

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0540
IN THE MATTER OF
ALEX J. AND LYNDA M. SAMARIN

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 Alex J. and Lynda M. Samarin (Dischargers)(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 21 February 2014 and 28 April 2014, the Central Valley Water Board issued notices to Dischargers describing new water quality regulations and actions available to comply with the regulations.
2. On 19 November 2014, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Dischargers. The Directive required the Dischargers to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. The Directive was received by the Dischargers on 20 November 2014. As detailed in the Directive, the Dischargers could obtain coverage by joining the appropriate coalition, or by submitting a Report of Waste Discharge (RoWD).
3. Because the Dischargers failed to obtain regulatory coverage by the 5 December 2014 deadline, a Notice of Violation (NOV) was sent via certified mail to the Dischargers on 13 January 2015. The NOV was received by the Dischargers on 26 January 2015.
4. The Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.
5. Central Valley Water Board staff spoke with Mr. Alex Samarin on 14 August 2015, 10 December 2015, and 30 December 2015 via telephone. During each phone call Mr. Samarin stated that the third-party operator would enroll the parcels in a coalition. Board staff spoke with the operator on 10 December 2015 and explained the process for enrolling in a coalition.

Stipulated Administrative Civil Liability Order
R5-2016-0540

6. On 12 January 2016, the Assistant Executive Officer of the Central Valley Water Board issued a pre-Administrative Civil Liability letter (pre-ACL letter) describing a forthcoming assessment of administrative civil liability for failure to submit a RoWD as required by the Directive.
7. On 13 January 2016, the Dischargers received the pre-ACL letter. That same day, the Dischargers had the operator of farming operations on the property enroll the 37 acres of grapes in the Kings River Water Quality Coalition (Coalition). On 13 January 2016, the operator submitted a Notice of Intent (NOI) and the NOI processing fee to the Central Valley Water Board, thus resulting in a total of 403 days of violation.
8. Following subsequent conversations and financial documentation submitted in settlement negotiations with the Dischargers, the Assistant Executive Officer found that the facts supported a reduction to \$4,000 in administrative civil liability under Step 7 Other Factors as Justice May Require of the State Water Resources Control Board's Water Quality Enforcement Policy.

Regulatory Considerations

9. The Dischargers violated Water Code section 13260 by failing to obtain regulatory coverage for a period of 403 days. The Central Valley Water Board may assess an administrative civil liability (ACL) based on Water Code section 13261 for that violation.
10. 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.
11. 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 Water Code section 13261, subdivision (b).
12. 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.
13. 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

14. The Parties 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 resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, no further action is warranted concerning the violations alleged herein, and this Stipulated Order is in the best interest of the public.
15. 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 \$4,000 against the Dischargers.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an ACL totaling **four thousand dollars (\$4,000)** to the Central Valley Water Board to resolve the alleged Water Code violation. The ACL 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 Dischargers shall indicate on the check the number of this Order. The Dischargers 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.
2. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand 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, including additional ACLs. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

Stipulated Administrative Civil Liability Order
R5-2016-0540

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

For the Central Valley Water Board:

David Sholes – Senior Engineering Geologist
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, California 93706
(559) 445-6279

Kailyn Ellison – Attorney
Office of Enforcement, State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, California 95814
(916) 445-9557

For the Dischargers:

Alex J. & Lynda M. Samarin
236 S Bishop Ave.
Fresno, California 93706
(559) 907-0421

Alison Samarin, Esq. – Attorney
1887 E. Quincy
Fresno, California
(559) 907-0244

4. **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.
5. **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 Dischargers' full payment of the ACL by the deadline specified in Stipulation 1.
6. **Public Notice:** The Dischargers understand 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

Stipulated Administrative Civil Liability Order
R5-2016-0540

Water Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

7. **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.
8. **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.
9. **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.
10. **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.
11. **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, 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:

Stipulated Administrative Civil Liability Order
R5-2016-0540

- 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.
12. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waive their right to a hearing before the Central Valley Water Board.
13. **Waiver of Right to Petition:** The Dischargers hereby waive 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 waive the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
14. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, Dischargers shall and do 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.
15. **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 Dischargers or their respective 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 Dischargers, or their employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
16. **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.

