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## State Water Resources Control Board

TO: Vanessa Young  
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DATE: May 22, 2015

SUBJECT: A GREENER GLOBE ABILITY TO PAY, REGARDING  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2015-0503

### SUMMARY

This memo is in response to your request of December 2014 for a determination of A Greener Globe's (Discharger) ability to pay the Administrative Civil Liability Complaint No. R5-2015-0503 in the amount of \$677,531.

On May 12, 2015, the Discharger submitted a set of documents containing IRS 990 Tax Forms for the years 2009 through 2013 in an attempt to respond to the Prosecution Team's January 20, 2015 request for financial information. One of the important data sources for assessing A Greener Globe's financial situation, the Financial Data Request Form, was requested but not submitted. The Financial Data Request Form (FDRF) is critical to assess ability to pay because it was designed to collect data relevant to the overall financial health of a discharger. For more about this, see endnote i.<sup>i</sup>

The Porter-Cologne Water Quality Control Act requires that when setting civil liabilities, the regional board shall take into consideration the ability to pay and to continue in business<sup>ii</sup>. It is the conclusion of this analysis that the Discharger may have sufficient equity in the land at 901 Galleria Blvd., Roseville, CA to pay the proposed liability amount.

**Data: Net Income, Assets and Liabilities**

State Water Board Enforcement Policy<sup>iii</sup> requires looking at the Discharger's revenues and assets as

Table 1a Rental Net Revenues = Gross Rents - Rental Expenses			
	Gross Rents	Rental Expenses	Rental Net Revenues
2009	No rental income reported		
2010	\$246,375	\$234,083	\$12,292
2011	\$259,500	\$235,887	\$23,613
2012	\$259,500	\$252,682	\$6,818
2013	\$278,250	\$264,722	\$13,528

Data Source: IRS Form 990, Part VIII Lines 6a-6c.

sources of ability to pay. The only revenues which are available to pay the 501(c)(3) expenses come from Rental Net Revenues; that is, the gross rental revenues minus the costs of the rental activity. Table 1a presents the rental net revenues which range from \$6,818 to \$23,613. In 2013, A Greener Globe had \$13,528 available to pay the expenses of its 501(c)(3) activities.

Table 1b Net Income = Rental Net Revenues – Total Functional Expenses			
	Rental Net Revenues (from Table 1a)	Total Functional Expenses	Net Income
2010	\$12,292	\$40,475	-\$28,183
2011	\$23,613	\$47,142	-\$23,529
2012	\$6,818	\$43,408	-\$36,590
2013	\$13,528	\$39,584	-\$26,056

Data Source for Total Functional Expenses:  
IRS Form 990, Part IX Line 25.

Table 1b shows that the rental net revenues do not fully pay for the functional expenses<sup>iv</sup> of the 501(c)(3) activities of A Greener Globe. In 2013, A Greener Globe needed an additional \$26,056 to fully pay for the 501(c)(3) activities.

When the income is insufficient, an ability to pay analysis necessitates reviewing assets and liabilities to assess a discharger's ability to pay.

Table 2 Total Liabilities	
2009	\$1,372,048
2010	\$1,396,603
2011	\$1,416,130
2012	\$1,447,622
2013	\$1,485,078

Data Source:  
IRS 990, Part I Line 21.

A Greener Globe's only asset, according to the documentation submitted, appears to be the property at 901 Galleria Blvd, Roseville, CA. A Greener Globe on May 12, 2015 submitted a document entitled "All About Us". The document states that in 2006 the Discharger received "offers between five and eight million to joint venture the site." Table 2 summarizes the liabilities reported to the IRS for the years 2009-2013. Liabilities have steadily grown since 2009. The 2013 IRS Form 990 shows total liabilities of \$1,485,078. Using the largest liability (\$1,485,078) and assuming the property sells for a likely lower bound of \$5,000,000, the expected equity from selling the property is \$3,514,922 before closing costs, which is more than sufficient to pay the proposed penalty.

