8 August 2016

Emma J. Bounds
Bounds Family Trust
19621 SE 72nd Street
Oklahoma City, OK 74857

Certified Mail No.
7016 0340 0000 2447 0235

Monte Bounds
Bounds Family Trust
33318 Avenue 12
Madera, CA 93636

Certified Mail No.
7016 0340 0000 2447 0242

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0541, EMMA J. BOUNDS, AS AN INDIVIDUAL AND AS TRUSTEE FOR THE BOUNDS FAMILY TRUST

Enclosed is an Administrative Civil Liability Complaint (ACL Complaint), issued pursuant to California Water Code section 13323. This Complaint alleges that Emma J. Bounds, as an individual and as trustee for the Bounds Family Trust, (Bounds Family Trust or Discharger) failed to submit the 2013, 2014 and 2015 Farm Evaluations as required by the Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3), and recommends an administrative civil liability pursuant to Water Code section 13268 in the amount of **seventy thousand nine hundred and eighty dollars ($70,980)**.

Bounds Family Trust may:

- Pay the proposed administrative civil liability and waive the right to a hearing (Option 1 on the attached waiver form—see Attachment D);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options 2 or 3 on the attached waiver form—see Attachment D); or
- Contest the ACL Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **5:00 p.m. on 24 August 2016**, a hearing will be scheduled for **3/4 November 2016** before a panel of the Central Valley Water Board. This hearing will be governed by the attached Hearing

Procedures and held at 1685 E Street, Fresno, California. Any objections to the Hearing Procedures must be received by Andrew Deeringer, whose contact information is listed in the Hearing Procedures, by **5:00 p.m. on 18 August 2016**.

If the Discharger would like to engage in settlement negotiations and assert an inability to pay the proposed liability, it should submit detailed financial information to the Central Valley Water Board along with a waiver requesting settlement discussions by **24 August 2016**. Appropriate documentation must include the last three years of signed federal income tax returns including schedules and may also include credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's Rancho Cordova office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the ACL Complaint, please contact Brett Stevens at (916) 464-4642, or via e-mail at brett.stevens@waterboards.ca.gov.

Andrew Altevogt

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosure: ACL Complaint R5-2016-0541

cc via email: Pamela Creedon, Central Valley Water Board, Rancho Cordova
Adam Laputz, Central Valley Water Board, Rancho Cordova
Rob L'Heureux, Central Valley Water Board, Rancho Cordova
Susie Loscutoff, Office of Enforcement, SWRCB, Sacramento
Andrew Deeringer, Office of Chief Counsel, SWRCB, Sacramento
Parry Klassen, East San Joaquin Water Quality Coalition
Stevie McNeil, Madera County Agricultural Commissioner

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABLITY COMPLAINT R5-2016-0541

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

EMMA J. BOUNDS AS AN INDIVIDUAL AND AS TRUSTEE FOR THE
BOUNDS FAMILY TRUST
MADERA COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code section 13323 to Emma J. Bounds, as an individual and as trustee for the Bounds Family Trust, (Bounds or Discharger), for failing to submit Farm Evaluations as required by the Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3 or East San Joaquin Order).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

BACKGROUND

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 16 May 2013, Bounds enrolled four parcels in the East San Joaquin Water Quality Coalition (Coalition) as a landowner, thus obtaining coverage under the East San Joaquin Order. The parcels that Bounds enrolled are Madera County Assessor's Parcel Numbers (APN) 047-180-003, 047-180-007, 047-180-008, and 047-180-009. These parcels have a total area of 69 acres.

3. The East San Joaquin Order requires that all 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 24 January 2014, the Coalition sent the Discharger a notice that the 2013 Farm Evaluation would soon be due. The notice provided contact information for the Coalition to answer questions and various methods for submitting the Farm Evaluation.

7. In February 2014, the Coalition sent the Discharger a newsletter informing Bounds about Farm Evaluation template mailing schedules and opportunities to attend Coalition-sponsored workshops to assist members with completing the Farm Evaluations.

8. On 19 March 2014, the Coalition sent the Discharger a Farm Evaluation template and directions for completing and submitting it. The cover letter for the template explained that the mandatory Farm Evaluation must be returned to the Coalition by 1 May 2014.

