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10 STATE OF CALIFORNIA WATER RESOURCES CONTROL BOARD

11 SARBJIT ATHWAL and SATWANT  
12 ATHWAL

Administrative Civil Liability  
Order No.: R5-2015-0039

13 Petitioners,

14 PETITION FOR REVIEW OF ADMINISTRATIVE  
15 CIVIL LIABILITY ORDER R5-2015-0039

16 Pursuant to California Water Code section 13320, and Title 23, Cal. Code of Regulations, section  
17 2050, et. seq., petitioners respectfully request review of the above-referenced civil liability order issued  
18 by the Central Valley Water Board.

19 (1) Petitioners are Sarbjit and Satwant K. Athwal, 6543 Vivian Road, Modesto, CA 95358  
20 (main office formerly located at 2561 4th Street, Ceres, CA 95307) Telephone: 209-538-7653. E-mail:  
21 athwal\_farms@yahoo.com.

22 (2) The action or inaction of the Regional Board which the State Board is requested to review  
23 is the order imposing civil liability in the sum of \$56,628.00 for failure to submit a Report of Waste  
24 Discharge and delayed compliance with the Regional Board's directive letter notifying petitioners of their  
25 obligation to obtain regulatory coverage for waste discharges from irrigated agricultural parcels. A copy  
26 of Administrative Civil Liability Order R5-2015-0039 and revised attachment F (Calculation of Penalty  
27 per SWRCB Water Quality Enforcement Policy) is attached with this petition.

28 (3) The order of the Regional Board was issued on April 17, 2015.

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1 (4) Petitioners respectfully submit that the order was inappropriate in view of the Regional  
2 Board's specific findings that petitioners' failure to submit a Report of Waste Discharge and otherwise  
3 delayed compliance did "not (cause) daily detrimental impacts to the environment or the regulatory  
4 program" and "(resulted) in no economic benefit (to petitioners) that can be measured on a daily basis."  
5 (Order, Attachment F @ p. F-3). Petitioners respectfully submit that the assessed civil liability is punitive  
6 in effect, given the Regional Board's observation that "Athwal has no record of a history of violations  
7 prior to those described herein." (Id., Attachment F @ p. F-3). There was no environmental harm alleged  
8 or actually caused. In fact, physical inspections of several parcels by Regional Board personnel on  
9 January 7, 2015 found "no direct evidence of potential to discharge to surface waters" from any of the  
10 parcels. In fact, petitioners have used drip/micro drip irrigation for nine years, producing no runoff from  
11 its land.

12 (5) As noted above, and with due respect to the process utilized to determine liability and  
13 assess the value thereof, petitioner is aggrieved financially by the Order. Petitioners believe the assessed  
14 value is excessive and punitive, particularly in light of the fact that it appears from the Regional Board's  
15 own determination, any harm caused by the delayed compliance was in the abstract. (See Attachment F  
16 @ pp. F-1, F-2: "...Discharger has undermined the regulatory program...the regulatory program is  
17 compromised when staff resources are directed to bringing dischargers into compliance...). Additionally,  
18 the "per day" factor assigned appears excessive in light of the Regional Board's factual determinations as  
19 described in item (4) above. It is unclear to petitioners how its deviation from the regulatory requirement  
20 can be classified as "major" (i.e. requirement has been rendered ineffective, see p. 16, SWRCB Water  
21 Quality Enforcement Policy) and the potential for harm classified as "moderate" rather than minor, under  
22 the circumstances. Petitioners have always intended to be in compliance with the law and regulations  
23 issued by the State and Regional Boards. Unfortunately, during the time period described in the Order,  
24 petitioners were in the process of moving the main office from Ceres to Modesto, and both locations had  
25 limited staff available to monitor and act on notices, particularly during petitioners' busy seasons.

26 Understanding that the press of business does not justify non-compliance, petitioners nonetheless  
27 requests that the Board please understand that the Regional Board's notices were not intentionally

1 disregarded. Finally, petitioners believed that upon complying with the Directive by joining the East San  
2 Joaquin Water Quality Coalition in March 2014 (Order, p. 2 of 4, item 13) it had done what was required  
3 of it and that no further action was necessary.

