Note: This Summary Sheet was prepared by the Prosecution Team

ITEM: 23

SUBJECT: David L. & Linda M. Davis, Madera County

BOARD ACTION: *Consideration of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability (ACL) Order*

BACKGROUND: David L. & Linda M. Davis ("Davis") own 1,000 acres of agricultural land in Madera County. This land is divided into 11 Assessor's Parcels ranging from 35 to 169 acres. Six of the parcels had been identified by staff in the original Directive Letter and subsequent Administrative Civil Liability Complaint.

On 21 June 2013, the Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter ("Directive") to Davis. The Directive required Davis to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. Davis could comply by joining the East San Joaquin Water Quality Coalition ("Coalition"), or by submitting a Report of Waste Discharge (RoWD).

Because Davis failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent to Davis on 17 July 2013. The NOV required Davis to obtain regulatory coverage by 14 August 2013. Again, Davis did not obtain regulatory coverage and did not contact the Water Board.

On 29 August 2013, staff conducted an inspection of Davis parcel 044-290-022 and found evidence of a commercial irrigated agricultural operation based on the crop grown and the size of the operation. Aerial imagery indicates that the additional five parcels owned by Davis, and cited in the Directive, also have a land use of commercial irrigated agriculture.

On 16 October 2013, staff sent Davis a notification letter ("pre-ACL letter") that an ACL in the amount of $8,600 would be issued if Davis did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 1 November 2013.

On 10 May 2014 the Prosecution Team issued an ACL Complaint to Davis. Subsequent to issuing the complaint, Davis submitted a Notice of Intent to the Central Valley Water Board to get the required regulatory coverage. On 3 June 2014 Board staff received confirmation from the East San Joaquin Water Quality Coalition that Davis had enrolled the six parcels identified in the Directive, in addition to five unidentified parcels. On 12 June 2014, Davis waived their right to a hearing within 90 days and indicated that they would settle the Complaint by paying the liability in full and forgoing an administrative hearing on the matter. On 16 June 2014, Davis submitted payment of $8,600.

On 11 July 2014, the Advisory Team issued a memorandum (memo) to the Prosecution Team tentatively rejecting proposed settlement agreements for Davis and one other enforcement case (William R. Sinks, et al.). In this memo, the Advisory Team requested that the Prosecution Team further explain how the proposed settlements adequately address the Central Valley Water Board's regulatory interests. The Advisory Team invited the Prosecution Team and Discharger to prepare a Stipulated Order to address the concerns outlined in the memo.

BACKGROUND:
(cont.)

In response, the Prosecution Team and Davis entered a Settlement Agreement and proposed Stipulated Order including a revised penalty methodology and proposing an Administrative Civil Liability of $9,152, which Davis had agreed to pay. The proposed Stipulated Order was posted for 30-day public comment, with no comments received, and submitted to the Advisory Team for approval by the Executive Officer under delegated authority. On 26 September 2014, the Advisory Team, after consulting with the Board Chair, instructed the Prosecution Team to place the proposed Stipulated Order on calendar for Board consideration.

ISSUES:

In developing the Settlement Agreement and proposed Stipulated Order, the Prosecution Team attempted to address the Advisory Team's 11 July 2014 concerns, comply with the Enforcement Policy Penalty Calculation Methodology, and arrive at a proposed penalty that would be an effective deterrent for growers who ignore directives to get regulatory coverage.

For non-discharge violations such as the Davis case, the Penalty Calculation Methodology prescribes a number of factors used to calculate the penalty, most of which include some amount of judgment. The Prosecution Team took what it felt was a reasoned approach in applying the Penalty Calculation Methodology, while leaving room for the Board to make adjustments in this case and future related cases.

The Prosecution Team understands that the Board strives to ensure that the penalty applied in this case not only conforms to the Enforcement Policy, but is also a fair penalty, provides a sufficient deterrent, and is generally consistent with how the Board handles similar cases.

With respect to deterrence, the Prosecution Team recognizes that there may be a relationship between factors that incentivize growers without regulatory coverage to come into compliance. For example, both high penalty amounts and the timeliness with which enforcement actions are brought contribute to the deterrent effect of an enforcement program. In bringing enforcement actions, the Prosecution Team considers these variables and strives to strike a balance that provides the maximum benefit for water quality.

The Prosecution Team believes that the adoption of the proposed fine will send a strong signal to similarly situated non-compliant growers to come into compliance.

RECOMMENDATION:

The Prosecution Team recommends that the Board adopt the proposed Stipulated Order assessing a $9,152 Administrative Civil Liability.

Mgmnt. Review aa
Legal Review nsk

4/5 December 2014 Meeting
Central Valley Regional Water Quality Control Board meeting
11020 Sun Center Dr. #200, Rancho Cordova, CA 95670