9. In May 2014, the Coalition sent a postcard to the Discharger providing notice that submittal of the 2013 Farm Evaluation was past due and advising that the Discharger submit the evaluation as soon as possible. The Discharger did not submit the Farm Evaluation in response to the postcard.

10. On 11 July 2014, the Coalition sent a final notice to the Discharger that the 2013 Farm Evaluation had not been submitted, and that failure to do so made the Discharger subject to Central Valley Water Board enforcement. The notice urged the Discharger to submit the required 2013 Farm Evaluation as soon as possible. The Coalition notice included as an attachment a letter from the Board's Assistant Executive Officer that explained the requirement to submit the Farm Evaluation and potential Board enforcement for failure to do so. The Discharger did not submit the Farm Evaluation in response to the notice.

11. On 10 December 2014, the Coalition sent a notice to the Discharger that the Farm Evaluation for 2014 (2014 Farm Evaluation) was due to the Coalition on 1 March 2015. The Discharger did not submit the Farm Evaluation by the deadline.

12. In May 2015, the Coalition sent a postcard to the Discharger providing notice that submittal of the 2014 Farm Evaluation was past due and advising that the Discharger submit the evaluation as soon as possible. The Discharger did not submit the Farm Evaluation in response to the postcard.

13. On 27 May 2015, the Coalition sent a final notice to the Discharger that the 2014 Farm Evaluation had not been submitted, and that the Central Valley Water Board may soon initiate enforcement actions against Coalition members for not completing the evaluation. The notice urged the Discharger to submit the required 2014 Farm Evaluation by 15 July 2015. The Discharger did not submit the Farm Evaluation in response to the notice.

14. On 16 December 2015, and in response to a request from Central Valley Water Board staff, the Coalition provided a list of its members who failed to submit Farm Evaluations for 2013 and/or 2014. The Discharger appeared on this list.

15. 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 by the deadline.

16. 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. A copy of the NOV is provided as Attachment A.

17. The certified mail receipt for the NOV issued to the Discharger was received on 1 March 2016. The Discharger neither submitted the Farm Evaluation nor contacted the Board in response to the NOV. A copy of the certified mail receipt is included with Attachment A.

18. 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.

19. On 19 April 2016, the Coalition sent the Board a list of members who had not submitted the 2015 Farm Evaluation or the previous years' Farm Evaluations, if applicable. The list indicated that Bounds had not submitted the 2013, 2014 and 2015 Farm Evaluations.

20. 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.

21. 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. A copy of this pre-ACL letter is provided as Attachment B.

22. 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 Evaluations or contact Board staff in response to the pre-ACL letter. A copy of the Federal Express proof of delivery for the pre-ACL letter is included with Attachment B.

23. Central Valley Water Board records indicate that at the time of issuance of this ACL Complaint, the Coalition had not received the Discharger's 2013, 2014 or 2015 Farm Evaluations.

ALLEGED VIOLATIONS

24. The Discharger failed to submit the 2013, 2014 and 2015 Farm Evaluations as required by the East San Joaquin Order. As of 8 August 2016, these Farm Evaluations are 830 days, 526 days, and 160 days past due, respectively.

REGULATORY CONSIDERATIONS

25. Water Code section 13267, subdivision (b)(1) provides that

> *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposed to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

26. Pursuant to Water Code section 13268, subdivision (b)(1), any person who fails or refuses to furnish a technical or monitoring report as required by Water Code section 13267, subdivision (b), may face an ACL in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

27. The required 2013, 2014 and 2015 Farm Evaluations are 830, 526 and 160 days past due, respectively. The maximum liability under Water Code section 13268 for the failure

to furnish a report under Water Code section 13267 is $1,000 per each day the violation occurs, for a total maximum of one million five hundred sixteen thousand dollars ($1,516,000).

28. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall 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.

29. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.

30. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment C. 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.

31. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. The East San Joaquin Order identifies failure to submit required reports on time as a priority violation with regard to enforcement.

32. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is $1,516,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to submit the 2013, 2014 and 2015 Farm Evaluations is estimated at $413 (see Attachment C for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent ($454.30).

33. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.

34. Issuance of this ACL Complaint is an enforcement action, and is therefore 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, subdivision (a)(2).

EMMA J BOUNDS, AS AS INDIVIDUAL AND AS TRUSTEE FOR THE BOUNDS FAMILY TRUST, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **seventy thousand nine hundred eighty dollars ($70,980)**. The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the penalty amount is explained in Attachment C.

2. A panel of the Central Valley Water Board will hold a hearing on this matter on **3/4 November 2016**, unless the Discharger does any of the following by **24 August 2016**.

    a) The Discharger waives the right to a hearing by completing the waiver form provided as Attachment D (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability of **seventy thousand nine hundred eighty dollars ($70,980)**. The check must be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814, with a copy of the check mailed to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; OR

    b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; OR

    c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.

3. The hearing will be governed by the Hearing Procedure, which is provided as Attachment E. During the hearing, the panel may choose to recommend that the Central Valley Water Board affirm, reject, or modify the proposed ACL, which may include

raising the monetary value of the ACL, or whether to recommend referral of the matter to the Attorney General for recovery of judicial civil liability.

4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this ACL Complaint, and through completion of the hearing.

Andrew Altevogt

Andrew Altevogt, Assistant Executive Officer

8/8/16

(Date)

Attachment A: February 2016 NOV and Proof of Receipt
Attachment B: May 2016 Pre-ACL Notification Letter and Proof of Delivery
Attachment C: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
Attachment D: Hearing Waiver
Attachment E: Hearing Procedure
Attachment F: ACL Fact Sheet

ATTACHMENT A

February 2016
NOV and Proof of Receipt

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

22 February 2016

Monte Bounds
Bounds Family Trust
33318 Ave 12
Madera, CA 93636-

Certified Mail Number
7013 1710 0002 3644 5132

NOTICE OF VIOLATION

FAILURE TO SUBMIT FARM EVALUATION
FAILURE TO RESPOND MAY RESULT IN FINES OF UP TO $1,000 PER DAY

You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or board), you are a member of the East San Joaquin Water Quality Coalition (Coalition) who has failed to submit Farm Evaluations for your 2013 and 2014 farm activities.

In becoming a Member of the Coalition, you became subject to the legal requirements described in the "Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group" (Order R5-2012-0116-R3 or "Order"). According to the Coalition's records, you have failed to meet your obligation to submit a Farm Evaluation to the Coalition for the 2013 and 2014 growing seasons. Failure to submit these Farm Evaluations by the required 1 May 2014[24] and 1 March 2015 due dates may subject you to fines.

The requirement to submit a Farm Evaluation is part of the Order's Monitoring and Reporting Program (MRP), which was issued pursuant to California Water Code section 13267. If you fail to submit the required Farm Evaluations by **31 March 2016**, the Central Valley Water Board may impose penalties of up to $1,000 per day pursuant to Water Code section 13261. As of the date of this Notice of Violation, you are 662 days and 358 days late, respectively, in submitting your 2013 and 2014 Farm Evaluations.

[24] For Members in High Vulnerability Areas – see Section V11.B.2 of the Order. The 2013 Farm Evaluation was due 5/1/2014 and the 2014 Farm Evaluation was due 3/1/2015. According to the Coalition, you have not submitted either evaluation.

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2012-0116-r3.pdf

These are separate violations under the Water Code, so the combined maximum penalty is therefore **one million and twenty thousand dollars ($1,020,000)**.

In order to avoid further potential fines, the Central Valley Water Board urges you to promptly complete the Board-approved Farm Evaluation form (enclosed) for both the 2013 and 2014 growing season and submit it to the Coalition. You can mail the Farm Evaluation to, or drop it off in person at, the address below:

East San Joaquin Water Quality Coalition
1201 L Street
Modesto, CA 95354

If you have any further questions, please contact Scott Perrou at (916) 464-4633 or via email at Scott.Perrou@waterboards.ca.gov.