4 (6) Petitioners respectfully request that the entire penalty be waived. Alternatively, petitioners  
5 request that the civil penalty be modified to more closely reflect what petitioners believe to be the  
6 "minor" nature of the violations resulting from delayed compliance. Petitioners will participate in  
7 settlement discussions or mediation if such alternative dispute resolution is available.

8 (7) Petitioners respectfully submit that the violations described in the Regional Board's Order  
9 are "minor" as contemplated by California Water Code section 13399 subd. (a) in that the violations  
10 posed no danger to or potential "for endangering human health, safety or welfare or the environment."  
11 The violations were not intentional, did not benefit petitioners economically, and were not part of a  
12 pattern of chronic violation (subd. (f)). Petitioners appeared at the April 16/17, 2015 Board Meeting and  
13 testified through its employees before the Board, but did not request or otherwise obtain a transcript of  
14 the hearing.

15 (8) This petition has been sent to the Central Valley Regional Water Control Board.

16 (9) Petitioners appeared at and testified through its employee, Roman Katuszonek, before the  
17 Board in Fresno in April 2015, raising substantially the same issues and objections.

18 Dated: July 2, 2015

19 LAW OFFICES OF BRUNN & FLYNN  
20 A Professional Corporation

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23 By:

  
\_\_\_\_\_  
MICHAEL G. DONOVAN  
Attorneys for Petitioners

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25 K:\cases\613815166\Petition for Review

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0039

IN THE MATTER OF

SARBJIT & SATWANT K. ATHWAL  
MADERA COUNTY

This Order is issued to Sarbjit & Satwant K. Athwal (hereafter Discharger) pursuant to California Water Code section 13261, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger failed to submit a Report of Waste Discharge as required by Water Code section 13260.

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds the following:

1. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste in the Central Valley Region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the Board a report of waste discharge (RoWD).
2. A person who fails to submit a RoWD under Water Code section 13260 when so requested by the Board may be liable civilly under section 13261. The Board may impose such liability administratively in accordance with Water Code section 13323 in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.
3. Water Code section 13264 provides that no person may discharge waste unless they have filed a RoWD and until the Board has issued waste discharge requirements under section 13263 or waived such requirements under section 13269.
4. On 7 December 2012, the Board issued, and on 3 October 2013 and 27 March 2014 revised, the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group, Order R5-2012-0116-R2 (hereinafter General Order) and the General Order's corresponding Monitoring and Reporting Program.
5. The General Order serves as general waste discharge requirements under Water Code section 13263 for both indirect and direct waste discharges that result from runoff, leaching, irrigation water, and storm water, that could

SARBJIT & SATWANT K. ATHWAL  
MADERA COUNTY  
ACLO R5-2015-0039

affect the ground or surface waters of the state. The Discharger's agricultural parcels are located within the General Order's coverage area.

6. Growers within the General Order's coverage area may comply with Water Code section 13264 for discharges of waste from their irrigated agricultural lands by submitting an individual RoWD under section 13260, leading to an individual waste discharge requirement order under section 13263, or by submitting a Notice of Intent and otherwise complying with the General Order.
7. The Discharger owns greater than 900 acres of agricultural land in Madera, Merced and Stanislaus Counties that did not timely receive coverage under the Board's Irrigated Lands Regulatory Program.
8. On 19 July 2013, staff conducted inspections of three Madera County parcels owned by the Discharger and found evidence of commercial irrigated agriculture based on the crop grown and the size of the operations.
9. On 31 July 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Directive Letter (hereafter Directive) notifying the Discharger of its obligation to obtain regulatory coverage for waste discharges from the irrigated agricultural parcels, and directing the Discharger to obtain such coverage either by submitting an individual RoWD or a Notice of Intent under the General Order within 15 calendar days of receipt of the Directive. The Discharger did not submit an individual RoWD or a Notice of Intent within that time.
10. The Discharger violated Water Code section 13260 by failing to submit an individual RoWD by 17 August 2013.
11. On 30 August 2013, Central Valley Water Board staff issued a Notice of Violation (NOV) to the Discharger regarding the failure to obtain regulatory coverage. The NOV requested that coverage be obtained as soon as possible to minimize potential liability. Athwal did not respond to the NOV.
12. On 16 October 2013, staff sent Athwal a notification letter via certified mail that an Administrative Civil Liability Complaint (ACL Complaint) in the amount of \$3,500 would be issued if Athwal did not obtain regulatory coverage and initiate settlement discussions regarding the proposed penalty by 1 November 2013. A settlement was not reached and regulatory coverage was not obtained by that date.
13. On 10 March 2014, Athwal complied with the Directive by joining the East San Joaquin Water Quality Coalition, enrolling 935 acres with the Coalition.

