

ITEM:	13
SUBJECT:	William R. Sinks et al., Madera County
BOARD ACTION:	<i>Consideration of an Administrative Civil Liability Order (ACLO)</i>
BACKGROUND:	<p>William R. Sinks ( "Discharger") owns 154 acres of agricultural land in Madera County, identified as Assessor's Parcel Number 023-110-004.</p> <p>On 20 February and 18 April 2013, the Board issued notices to the Discharger describing new water quality regulations and actions available to comply with the regulations.</p> <p>On 19 July 2013, staff conducted an inspection of parcel 023-110-004 and found evidence of land irrigated for a commercial purpose based on the crop grown and the size of the operation.</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 the Discharger. The Directive required the Discharger to obtain regulatory coverage for their irrigated agricultural parcel within 15 calendar days of receipt of the Directive. The Discharger could comply by joining the Coalition, or by submitting a Report of Waste Discharge (RoWD).</p> <p>Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent to the Discharger on 30 August 2013.</p> <p>The certified NOV mail package was returned to the Central Valley Water Board with a note from the mail carrier indicating that the letter was "refused" by the recipient on 5 September 2013.</p> <p>On 19 February 2014, Board staff arranged for a process server to deliver a notification letter to the Discharger explaining that an Administrative Civil Liability (ACL) would be issued if the Discharger did not obtain regulatory coverage and initiate settlement discussions regarding the proposed ACL fine by 6 March 2014. Although the pre-ACL letter was received, the Discharger did not contact Board staff in response to the letter.</p> <p>On 10 May 2014, the Assistant Executive Officer of the Central Valley Water Board issued an ACL Complaint to the Discharger in the amount of three thousand five hundred forty dollars (\$3,540) for failing to either submit a Report of Waste Discharge (RoWD) or, in lieu of submitting a RoWD, submit a Notice of Intent (NOI) to enroll in the East San Joaquin Water Quality Coalition.</p> <p>On 23 June 2014, the Discharger submitted a hearing waiver and the proposed penalty of \$3,540 to settle the ACL Complaint.</p> <p>On 11 July 2014, the Advisory Team issued a memorandum (memo) to the Prosecution Team tentatively rejecting proposed settlement agreement. In this memo, the Advisory Team requested that the Prosecution Team further explain how the proposed settlements adequately address the Central Valley Water Board's regulatory interests. The Advisory Team invited the Prosecution Team and Discharger to prepare a Stipulated Order to address the concerns outlined in the memo.</p>

	<p>On 17 July 2014, the Discharger enrolled in the Coalition and paid the Coalition dues and back dues. This action brought the Discharger into compliance with the Directive.</p> <p>On 30 September 2015, Board staff sent a letter to the Discharger to renegotiate settlement of the violation in accordance with the Advisory Team comments. In the letter, staff proposed a settlement of fifty thousand and fifty dollars (\$50,050). The Discharger agreed to a settlement meeting, which was held in October 2015.</p> <p>During settlement negotiations, the Discharger submitted financial documents to the Prosecution Team. An economist for the State Water Resources Control Board (State Water Board) performed an “ability to pay” analysis using those documents, and concluded that the Discharger does not have the ability to pay the proposed penalty of \$50,050 and stay in business. A tentative settlement agreement was drafted that would require the Discharger to pay a penalty of \$3,540 to resolve the outstanding liability.</p> <p>In August 2015 the Advisory Team rejected the April 2016 settlement agreement and directed the Prosecution Team to present the matter to the hearing panel.</p>
<p>ADMINISTRATIVE CIVIL LIABILITY COMPLAINT</p>	<p>On 10 May 2014, the ACL Complaint was issued by the Assistant Executive Officer in the amount of \$3,540. The ACL Complaint alleged the Discharger failed to obtain regulatory coverage as required by the Directive. The Discharger’s attempt to settle the Complaint by paying the proposed fine in full was rejected by the Advisory Team.</p> <p>A proposed ACL Order would allow the Discharger to settle the ACL Complaint for \$3,540 based on the Discharger’s inability to pay a larger penalty and stay in business.</p>
<p>ISSUES:</p>	<p>The Discharger has submitted evidence to support a claim that he cannot pay the proposed penalty of \$50,050 and stay in business. The Prosecution Team supports this claim based on the analysis and expert opinion of the State Water Board’s economist.</p>
<p>ACLO RECOMMENDATION:</p>	<p>The Prosecution Team recommends that the Board adopt the Administrative Civil Liability Order for \$3,540 as proposed.</p>

Mgmt. Review   SYM    
Legal Review   SNL  

3/4 November 2016 Hearing Panel  
Central Valley Regional Water Quality Control Board meeting  
1685 E Street, Fresno, CA 93706