Para obtener más información en español por favor contáctenos al teléfono Scott Perrou a (916) 464-4633 o vía email a: Scott.Perrou@waterboards.ca.gov.

ANDREW ALTEVOGT
Assistant Executive Officer, Central Valley Water Board

Enclosure: East San Joaquin Water Quality Coalition Farm Evaluation Form

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Monte Bounds
Bounds Family Trust
33318 Ave 12
Madera, CA 93636-

N

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jan Bounds ☐ Agent ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery
Jan Bounds

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MADERA CA 93638
MAR - 1 2018

ENTERED
Ky

3. Service Type
☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service la 7013 1710 0002 3644 5132

PS Form 3811, July 2013 Domestic Return Receipt

ATTACHMENT B

May 2016
Pre-ACL Notification Letter and Proof od Delivery

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 May 2016

Monte Bounds
Bounds Family Trust
33318 Avenue 12
Madera, CA 93636

Federal Express
2nd Day Delivery

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT FARM EVALUATIONS, BOUNDS FAMILY TRUST, MADERA, MADERA COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint), and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to submit a Farm Evaluation pursuant to section VII.B of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are members of the Third-Party Group (OrderR5-2012-0116-R3 or "Order"). **Please read this notice carefully.**

Based on information available to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), you own or operate at least one parcel that contains irrigated agriculture and are a member of the East San Joaquin Water Quality Coalition (Coalition). In becoming a member of the Coalition, you became subject to the legal requirements of the Order.

According to the Coalition's records, you have failed to meet your obligation to submit a Farm Evaluation to the Coalition for the 2013, 2014, and 2015 growing seasons. Pursuant to the Order, the due dates for these evaluations were 1 May 2014, 1 March 2015, and 1 March 2016, respectively.

The Coalition mailed you two reminders to submit the required evaluations after the due date, including resending you a copy of the Farm Evaluation form. Additionally, on 1 March 2016 you received a Notice of Violation from the Board that urged you to avoid further potential fines by submitting the required Farm Evaluations to the Coalition.

Legal Authority

California Water Code section 13267, subdivisions (a) and (b)(1) state:

"(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b)(1) *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."*

Under California Water Code section 13268, failure to submit a technical report (in this case, a Farm Evaluation) when requested by the Central Valley Water Board may result in an administrative civil liability against you of up to $1,000 per day for every day the report is late.

As of the date of this letter, your submittal of the 2013 Farm Evaluation is 736 days overdue; your submittal of the 2014 Farm Evaluation is 432 days overdue; and your submittal of the 2015 Farm Evaluation is 66 days overdue. The sum of these days of violation is 1,234, and the **maximum penalty** for the violations described above is **one million two hundred and thirty four thousand dollars ($1,234,000)** based on a calculation of the total number of days of violation times the statutory maximum penalty (1,234 total days of violation multiplied by $1,000).

Based on our review and after conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you for **fifty eight thousand eight hundred and two dollars ($58,812)**. This proposed penalty amount was calculated considering the methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) and is based on facts known to date. This proposed penalty amount is preliminary and is subject to modification should additional information come to light. In addition, because the violations are continuing, the maximum and proposed penalty amounts will continue to increase until you resolve the violations. The full Enforcement Policy may be found here: http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf. To avoid further liability, you are urged to submit your Farm Evaluations and then contact Board staff to arrange a settlement meeting (see details below).

By way of this letter, you are being notified of the opportunity to meet to discuss the facts regarding the alleged violation, including the option of settlement. This meeting affords you the opportunity to potentially reduce the proposed penalty amount if you present new

information to the Central Valley Water Board staff, or other information you believe is relevant to determining an appropriate monetary penalty. All settlement communications would be kept confidential subject to California Evidence Code sections 1152 and 1154. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing a Complaint.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring supporting documentation with you to the meeting. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing.

In order to initiate any discussions to settle this matter, you must contact Brett Stevens at (916) 464-4642 by **20 May 2016** to schedule a day and time to meet with Central Valley Water Board staff. If you do not respond by this date, the Assistant Executive Officer will issue you a Complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board; or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency.