Stipulated Administrative Civil Liability Order
R5-2016-0540

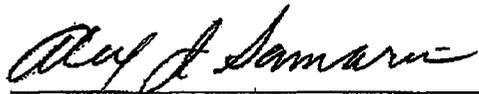
17. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
18. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
19. **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.
20. **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.



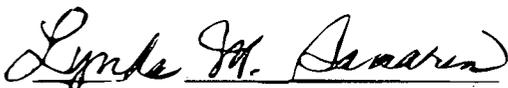
Clay Rodgers
Assistant Executive Officer
For the Central Valley Water Board Prosecution Team

8/9/16
Date



Alex J. Samarin

8-9-16
Date



Lynda M. Samarin

8/9/2016
Date

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 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 concerning the Dischargers 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 C. Creedon
Executive Officer
Central Valley Regional Water Quality Control Board

Date

ATTACHMENT A

Calculation of Penalty per SWRCB
Water Quality Enforcement Policy

Calculation of Penalty per SWRCB Water Quality Enforcement Policy

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 the Dischargers' 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 "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 violations resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

The Dischargers failed to timely submit a Notice of Intent (NOI) to comply with the Report of Waste Discharge (RoWD) requirements or enroll in the Kings River Water Quality Coalition (Coalition) for discharges from irrigated cropland despite evidence that the Dischargers own 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/or the circumstances of the violation indicate a substantial potential for harm.

By failing to timely file a RoWD or to enroll under an applicable General Order, the Dischargers have 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 Dischargers frustrate 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 circumvent the Board's ability to take necessary enforcement actions to address problems.

Deviation from Requirement

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

The Deviation from Requirement is major. Dischargers undermined the efforts of the Central Valley Waters Boards Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for their waste discharges. The requirement has been rendered ineffective. Based on the above factors, a 'per day' factor of 0.55 is appropriate (see Table 3 on p. 16 of the Enforcement Policy).

Multiple Day Violations

On 19 November 2014, the Dischargers received a Directive Letter pursuant to California Water Code section 13260 (13260 Directive), which required them to obtain regulatory coverage within 15 calendar days or face a potential civil liability. The 13260 Directive was received by the Dischargers on 20 November 2014. Regulatory coverage was required by 5 December 2014. The Dischargers obtained regulatory coverage on 13 January 2016, and thus came into compliance with the 13260 Directive. Dischargers were therefore 403 days late in meeting that requirement.

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 Dischargers' failure to timely submit a RoWD or NOI is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Dischargers' failure to timely 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 Dischargers pursuant to the regulatory requirements would have been provided on an intermittent, rather than daily basis.

Moreover, the Dischargers' failure to timely submit a RoWD or 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 annual permit fees, 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 19.

Initial Liability Amount

The initial liability amount using compressed days of violation is as follows:

$$\text{Compressed Days of Violation} \times \text{Statutory Maximum Per Day} \times \text{Per Day Factor} = \\ 19 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$10,450$$

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 proposed 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 Dischargers were given the score of 1.3 for culpability.

Central Valley Water Board staff sent notices on 21 February and 28 April 2014 to the Dischargers describing the new water quality regulations and the required actions to comply therewith. Dischargers also received a 13260 Directive and Notice of Violation requiring the Dischargers to obtain coverage. Despite knowledge of the regulatory requirements, which is exemplified by the notices described above, the Dischargers came into compliance only after a forthcoming assessment of administrative civil liability (pre-ACL letter) was issued on 12 January 2016. The four notices and failure to respond until a fifth letter was sent and received, suggests a willful disregard of the obligation to obtain the regulatory coverage.

b) *Cleanup and Cooperation:* 1.1

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 Dischargers were given the score of 1.1 for cleanup and cooperation.

Regional Board staff spoke with Mr. Alex Samarin on 14 August 2015, 10 December 2015, and 30 December 2015 via telephone. During each phone call Mr. Samarin stated that the operator would enroll the parcels in the Coalition. Regional Board staff spoke with the operator on 10 December 2015 and explained the process for enrolling in the Coalition. The day the Samarins received the pre-ACL letter, 13 January 2016, they contacted the operator who immediately enrolled the parcels in the Coalition. Cleanup is not applicable here as this is a non-discharge violation. Under the unique circumstances of this case, 1.1 is the appropriate multiplier for cleanup and cooperation.