14. On 11 July 2014, the Central Valley Water Board staff advising the Board on enforcement matters (the "Advisory Team") issued a memorandum regarding the proposed settlements of ACL Complaints issued to the David L. & Linda M. Davis Trust and to William R. Sinks et al. The Prosecution Team determined that the issues raised in that memorandum apply also to the Athwal enforcement case. These issues were considered by the Prosecution Team when preparing the ACL Complaint, which accounts for the difference in the proposed penalty amounts between the pre-ACL letter and this Complaint.
15. On 20 January 2015, the Assistant Executive Officer of the Central Valley Water Board, lead prosecutor for the Prosecution Team, issued ACL Complaint R5-2015-0501 to the Discharger in the amount of thirty one thousand four hundred and sixty dollars (\$31,460) for failure to submit an individual RoWD under Water Code section 13260 by 17 August 2013.
16. On 17 November 2008 the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors used to assess a penalty under Water sections 13327 and 13385 subdivision (e) including the Discharger's culpability, history of violations, ability to pay and continue in business, economic benefit, and other factors as justice may require.
17. After conducting a hearing to receive evidence and to deliberate on an application of the factors articulated in the Enforcement Policy, the Central Valley Water Board concluded that it was appropriate to adjust the number of days used for the purposes of calculating the base liability amount from 40 days to 72 days, resulting in a final liability amount of \$56,628. An explanation of the Board's rationale and a discussion of how the Board applied the required factors under Water code section 13327 using the methodology in the Enforcement Policy is found in Attachment F to this Order, as modified, which is incorporated herein by reference.
18. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
19. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegatee is authorized to refer this matter to the Attorney General's Office for enforcement.

SARBJIT & SATWANT K. ATHWAL  
MADERA COUNTY  
ACLO R5-2015-0039

20. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
21. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:  
[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**IT IS HEREBY ORDERED THAT:**

1. Sarbjit & Satwant K. Athwal shall be assessed an Administrative Civil Liability in the amount of **fifty-six thousand six hundred and twenty eight dollars (\$56,628)**.
2. Payment shall be made no later than 30 days from the date of issuance of this Order by check payable to the *Cleanup and Abatement Account*, and shall have the number of this order written upon it.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, on 17 April 2015.



Pamela C. Creedon  
Executive Officer

Attachment: Revised Penalty Calculations per SWRCB Enforcement Policy

REVISED ATTACHMENT F

Calculation of Penalty per SWRCB Water Quality Enforcement Policy

The proposed administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (the "Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version date 2/4/2014" (the "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 failed to submit a Report of Waste Discharge (RoWD) or enroll under an applicable General Order for discharges from irrigated cropland despite evidence indicating that they irrigate 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 State Water Resources Control Board's Water Quality Enforcement Policy (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 total greater than 900 acres, 150 acres of which were subject to the Directive described below.

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 impedes the Regional Board's efforts to assess potential impacts and risks to water quality, and circumvents the Regional Board's ability to take 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. Additionally, 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 Regional 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. Athwal 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 their waste discharges. 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.

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 the requirement is major. Based on the above factors, a per day factor of 0.55 is appropriate (see Table 3 on p. 16 of the Enforcement Policy).

#### **Step 4. Adjustment Factors**

a) *Culpability: 1.3*

*Discussion:* The Discharger was given the score of 1.3, which increases the fine. Central Valley Water Board staff sent notices on both 28 January 2013 and on 18 April 2013 to Athwal describing the new water quality regulations and the required actions to comply therewith. On 31 July 2013, Athwal received the 13260 Directive requiring them to obtain coverage. Staff communicated several times with Athwal and Athwal representative Roman Katuszonek regarding the need for regulatory coverage in the months following the 13260 Directive and NOV mail outs.