Before settlement discussions can occur, you must submit the Farm Evaluations to the Coalition. A Farm Evaluation form is enclosed for your convenience. Complete the evaluation and submit it to:

East San Joaquin Water Quality Coalition
1201 L Street
Modesto, CA 95354

Failure to submit the Farm Evaluation and to schedule a settlement meeting with Central Valley Water Board staff will result in a Board hearing so that the Board can consider your enforcement case.

If you have any questions, please contact Brett Stevens by phone at (916) 464-4642 or by email at Brett.Stevens@waterboards.ca.gov.

Original signed by

Sue McConnell, Manager
Irrigated Lands Regulatory Program

cc via email: Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Susie Loscutoff, SWRCB Office of Enforcement
Parry Klassen, East San Joaquin Water Quality Coalition

Encl: Farm Evaluation Form

My Profile Support Locations English Search or tracking number Subr

FedEx Shipping Tracking Manage Learn FedEx Office ® Login

FedEx Tracking

808229734174

Ship date:
Fri 5/06/2016

RANCHO CORDOVA, CA US

Delivered
Signature not required

Actual delivery:
Tue 5/10/2016 1:21 pm

CA US

Travel History

Date/Time	Activity	Location
5/10/2016 - Tuesday		
1:21 pm	Delivered Package delivered to recipient address - release authorized	CA
8:49 am	On FedEx vehicle for delivery	CLOVIS, CA
7:58 am	At local FedEx facility	CLOVIS, CA
5/09/2016 - Monday		
1:30 am	Departed FedEx location	OAKLAND, CA
5/08/2016 - Sunday		
5:42 pm	Arrived at FedEx location	OAKLAND, CA
3:47 pm	Departed FedEx location	MEMPHIS, TN
5/07/2016 - Saturday		
12:21 pm	Arrived at FedEx location	MEMPHIS, TN
5/06/2016 - Friday		
8:33 pm	Left FedEx origin facility	RANCHO CORDOVA, CA
4:13 pm	Picked up	RANCHO CORDOVA, CA

Shipment Facts

Tracking number	808229734174	**Service**	FedEx 2Day
Delivered To	Residence	**Total pieces**	1
Terms	Shipper	**Packaging**	FedEx Envelope
Special handling section	Deliver Weekday, Residential Delivery		

FedEx

Search or tracking number Subm

Customer Focus
New Customer Center
Small Business Center
Service Guide
Customer Support

Company Information
About FedEx
Careers
Investor Relations
Subscribe to FedEx email

Featured Services
FedEx Delivery Manager
FedEx SameDay
FedEx Home Delivery
FedEx TechConnect
Healthcare Solutions
Online Retail Solutions
Packaging Services
Ancillary Clearance Services

Other Resources
FedEx Compatible
Developer Resource Center
FedEx Ship Manager Software
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ATTACHMENT C

Calculation of Penalty per SWRCB
Water Quality Enforcement Policy

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 (Enforcement Policy). The proposed administrative 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

Step1. 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 Discharger has failed to submit three Farm Evaluations as required by the East San Joaquin Order. By not submitting the evaluations, the Discharger has undermined the Coalition's efforts to analyze and report its members' Farm Evaluation data to the Board. The Discharger has therefore reduced the value of the Coalition's Farm Evaluation analysis and caused harm to the Irrigated Lands Regulatory Program.

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. The reporting of management practices in the Farm Evaluations will allow the Coalition and Board to effectively implement the Management Practices Evaluation Plan. This plan is a critical component of the Board's effort to address agricultural waste discharges and protect beneficial uses, including groundwater as a source of drinking water.

The Discharger operates irrigated lands that are in a designated High Vulnerability Area (HVA) for groundwater protection. The East San Joaquin Order prioritizes program implementation in HVAs, since these are the areas where beneficial uses are

most threatened. The missing Farm Evaluations and lack of reporting on management practices therefore cause a greater potential for harm to beneficial uses.

Additionally, the regulatory program is compromised when staff resources are directed toward bringing Coalition members into compliance rather than being available for outreach and assistance with regulatory compliance.

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. To date, the Discharger has disregarded the regulatory requirements and rendered those requirements ineffective.

