

ITEM:	35
SUBJECT:	Sarbjit & Satwant K. Athwal, Madera County
BOARD ACTION:	<i>Consideration of an Administrative Civil Liability Order (ACLO)</i>
BACKGROUND:	<p>Sarbjit & Satwant K. Athwal (“Athwal”) own approximately 983 acres of agricultural land in Madera, Merced, and Stanislaus Counties. Staff identified three Madera County parcels in the Water Code section 13260 Directive letter (“Directive”) sent to Athwal. Athwal later reported owning several more parcels.</p> <p>On 19 July 2013, staff conducted inspections of three Madera County parcels owned by Athwal, and found evidence of commercially irrigated agriculture based on the crop grown and size of the operations. Aerial imagery also indicates that the land use of the parcels owned by Athwal is commercial irrigated agriculture.</p> <p>On 31 July 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (“Directive”) to Athwal. The Directive required Athwal to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive (17 August 2013). Athwal could comply by joining the East San Joaquin Water Quality Coalition (“Coalition”), or by submitting a Report of Waste Discharge (RoWD). The certified mail receipt for the Directive was signed as received by Athwal on 2 August 2013.</p> <p>Because Athwal failed to respond by the deadline specified in the Directive, a Notice of Violation (“NOV”) was sent to Athwal on 30 August 2013. The NOV required Athwal to obtain regulatory coverage by 19 September 2013. Again, Athwal did not obtain regulatory coverage and did not contact the Water Board.</p> <p>On 16 October 2013, staff sent Athwal a notification letter (“pre-ACL letter”) that an ACL in the amount of \$3,500 would be issued if Athwal did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 1 November 2013. Athwal did not obtain regulatory coverage or reach settlement with Staff.</p> <p>In July 2014, the Advisory Team to the Board issued a memorandum regarding proposed settlements for cases involving failure to respond to an Irrigated Lands Program Directive (cases similar to Athwal). The Prosecution Team finds that the issues raised in the Advisory Team memorandum apply also to the Athwal enforcement case. These issues were considered by the Prosecution Team when preparing the Athwal ACL Complaint, which accounts for the difference in the proposed penalty amounts between the pre-ACL letter and this Complaint. This Complaint proposes a penalty amount of \$31,460.</p>
ISSUES:	<p>The Prosecution Team understands that the Board strives to ensure that penalties, not only conform to the Enforcement Policy, but are also fair, provide a sufficient deterrent, and are generally consistent with those applied in similar cases.</p> <p>With respect to deterrence, the Prosecution Team recognizes that there may be a relationship between factors that incentivize growers without regulatory coverage to come into compliance. For example, both high penalty amounts and the timeliness with which enforcement actions are brought contribute to the deterrent effect of an enforcement program.</p> <p>The Prosecution Team believes that the adoption of the proposed fine will send a</p>

	strong signal to similarly situated non-compliant growers to come into compliance.
ACLO RECOMMENDATION:	The Prosecution Team recommends that the Board adopt the proposed Administrative Civil Liability Order assessing a \$31,460 Administrative Civil Liability.

Mgmt. Review SYM
Legal Review NSK

17 April 2015 Meeting
Central Valley Regional Water Quality Control Board meeting
1685 E Street, Fresno, CA 93706