

ITEM:	18
SUBJECT:	Gilbert & Enedina Marroquin, Tulare County
BOARD ACTION:	<i>Consideration of an Administrative Civil Liability Order (ACLO)</i>
BACKGROUND:	<p>Gilbert & Enedina Marroquin (“Dischargers”) own agricultural land in Tulare County, identified as Assessor’s Parcel Numbers (APNs) 119-110-012 and 119-110-013.</p> <p>On 21 May 2014 and 30 June 2014, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and options available to comply with the regulations. The Dischargers did not obtain regulatory coverage or contact the Water Board.</p> <p>On 21 November 2014, staff conducted a field inspection of Tulare County APN 119-110-012. Evidence was found of land irrigated for commercial purposes based on the crop grown (pistachios) and the size of the operation (39.6 acres).</p> <p>On 18 December 2014, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Dischargers, notifying them of the requirement to obtain regulatory coverage for their irrigated lands within 15 days of receipt of the Directive. The Dischargers received the Directive on 22 December 2014.</p> <p>Gilbert Marroquin spoke to Central Valley Water Board staff on 22 December 2014. During the conversation, staff provided information about the program and the Kaweah Basin Water Quality Association’s (Coalition’s) phone number.</p> <p>Because the Dischargers failed to obtain coverage by the deadline specified in the Directive (6 January 2015), a Notice of Violation (NOV) was sent to the Dischargers on 28 January 2015. The NOV was received on 29 January 2015. The Dischargers did not obtain regulatory coverage and did not contact the Water Board.</p> <p>On 16 September 2015, Board staff conducted field inspections from public roadways of the Dischargers’ two parcels in Tulare County to determine if the parcels have the potential to discharge irrigation return flows or storm water to waters of the state. Both APN 119-110-012 and 119-110-013 had canals that ran along the perimeter of the fields. However, the inspections found no direct evidence of surface water discharges from the parcels (e.g., discharge pipes at borders or erosion rills leading offsite).</p> <p>On 12 January 2016, the Prosecution Team sent the Dischargers a notification letter (pre-ACL letter) via certified mail, indicating that an ACL Complaint would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 26 January 2016. The pre-ACL letter was sent to the same address as the notices, Directive, and NOV, but was not claimed by the Dischargers and was sent back to the Central Valley Water Board’s office.</p> <p>The Dischargers obtained regulatory coverage by joining the Kaweah Basin Water Quality Association on 10 August 2016 following issuance of the ACL Complaint.</p>

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT:	<p>On 9 August 2016, the ACL Complaint was issued by the Assistant Executive Officer in the amount of \$30,030, based on the State Water Board's Enforcement Policy. The ACL Complaint alleges the Dischargers failed to obtain regulatory coverage as required by the Directive.</p> <p>The maximum penalty for the alleged violation is \$582,000. The minimum penalty recommended by the Enforcement Policy is the economic benefit plus 10% which amounts to \$6,246. The Enforcement Policy's penalty calculation methodology resulted in a liability of \$30,030, and is the amount of administrative civil liability proposed by the Prosecution Team.</p>
ISSUES:	<p>The Dischargers claim to only grow pistachios on 65 of the approximately 80 acres they own. The Prosecution Team does not dispute this claim.</p> <p>The Dischargers claim revenues from the 2014 crop were "nowhere near" the amount alleged by the Prosecution Team and provided documentation to support this contention.</p> <p>The Dischargers claim an inability to pay the proposed administrative civil liability and ask to only be required to pay the minimum penalty of \$6,246. The Dischargers provided financial documentation to support their inability to pay claim, which is available for <i>in camera</i> review.</p> <p>The Prosecution Team submitted a rebuttal with an analysis showing the Dischargers have the ability to pay the proposed ACL.</p>
ACLO RECOMMENDATION:	<p>The Prosecution Team recommends that the Board adopt the Administrative Civil Liability Order for \$30,030 as proposed.</p>

Mgmt. Review DAS
Legal Review KE

3/4 November 2016 Hearing Panel
Central Valley Regional Water Quality Control Board
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