Despite knowledge of the regulatory requirements, which is exemplified by the notices and meetings described above, Athwal failed to come into compliance for 204 days. The multiple notices and communications with staff regarding the regulatory requirements indicate that Athwal had knowledge and acted intentionally in ignoring the requirement to get regulatory coverage. Therefore, a culpability factor of 1.3 is warranted.

b) *Cleanup and Cooperation: 1.1*

*Discussion:* The Discharger was given the score of 1.1, which increases the fine. Athwal has come into compliance by getting the necessary regulatory coverage,

but only after multiple notices and the threat of fines. Cleanup is not applicable here.

c) *History of Violations:* 1.0

Discussion: The Discharger was given the score of 1.0 because Athwal has no record of a history of violations prior to those described herein.

**Multiple Day Violations:** On 31 July 2013, the Discharger was mailed a Directive Letter pursuant to California Water Code section 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 Discharger on 2 August 2013. Thus, regulatory coverage was required by 17 August 2013. The Discharger completed both steps of the regulatory requirements on 10 March 2014 by joining the Coalition and submitting a Notice of Intent to the Board. The Discharger was 204 days, therefore, late in meeting the regulatory requirement.

Violations under Water Code section 13260 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 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 RoWD or NOI (and join the Coalition) 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 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 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 RoWD or NOI results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is the one-time delayed expenditure of joining the Coalition and various costs associated with Coalition membership, 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 under the

alternate approach in this case is 12. However, this approach generates a Total Base Liability Amount that is not a sufficient deterrent for an operation this size. Because the Discharger's inaction undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, and because the unregulated discharges from the Athwal's agricultural properties present a significant threat to water quality, it is appropriate to increase the number of days of violation above the Minimum Approach to a total number of 72 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: \$56,628.* (Initial Liability (\$1,000/day x 72 days x 0.55) x Adjustments (1.3)(1.1)(1.0)).

#### **BASE LIABILITY AND FACTORS APPLIED TO THE VIOLATION**

The Base Liability Amount for the Violation is \$56,628. 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." The Discharger has the ability to pay the Base Liability Amount based on 1) Value of property owned by the Discharger, a significant asset with a 2014-2015 assessed value of the three Madera County parcels listed at \$624,364 according to the Madera County Assessor's office; 2) Discharger owns approximately 150 acres of almonds in Madera County, which generated approximately \$903,775 in 2013<sup>1</sup>; and 3) Athwal has received an estimated \$257,864 in farm subsidies from the United States Department of Agriculture from 1995 through 2012<sup>2</sup>. The value of owned property and crop values are low because Athwal enrolled 27 other parcels in Merced and Stanislaus Counties into the Coalition, totaling an additional 833 acres. Since those parcels and their acreages were not listed in the original Order, they are not used for these calculations. There are no factors under this category that warrant an adjustment.

#### **Step 7. Other Factors as Justice May Require**

*Base Liability Amount: \$56,628*

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

<sup>1</sup> Information provided by the 2013 Madera County Agricultural Crop Report, available at <http://www.madera-county.com/index.php/publications/crop-reports>

<sup>2</sup> Information provided from farm.ewg.org.

## Step 8. Economic Benefit

*Economic Benefit:* **\$396**

Discussion: 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)<sup>3</sup> 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 the BEN Model penalty and financial modeling program, version 5.4.0. BEN calculates a discharger's monetary interest earned from delaying or avoiding the costs of 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," or filing a NOI for regulatory coverage under a third-party group Order and joining the Coalition.

As a result of settlement discussions related to the pre-ACL Letter, the Prosecution Team learned that the Discharger joined the Coalition. By joining the Coalition instead of filing a RoWD, the Discharger was required by the Coalition to pay back dues for prior years' membership. In this case, the Discharger should have joined the Coalition by 17 August 2013, the deadline set in the Directive letter.

The economic benefit was calculated based on both delayed costs and avoided costs. Delayed costs are those costs that should have been born earlier, but that the Discharger is still required to pay. Avoided costs are 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 joining the Coalition, as well as estimates of other delayed and avoided costs that were required of the Discharger to comply with the Order.

