Victor Produce, Inc.
ACL Complaint No. R5-2016-0550

HEARING PANEL REPORT

This matter was heard on November 4, 2016 in Fresno, California before a panel consisting of Central Valley Regional Water Quality Control Board members Denise Kadara, Carmen Ramirez, and Board Chair Karl Longley. Assistant Executive Officer Adam Laputz, Patrick Pulupa, and Andrew Deeringer were Panel Advisors. Gilbert Baca appeared on behalf of Victor Produce, Inc. (Discharger). Susie Loscutoff, Brett Stevens, and Sue McConnell appeared for the Prosecution Team.

The Panel makes the following determinations:

FINDINGS OF FACT

1. The East San Joaquin Order applies to owners and operators of irrigated lands within the Eastern San Joaquin River Watershed. Pursuant to the East San Joaquin Order, either the owner or operator may enroll an irrigated lands parcel for regulatory coverage under the East San Joaquin Order.

2. On 10 February 2015, Victor Produce enrolled nine parcels in the East San Joaquin Water Quality Coalition (Coalition) as an operator, thus obtaining coverage under the East San Joaquin Order. The parcels that the Discharger enrolled are Merced County Assessor's Parcel Numbers (APN) 049-050-087, 049-050-088, 049-050-089, 049-050-091, 049-060-073, 049-080-003, 049-080-006, 049-080-015, and 049-080-016. These parcels have a total area of 271 acres.

3. The East San Joaquin Order requires that all Coalition members complete a Farm Evaluation describing management practices implemented to protect surface and groundwater quality. The Farm Evaluation also includes information such as location of the farm, surface water discharge points, location of in service wells and abandoned wells and whether wellhead protection practices have been implemented.

4. The Farm Evaluation is intended to provide the third-party coalition and the Central Valley Water Board with information regarding individual member implementation of the East San Joaquin Order's requirements. Without this information, the Board would rely solely on regional surface and groundwater monitoring to determine compliance with water quality objectives. The regional monitoring cannot determine whether all members are implementing protective practices, such as wellhead protection

measures for groundwater. Regional monitoring also does not allow identification of which practices are protective in areas where impacts are observed and multiple practices are employed. For groundwater protection practices, it may take years in many areas (even decades in some areas) before broad trends in groundwater may be measured and associated with implementation of the East San Joaquin Order. Farm Evaluations are intended to provide assurance that members are implementing management practices to protect groundwater quality while trend data is collected.

5. The reporting of practices identified in the Farm Evaluation will allow the third-party coalition and Board to effectively implement the Management Practices Evaluation Plan. Evaluating management practices at representative sites (in lieu of farm-specific monitoring) only works if the results of the monitored sites can be extrapolated to non-monitored sites. One of the key ways to extrapolate those results will be to have an understanding of which farming operations have practices similar to the site that is monitored. The reporting of practices will also allow the Board to determine whether the Groundwater Quality Management Plan is being implemented by members according to the approved schedule.

6. On 21 December 2015, the Coalition sent a notice to the Discharger that the Farm Evaluation for 2015 (2015 Farm Evaluation) was due to the Coalition on 1 February 2016. The Discharger did not submit the 2015 Farm Evaluation in response to the notice.

7. On 22 February 2016, Board staff sent the Discharger a Notice of Violation (NOV) via certified mail for failure to submit the 2013 and 2014 Farm Evaluations. The NOV urged the Discharger to submit the evaluations to the Coalition and warned that failure to do so may result in enforcement action by the Central Valley Water Board. Victor Produce did not join the Coalition until February 2015 and therefore the General Order for the East San Joaquin Coalition does not specify that the Board may assess liability for failing to submit Farm Evaluations under that Order for 2013 and 2014.

8. The Discharger received the NOV on 25 February 2016. The Discharger did not contact the Board in response to the NOV. A copy of the certified mail receipt is included with Attachment A.

9. In March 2016, the Coalition sent a postcard to the Discharger providing notice that submittal of the 2015 Farm Evaluation was past due and requesting that the Discharger submit the evaluation as soon as possible. The Discharger did not submit the 2015 Farm Evaluation in response to the postcard.

10. On 19 April 2016, the Coalition sent the Board a list of members who had not submitted the 2015 Farm Evaluation. The list indicated that Victor Produce had not submitted the 2015 Farm Evaluation.

11. In May 2016, the Coalition sent a final notice to the Discharger that the 2015 Farm Evaluation had not been submitted, and that failure to do so may lead to an enforcement action by the Central Valley Water Board. The notice urged the Discharger to submit the required 2015 Farm Evaluation as soon as possible. The Discharger did not submit the 2015 Farm Evaluation in response to the notice.

12. On 6 May 2016, Board staff sent the Discharger a pre-ACL letter indicating that an ACL Complaint was forthcoming and inviting the Discharger to engage in settlement negotiations prior to issuance of an ACL Complaint.

13. The pre-ACL letter was sent via Federal Express, which delivered the letter to the Discharger's address on 10 May 2016. The Discharger did not submit the missing Farm Evaluation or contact Board staff in response to the pre-ACL letter.

14. On 8 August 2016, the Assistant Executive Officer of the Central Valley Water Board issued an Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0550 to the Discharger in the amount of fifteen thousand two hundred and ten dollars ($15,210) for failing to submit the 2015 Farm Evaluation as required by the East San Joaquin Order.

15. On 25 August 2016, the Discharger submitted the 2015 Farm Evaluation to the Coalition following issuance of the ACL Complaint.

16. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of eighteen thousand five hundred ninety dollars ($18,590) should be imposed on the Discharger pursuant to Water Code section 13268 for violation of Water Code section 13267.

CONCLUSIONS OF LAW

1. The failure to submit a Farm Evaluation constitutes a violation of Water Code section 13323.

2. Pursuant to Water Code section 13268, subdivision (b)(1), the Regional Board may impose administrative civil liability up to $1,000 for each day of violation.

3. The total maximum amount of Administrative Civil Liability assessable for the violations alleged in Complaint No. R5-2016-0550 pursuant to Water Code section 13268 is $160,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of $18,590 on the Discharger for violations found herein to have been committed by the Discharger.

I, ADAM LAPUTZ, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the recommendation issued by this Hearing Panel for the California Regional Water Quality Control Board, Central Valley Region.

Adam Laputz
Assistant Executive Officer

12.6.16
Date