**Information Sources:** Table 3 provides the list of documents reviewed by the economist.

**Table 3: Information used in the Ability to Pay Analysis:**

\* IRS tax form 990 for 2013

Return of Organization Exempt from Income Tax with:  
Schedule A, Public Charity Status and Public Support  
Schedule D, Supplemental Financial Statements  
Schedule L, Transactions with Interested Persons  
Schedule O, Supplemental Information to Form 990 or 990-EZ  
Annual Registration Renewal Fee Report  
California Statement

\* IRS tax form 990 for 2012

Return of Organization Exempt from Income Tax with:  
Schedule A, Public Charity Status and Public Support  
Schedule D, Supplemental Financial Statements  
Schedule L, Transactions with Interested Persons  
Schedule O, Supplemental Information to Form 990 or 990-EZ  
Annual Registration Renewal Fee Report

\* IRS tax form 990 for 2011

Return of Organization Exempt from Income Tax with:  
Schedule A, Public Charity Status and Public Support  
Schedule D, Supplemental Financial Statements  
Schedule L, Transactions with Interested Persons  
Schedule O, Supplemental Information to Form 990 or 990-EZ  
Annual Registration Renewal Fee Report  
Form 4562, Depreciation and Amortization  
Forms 990 / 990-PF  
Form 8868, page 2 only.  
California Statements

\* IRS tax form 990 for 2010

Return of Organization Exempt from Income Tax with:  
Schedule A, Public Charity Status and Public Support  
Schedule D, Supplemental Financial Statements  
Schedule L, Transactions with Interested Persons  
Schedule O, Supplemental Information to Form 990 or 990-EZ  
Annual Registration Renewal Fee Report  
California Statements

\* IRS tax form 990 for 2009

Return of Organization Exempt from Income Tax with:  
Schedule A, Public Charity Status and Public Support  
Annual Registration Renewal Fee Report  
Federal Statements  
California Statement

\* "All About Us", undated, no author, submitted by A Greener Globe, May 12, 2015.

**Caveats:**

At this writing, we do not have a verifiable market value for 901 Galleria Blvd, Roseville, CA property. There is a For Sale sign on the property, yet the asking price is not known.

We do not know how much it would cost to place the property on the market. Is remediation, if any, required?

**Assumptions:**

We assume the liabilities reported in the IRS 990 forms are complete, true, and accurate. That is, we assume there are no other liabilities because no other liabilities were identified in the tax documents the Discharger submitted on May 12, 2015.

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<sup>i</sup> The Financial Data Request Form (FDRF) requires, for instance, specific information about each loan and each mortgage: name of creditor, purpose of the loan or mortgage, term of the loan, interest rate, collateral, cosigner, original amount, present balance. In this case understanding the purpose of the loan would have enabled a more accurate interpretation of the liabilities reported in the IRS 990 forms. FDRF also asks for specific assets such as securities, inventory, accounts receivable. This information would shed light on the assets which are supported by the liabilities. The FDRF also requests specific information about each bank, each savings & loan, and each trust account requiring the account number and balance for each entity. This information consolidates all of the current financial data in one place, allowing for a more reliable assessment. Lastly, the FDRF asks for sufficient information to assess net income. Examples are: interest expense and interest income and their sources, overhead, lease payments and lease receipts. This detail is not required by IRS, yet is a consideration to assess ability to pay. It is this more inclusive information which produces a more reliable ability to pay analysis. Rather, in this case, the conclusion of the ability to pay analysis relies on the limited financial information submitted by the Discharger and the information supplied by the Prosecution Team as listed in Table 3.

<sup>ii</sup> See Water Code sections 13327 and 13385

<sup>iii</sup> Water Quality Enforcement Policy, Office of Enforcement, State Water Resources Control Board, Effective May 20, 2010, page 19.

<sup>iv</sup> Functional expenses are unique to nonprofit organizations and provide information about the distribution of costs by natural categories such as a specific program, for example recycling education, and more general categories such as salaries, overhead. Keating (Northwestern University) and Frumkin (Kennedy School of Government, Harvard University), Reading 5 provided at a National Assembly of State Arts Agencies training, October 2001, p. 38. The IRS form 990, Part IX presents three categories: Program service expenses, Management and general expenses, and Fundraising expenses.