The Discharger has undermined the efforts of the Central Valley Waters Board's Irrigated Lands Regulatory Program and the Coalition's efforts to comply by disregarding the requirement to submit the 2013, 2014 and 2015 Farm Evaluations. A Coalition member's compliance with reporting requirements is foundational to the Board's efforts to protect water quality. The Irrigated Lands Program Orders adopted by the Board specify the expectations and requirements for water quality protection. The requirements in the applicable Orders are rendered ineffective when Coalition members fail to meet their reporting requirements.

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 requirement is major. Based on the above factors, a per day factor of 0.6 is appropriate (see Table 3 on pg. 16 of the Enforcement Policy).

Multiple Day Violations: Pursuant to the East San Joaquin Order, the Discharger was required to submit the 2013 Farm Evaluation on 1 May 2014, the 2014 Farm Evaluation on 1 March 2015, and the 2015 Farm Evaluation on 1 March 2016. As of 8 August 2016, these Farm Evaluations are 830 days, 526 days and 160 days past due, respectively.

Violations under Water Code section 13268 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 this 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 Farm Evaluations is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Discharger's failure to submit the 2014 and 2015 Farm Evaluations has detrimentally impacted the environment on a daily basis, since submitting these evaluations does not result in immediate 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 the Farm Evaluations results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is associated with costs of preparing the evaluations, which are outlined in Step 8 below.

Either of the above findings justifies the use of the alternate approach to penalty calculation for multiple day violations. The minimum numbers of days to be assessed under the alternate approach for the 2013, 2014 and 2015 Farm Evaluations are 34, 24 and 12 days, respectively. Use of these minimum days yields a Total Base Liability Amount that is a sufficient deterrent for future violations.

Initial Liability Amount
The initial liability amount for the violations calculated on a per-day basis is as follows:

Violation 1: $1,000/day x 34 days x 0.6 = $20,400

Violation 2: $1,000/day x 24 days x 0.6 = $14,400

Violation 3: $1,000/day x 12 days x 0.6 = $7,200

Total Initial Liability Amount: $42,000

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 Discharger was given the score of 1.3 for the culpability factor. As a member of the Coalition, it is the Discharger's responsibility to be aware of, and to comply with, the reporting requirements of the East San Joaquin Order. The Coalition sent the Discharger multiple notices urging the submittal of the 2013, 2014 and 2015 Farm Evaluations.

Additionally, Board staff sent a Notice of Violation (NOV) to the Discharger on 22 February 2016, and a certified mail return card was received indicating that the NOV was delivered to the Discharger's address. The NOV urged submittal of the missing Farm Evaluations in order to avoid potential enforcement action.

Despite knowledge of the regulatory requirements, the Discharger failed to come into compliance by submitting the 2013, 2014 and 2015 Farm Evaluations.

b) *Cleanup and Cooperation*: 1.3

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 Discharger was given the score of 1.3. The Coalition issued multiple notices, and the Central Valley Water Board issued the Discharger an NOV in an effort to allow the Discharger to address the violation prior to the issuance of an ACL Complaint. The Discharger did not respond and cooperate with the Central Valley Water Board or Coalition despite being allowed ample time in which to do so. Despite opportunities to come into compliance, the Discharger did not make any attempt to cooperate. Cleanup is not applicable in this case.

c) *History of Violations*: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier for 1.1 to be used. The Discharger was given the score of 1.0, as there is no evidence of 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.

a) *Total Base Liability Amount:* **$70,980** ($34,476 + $24,336 + $12,168)

Violation 1: Initial Liability ($20,400) x Adjustments (1.3)(1.3)(1.0)) = $34,476

Violation 2: Initial Liability ($14,400) x Adjustments (1.3)(1.3)(1.0)) = $24,336

Violation 3: Initial Liability ($7,200) x Adjustments (1.3)(1.3)(1.0)) = $12,168

Step 6. Ability to Pay and Continue in Business

As per the Enforcement Policy, "[t]he ability of a Dischargers to pay an ACL is determined by its revenues and assets." The Discharger appears to have the ability to pay the Base Liability Amount based on revenues derived from managing 69 acres of almond orchard. Based on the 2014 Madera County Crop Report[1], the estimated revenue for a 69-acre almond orchard for this year is $483,531. As the orchard operator, the Discharger would have a share of these revenues. Based on current information, there are no factors under this category that warrant an adjustment.