The Coalition is currently charging new members \$50 for each year, plus \$9 per acre for the prior unpaid years (2013), and \$50 per member plus \$3.75 per acre for 2014. The economic benefit of this delayed cost for this compliance action is \$213.

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<sup>5</sup> 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>

Based on information provided by the Coalition<sup>4</sup>, the Coalition produces about six newsletters a year, which require about 20 minutes for a grower to review. Under the Order, growers are required to become familiar with the water quality issues in their area and methods to address those issues. By failing to enroll under the Order in a timely manner, the Discharger avoided reviewing approximately four Coalition newsletters between July 2013 and March 2014. Using an estimate of the value of a grower's time<sup>5</sup> at \$120 per hour and assuming Coalition newsletters went out every two months starting in July 2013, the total economic benefit of this avoided cost for this compliance action is \$43.

Growers are also required to attend one Coalition outreach event annually. Since the Discharger did not attend an event in 2013, this is an avoided cost. Based on information provided by the Coalition<sup>5</sup>, Coalition meetings are typically two hours. On average, a Coalition member would travel 50 miles round trip, taking approximately one hour of drive time. The cost per mile is estimated to be \$0.50/mile and the value of the grower's time is \$120/hour<sup>6</sup>. The economic benefit of this avoided cost is \$139, assuming the last outreach event occurred in December 2013.

In summary, the economic benefits associated with delayed costs are \$213 associated with fees. The economic benefits associated with avoided costs are: 1) \$139 associated with attending a grower meeting; and 2) \$43 associated with review of newsletters. The total economic benefit is, therefore, \$396.

### **Step 9. Minimum and Maximum Liability Amounts**

a) *Minimum Liability Amount: \$435*

*Discussion:* 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 in this memo is \$396. Therefore, the minimum liability is \$435.

b) *Maximum Liability Amount: \$204,000*

*Discussion:* 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 Discharger was in violation for 204 days, which is a maximum liability of \$204,000.

<sup>4</sup> Personal communication Joe Karkoski and Parry Klassen, July 2014.

<sup>5</sup> See page 2-22 from Draft Technical Memorandum Concerning Economic Analysis of the Irrigated Lands Regulatory, July 2010.  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/new\\_waste\\_discharge\\_requirements/program\\_environmental\\_impact\\_report/2010jul\\_draft\\_peir/econ\\_tech\\_rpt\\_draft.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/new_waste_discharge_requirements/program_environmental_impact_report/2010jul_draft_peir/econ_tech_rpt_draft.pdf)

**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 RoWD under California Water Code section 13260 is **fifty-six thousand six hundred and twenty-eight dollars \$56,628.**

1 **PROOF OF SERVICE**  
2 (1013a, 2015.5 C.C.P.)

3 STATE OF CALIFORNIA, COUNTY OF STANISLAUS

4 I, **HEATHER J. McCAULEY**, declare that:

5 I am employed in the County of Stanislaus, California. I am over the age of eighteen (18) years  
6 and not a party to the within action. My business address is 928 12th Street, Suite 200, Modesto,  
7 California, 95353.

8 On **July 2, 2015**, I served the within:

9 **PETITION FOR REVIEW OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0039**

10 on the interested parties as follows:

11 SEE ATTACHED SERVICE LIST.

12 The following is the procedure in which service of this document was effected:

13 XXXXX U.S. Postal Service by placing such envelope(s) with postage thereon fully prepaid in the  
14 designated area for outgoing mail in accordance with this office's practice, whereby the  
15 mail is deposited in a U.S. Mailbox in the City of Modesto, California after the close of the  
16 day's business.

17 \_\_\_\_\_ United Parcel Service - Next Day Air

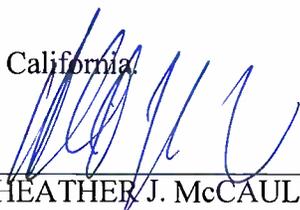
18 \_\_\_\_\_ Express Mail

19 \_\_\_\_\_ FAX

20 \_\_\_\_\_ Certified Mail - Return Receipt Requested

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
22 and correct.

23 Executed on **July 2, 2015**, at Modesto, California.

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26 HEATHER J. McCAULEY  
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**SERVICE LIST**

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