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 Dischargers were given the score of 1.0, as there is no evidence that the Dischargers have a history of 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.

$$\text{Initial Liability Amount} \times \text{Culpability Multiplier} \times \text{Cleanup and Cooperation Multiplier} \times \text{History of Violations Multiplier} = \$10,450 \times 1.3 \times 1.1 \times 1.0 = \$14,944$$

Step 6. Ability to Pay and Continue in Business

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. As per the Enforcement Policy, “[t]he ability of a discharger to pay an ACL is determined by its revenues and assets.”

The Prosecution Team’s initial analysis determined that the Dischargers have the ability to pay based on 1) the value of property owned by the Dischargers, and 2) the value of Dischargers 37 acres of grapes in Fresno County, which would generate an estimated \$131,424 in 2014¹.

During subsequent negotiations, the Dischargers submitted to the Prosecution Team documentation to attempt to establish an inability to pay. These documents included 2012 through 2014 income tax returns, Individual Ability to Pay Claim Financial Data Request Form, list of annual living expenses, and list of anticipated expenses. These documents were analyzed by the State Water Board economist.

The State Water Board economist concluded that the Dischargers have the ability to

¹ Information provided by the 2014 Fresno County Agricultural Crop Report, available at <http://www.co.fresno.ca.us/WorkArea/DownloadAsset.aspx?id=65462>

pay based on projected annual household cash flow of over \$100,000 and current net worth of over \$1.6 million, primarily based on the value of the irrigated lands.

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 added to the liability amount. The Central Valley Water Board Prosecution Team has incurred a significant amount of staff costs associated with the investigation and enforcement of the violations alleged herein. While staff costs could be added to the penalty, the Prosecution Team, in its discretion, is electing not to pursue staff costs in this matter.

The financial documentation submitted by the Dischargers shows that although they have an ability to pay, they do not have sufficient cash in their bank accounts to pay an administrative civil liability of \$14,944. To pay the administrative civil liability, the Dischargers would most likely need to take out a loan against the property or take money out of their retirement accounts, resulting in penalties for withdrawing the money early and reducing money they are relying on for their future. The Prosecution Team does not believe this is an appropriate outcome considering the unique circumstance of this case including that the Samarins believed the operator would enroll the parcels in the Coalition, the Samarins convinced the operator to enroll the day they received the pre-ACL letter, and the 37 acres of grapes is considered a Small Farming Operation under the applicable General Order². Thus, an adjustment to \$4,000 is appropriate in this case under other factors as justice may require. This determination is unique to this case and should not be interpreted as a decision by the Central Valley Water Board that, in other cases, lack of available cash and/or the need to finance a loan will result in an adjustment in liability under this factor.

Step 8. Economic Benefit: \$4

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 using the United States Environmental Protection Agency’s (US EPA) Economic Benefit Model (BEN)³ penalty and financial modeling program, version 5.4.0. 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 in this

² “Small Farming Operations are those with a total farming operation that comprises less than 60 acres of irrigated land.” (Waste Discharge Requirements General Order for Growers in the Tulare Lake Basin Area that are Members of a Third-Party Group, Central Valley Regional Water Quality Control Board Order R5-2013-0120, p. 3.)

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>.

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" 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. Because the Dischargers have since joined the Coalition, the benefit was calculated based on costs associated with General Order R5-2013-0120 (Third-Party Group General Order) will apply to the Dischargers.

The economic benefit was calculated based on the delayed cost of joining the Coalition. These costs include the 2014-15 and 2015-16 permit fees for the Coalition. These fees are \$105.55 and \$79.55, respectively for a total of \$185.10. The operator of the Dischargers' irrigated lands paid these costs when it joined the Coalition on 13 January 2016.

Using BEN to calculate the economic benefit of the noncompliance, the delayed cost of paying the 2014-15 and 2015-16 permit fees for the Coalition is \$4.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$4.40*

Pursuant to the Enforcement Policy, the minimum liability amount imposed should be at least ten percent higher than the calculated economic benefit. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Dischargers' economic benefit obtained from the violations cited herein is \$4. This number plus ten percent results in a Minimum Liability of \$4.40.

b) *Maximum Liability Amount: \$403,000*

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 Dischargers were 403 days past due in complying with the applicable Water Code section 13260 Directive. Thus, the maximum liability is \$403,000.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final Administrative Civil Liability is **\$4,000**.