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.

There are no other factors under this category that warrant an adjustment.

Step 8. Economic Benefit

Economic Benefit: **$413**

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)[2] penalty and financial modeling program, version 5.4.0. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statues.

[1] The value of almonds in 2014 was $7,455 per ton, with an average of 0.94 tons produced per acre. The 2014 Crop Report is available online here: http://www.madera-county.com/index.php/publications/crop-reports

[2] US EPA Economic Beneift 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.

The BEN model is the appropriate tool for estimating the economic benefit in this 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.

The violations described in the Complaint identify the avoided costs of preparing the 2013, 2014 and 2015 Farm Evaluations, which have benefited the Discharger.

For the purposes of determining the economic benefit, Board staff assumed that it would take a person knowledgeable with the Discharger's farm operations, such as a farm manager or a crop advisor, about two hours per farm operation to complete the Farm Evaluation for a given year. Since the Discharger is the operator for four contiguous parcels, staff assumed that the parcels are a single farm operation. Using an estimate of the value of the knowledgeable person's time of $120 per hour, the economic benefit of this avoided cost per Farm Evaluation is:

1 operation x 2 hours/operation x $120/hour = $240

Therefore, the cost for the three Farm Evaluations is $720 ($240 per Farm Evaluation x 3 Farm Evaluations).

In summary, the costs avoided by the Discharger are estimated at approximately $720. The actual economic benefit realized is derived by adjusting the avoided costs for inflation and tax deductibility. Using the BEN model, the total economic benefit of noncompliance was determined to be $413.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount:* **$455**

The Enforcement Policy recommends 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 calculated the Discharger's economic benefit obtained from the violations cited herein to be $413. This number plus ten percent results in a recommended Minimum Liability of $455.

b) *Maximum Liability Amount:* **$1,516,000**

The maximum liability under Water Code section 13268 for the failure to furnish a report under Water Code section 13267 is $1,000 per each day the violation occurs. The Discharger was required to submit the 2013 Farm Evaluation on 1 May 2014, the 2014 Farm Evaluation on 1 March 2015, and the 2015 Farm Evaluation on 1 March 2016. As of 8 August 2016, these Farm Evaluations are 830 days, 526 days and 160 days past due, respectively. The sum of these

violation days is 1,516, so the total maximum liability is one million five hundred sixteen thousand dollars ($1,516,000).

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 the 2013, 2014 and 2015 Farm Evaluations is seventy thousand nine hundred and eighty dollars **($70,980)**.

ATTACHMENT D

Waiver Form
For ACL Complaint

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent **EMMA J. BOUNDS, AS AN INDIVIDUAL AND AS TRUSTEE FOR THE BOUNDS FAMILY TRUST,** (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0541 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)***

I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.

a. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **seventy thousand nine hundred eighty dollars ($70,980)** by check that references "ACL Complaint R5-2016-0541" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by **24 August 2016.**

b. I understand that payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)***

I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)***

I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

ATTACHMENT E

Hearing Procedure

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2016-0541

ISSUED TO
EMMA J. BOUNDS, AS AN INDIVIDUAL AND AS TRUSTEE FOR THE
BOUNDS FAMILY TRUST
MADERA COUNTY

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Emma J. Bounds, as an individual and as trustee for the Bounds Family Trust (Discharger) for the violations charged in the ACL Complaint. The Board has scheduled a hearing to consider the matter on the following date:

3/4 November 2016
Central Valley Water Board Offices
1685 E Street
Fresno, California

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the Central Valley Water Board will convene a hearing to hear evidence and argument and to propose a recommendation to the Central Valley Water Board about resolution of the ACL Complaint. The recommendation of the Hearing Panel will be presented to the Board at a subsequent meeting. You will be notified of the date of the meeting. At the meeting, the Board may adopt, modify, or reject, the recommendation of the Hearing Panel.

