database of Central Valley organizations that serve DACs and conduct WQ work. Develop and annually broadly circulate a Request for Proposals (RFP) containing detailed application instructions.
2. (5%) Annually conduct applicant workshops in each region.
3. (15%) Respond to prospective applicant inquiries, and advise applicants on shaping their proposals. Most applicants have detailed questions about allowable/eligible activities and/or structural requirements of the application process.
4. (25%) Review and respond to all proposals. Perform due diligence, including applicant interviews and site visits. Work with well-qualified applicants to move proposals forward which closely conform to the nexus around DACs and WQ. Advise applicants whose proposals illustrate potential, but need guidance in designing a competitive proposal; smaller community-based groups generally fall into this category. Advise unqualified applicants how they may potentially improve a future proposal.
5. (10%) Select the most qualified and strategic proposals to advance towards the Project List. Review the draft Project List with Central Valley Water Board to ensure strong nexus fit and that none of the projects are adverse to established Central Valley Water Board policies. Work with applicants to conduct any final needed reshaping of proposals.
6. (10%) As specific SEPS come into the Fund, negotiate grant terms with selected grantees that tie into their overall workplans, and specify deliverables for the actual grant. This may include updating workplans/timelines, breaking out pieces of projects that can be funded now vs. later, and generally scaling up or down of the overall project to fit available funds and nexus requirements. Bind all grantees through a contract that allows for the Rose Foundation's oversight and requires detailed follow-up reporting to ensure that promises made in the grant application are fulfilled to the best ability of each grantee.

SEP Oversight Activities – 30% of Total Efforts:

1. (15%) Rigorously track grantee achievements to hold grantees accountable for their performance and ensure that funds are well spent. Tracking includes periodic check-in calls, site visits and written reports. These reports are the backbone of our accountability process, and also provide an important history and context for future applications and become part of our knowledge base that educates future grant decisions.
2. (2%) Annual report to Central Valley Water Board regarding status/completion of funded projects and present new Project List for approval.
3. (13%) Overall organizational overhead including rent, utilities, insurance, bookkeeping, audit, tax filings, etc.

ATTACHMENT C

Central California Environmental Justice Network

SEP Project Proposal and Schedule

Central California Environmental Justice Network



PROJECT PROPOSAL

Advancing Community Engagement to Monitor, Report Hazards, and Preserve the Water Quality of Fresno and Kern Counties

Amount Requested: \$23,000

Summary Description: Central California Environmental Justice Network seeks support from the Rose Foundation and the Regional Water Quality Control Board to improve water quality pollution prevention efforts in Fresno and Kern Counties. In conjunction with the already established FERN/KEEN resident reporting networks of environmental hazards, this project will serve to enhance residents' abilities to identify, monitor, and report potential threats to groundwater and surface watersheds. FERN and KEEN are part of the growing IVAN (Identifying Violations that Affect Neighborhoods) network, and thus both FERN and KEEN address a broad range of environmental and community conditions. However, water quality and supply issues are central to FERN and KEEN, and the workplan for this SEP project. By helping to strengthen the backbone of the community participation in FERN and KEEN, this project will allow the KEEN/FERN networks to inform the RWQCB about the potential threats in a manner consistent with quick abatement and comprehensive compliance actions.

The Fresno Environmental Reporting Network (FERN) and the Kern Environmental Enforcement Network (KEEN) operate in Fresno and Kern counties respectively. These networks allow residents to report environmental concerns (including water quality concerns) that they perceive as threats to the environment. In response to those concerns, the networks operate a taskforce of regulatory agency representatives and community NGO's that consider, investigate, and respond to those concerns. In the past, resident reports about dairies, oil operations, and unregulated discharge have allowed the RWQCB to conduct investigations that have led to the prevention of pollution via enforcement and/or compliance actions. The project seeks to extend our reach to residents who can help us further prevent contamination.

Detailed Project Description: With the support from the Rose Foundation and the RWQCB we will involve residents by launching a series of community meetings and trainings in Kern and Fresno counties. We expect to conduct a series of 10 trainings over the course of 1 year. During these trainings, the residents will learn how to use the KEEN/FERN websites, phone application, and telephone reporting system. The residents will also learn about the prevalent sources of pollution that can harm water quality, and best practices for identifying and monitoring threats. This includes discussions about illegal water discharge, dairy nutrient management plans, produced water injection methods, wastewater runoff, household items that harm groundwater, etc. We pursue to reach 100 residents through these community events. These community events will happen in communities across the full extent of Fresno and Kern Counties and are not limited to the target communities that we have identified for the Water Watcher groups. The focus with these workshops is to increase the number of people who know how to report hazards, and can maybe

begin thinking about hazards around their community, even if they are not actively participating in a consistent data gathering project.