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may assess the proposed civil liability, assess a higher or lower amount, decline to asses any liability, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The Meeting Agenda will be posted at least ten days before the meeting on the Board's website, at the following address:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

Objections to this Hearing Procedure must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Board's Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Board Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

I. Hearing Participants

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Emma J. Bounds, as an individual and as trustee for the Bounds Family Trust

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person's interest. The Board's Advisory Team will promptly respond to all timely requests for Designated Party status.

II. Hearing Time Limits

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **30 minutes**
2. Emma J. Bounds, as an individual and as trustee for the Bounds Family Trust: **25 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

III. Documents in Evidence and Availability of Board Files

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. The file is available to the public and may be inspected or

copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties' (including the Discharger's) Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

Printing and Page Limitations: For each Designated Party, including the Board's Prosecution Team, the Board has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Board Members will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Board Members. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The Draft ACL

Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

Parties without access to computer equipment are encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Board Members, which must be received by the Advisory Team at Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

V. Miscellaneous Matters

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: http://www.waterboards.ca.gov. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

VI. Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM	
Adam Laputz, Assistant Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726 Adam.Laputz@waterboards.ca.gov	Andrew Deeringer, Attorney State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 322-3575 Andrew.Deeringer@waterboards.ca.gov
BOARD PROSECUTION TEAM*	
Brett Stevens, Senior Environmental Scientist 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4642 Brett.Stevens@waterboards.ca.gov	Susan Loscutoff, Attorney State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 327-0140 Susan.Loscutoff@waterboards.ca.gov
DISCHARGER	
Emma J. Bounds Bounds Family Trust 19621 SE 72nd Street Oklahoma City, OK 74857 Monte Bounds Bounds Family Trust 33318 Avenue 12 Madera, CA 93636	

*The Board's Advisory Team also includes: Pamela Creedon, Executive Officer

**The Board's Prosecution Team also includes: Andrew Altevogt, Assistant Executive Officer, David Boyer, Assistant Chief Counsel, Sue McConnell, Supervising Water Resources Control Engineer, and Keri Yee, Associate Government Program Analyst.

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the "Primary Contacts" table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

8 August 2016	▪ Prosecution Team issues ACL Complaint and Hearing Procedure.
18 August 2016	▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. Hard copies of all of these documents must be submitted to the Prosecution Team.
24 August 2016	▪ Discharger's deadline to submit 90-Day Hearing Waiver Form. If the Prosecution Team accepts the waiver, all the following deadlines may be revised.
2 September 2016	▪ Prosecution Team's deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements."
22 September 2016	▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements." ▪ Interested Persons' written statements are due. Hard copies of all of these documents must be submitted to the Prosecution Team.
7 October 2016	▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. Hard copies of rebuttal documents must be submitted to the Prosecution Team. ▪ If a Designated Party's submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Board Members by this date. ▪ Deadline to submit requests for additional time.
13 October 2016	▪ All Designated Parties may submit responses to written statements submitted by Interested Persons. ▪ Prosecution Team submits Summary Sheet. ▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Board Members so that they are received by the Advisory Team by this date.
3/4 November 2016	Board Hearing

ATTACHMENT F

ACL Fact Sheet

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including 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 violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
   - IRS Form 1120 for C Corporations

- IRS Form 1120 S for S Corporations
- IRS Form 1065 for partnerships

2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;

3. The following information can be substituted if income tax returns cannot be made available:
   - Audited Financial Statements for last three years;
   - A list of major accounts receivable with names and amounts;
   - A list of major accounts payable with names and amounts;
   - A list of equipment acquisition cost and year purchased;
   - Ownership in other companies and percent of ownership for the last three years;
   - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
   - City/Town/Village;
   - County;
   - Municipality with enterprise fund;
   - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
   - Population;
   - Number of persons age 18 and above;
   - Number of persons age 65 and above;
   - Number of Individual below 125% of poverty level;
   - Median home value;
   - Median household income.
3. Current or most recent estimates of:
   - Population;
   - Median home value;
   - Median household income;
   - Market value of taxable property;
   - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;

10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml
An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.