CCEJN also seeks funds to help with the creation of two "Water Watcher" resident groups in the communities of Lamont and Riverdale. These groups will actively participate in a data-gathering project that is consistent, and has standards. Please note that when this proposal was first proposed (for the 2015 Project List), we outlined different communities for formation of Water Watcher groups. In the original proposal we had highlighted the communities of Parlier and Shafter, however, due to other funding we have already made some progress in those communities. In those communities we have already begun working with groups to do data-gathering projects. Although those groups are forming steadily, we anticipate minor interaction between them and the groups to be formed in Lamont and Riverdale. Geographically, these communities are distant from each other, and there are variations to the issues of concern. Lamont and Riverdale have emerged as prime for these "Water Watcher" projects, because residents in these communities have identified a composting facility and dairy runoff as grave concerns. Our focus with "Water Watchers" is to build off the momentum that is surging in these communities to establish a group of residents that is interested in monitoring and preserving water quality in their community. These "Water Watchers" will begin to document data on problematic facilities, or other sources of pollution, which will be stored through our FERN/KEEN databases and will be used to inform compliance actions. These groups will also explore local water quality decisions and the process for those decisions to be made, so that they may intervene and seek for stronger water regulations and more protection to water quality.

The curriculum for these trainings will be jointly created by the Project Coordinator and CCEJN Director, and through the RWQCB's regular participation in FERN and KEEN, will more than likely be shown to RWQCB representatives before trainings. For the 10 workshops, the curriculum involves learning about 1) KEEN/FERN project, 2) different ways of reporting, 3) reporting language, identification & details 4) areas of concern and 5) major sources of pollution to groundwater. For the Water Watcher groups, the curriculum will be similar, except that it will continue to include development alongside the community members interested in collecting data. The community will also help us define research objectives, quality assurance, and best practices for data collection. All of our materials including the website can be accessed in Spanish and English. Although, some level of computer access is required to access the websites, we do not anticipate this to prevent any person from participating—given that reporting can be done via phone call or text message. With the water watcher groups, we anticipate that all data collection will happen in easily-accessible ways, which can then be transcribed by the project coordinator into website format.

Support for this project will also be used for aiding the enforcement and investigations of these complaints/reports in two main ways. As mentioned above, the projects operate taskforces that help to connect residents, non-profit agencies, and regulatory government agencies in a manner that allows for constant collaboration and multi-agency approaches to resolving hazards. Support for this project will be used to continue our collaboration with the RWQCB through efficient relationship building via taskforce meetings and efficient documentation of reports and discussions during those meetings. Funding from this proposal will help to keep the meetings consistent, aid

with the cost of coordinating the meetings, and embark in engaging more agencies that can help the RWQCB. Secondly, support for this project will help with website maintenance and deliberate updating to all water-quality reports.

Deliverables & Timeline

Timeline & Deliverables		
Milestone	Tasks	Deliverables
25% complete— 3 month mark. Target project period: 12 months	1. Develop Training Materials 2. Identify locations and groups that would serve as strong audiences for the trainings.	All training and workshop materials will be completed. We will have an initial approach to conducting the trainings that includes set locations, and groups of interest. Provide telephone report to Rose Foundation documenting 25% complete.
50% complete— 6 month mark Target project period: 12 months	1. Conduct Trainings 2. Begin working to establish water watcher groups	5 trainings will be completed by this point. We will have learned from those trainings and assess changes to the workshop materials if needed. In Lamont and Riverdale, establish a base with at least 3 residents that are interested in forming a group to monitor areas of interest. Provide short written report to Rose Foundation documenting 50% complete
75% complete— 9 month mark Target project period: 12 months	1. Conduct Trainings 2. Continue work to establish water watcher groups.	10 trainings will be completed by this point. In Riverdale and Lamont we will have a base plan for facilities of interest and a plan to move the water watcher groups forward. Provide telephone report to Rose Foundation documenting 75% complete.
100% complete— 12 month mark Target project period: 12 months	1. Work heavily on establishing water watcher group monitoring and reporting processes.	In Riverdale and Lamont each group will have at least 5 member residents. The residents will be informed and trained about identifying hazards from specific areas of concern. The group will have an established plan for documenting reports and/or documenting pollution logs. Provide full project close-out report to Rose Foundation 'documenting full achievement of deliverables.
Ongoing Tasks	1. Engage the RWQCB within the KEEN/FERN taskforce meetings 2. Efficient documentation of reports via the websites and meeting notes	