

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0023-R

IN THE MATTER OF

BALCOM RANCH
21099 SOUTH MOUNTAIN ROAD, SANTA PAULA, CA

This Complaint is issued to Balcom Ranch (hereafter Discharger) pursuant to California Water Code (Water Code) section 13261, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on evidence that the Discharger violated Water Code section 13260 by failing to submit a report of waste discharge or, alternatively, by failing to submit a Notice of Intent to comply with the Los Angeles Regional Water Quality Control Board's (Regional Board) *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region*, Order Nos. R4-2005-0080 and R4-2010-0186, when so requested by the Regional Board.

The Executive Officer of the Regional Board alleges the following:

Background

1. Balcom Ranch owns the property located at 21099 South Mountain Road in the City of Santa Paula, County of Ventura, near the intersection of South Mountain Road and Balcom Canyon Road. The property is comprised of Assessor Parcel Numbers (APN) 046-0-150-140 and 046-0-150-320. According to Ventura County Assessor records, the Discharger owns approximately 108 acres for these two parcels. The property is in close proximity to the Santa Clara River, an impaired waterbody. Balcom Ranch is a California Partnership.
2. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste in the Los Angeles Region, which includes the coastal watersheds of Los Angeles and Ventura Counties, that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the Regional Board a report of waste discharge (ROWD).
3. Water Code section 13264 provides that no person may discharge waste unless they have filed a ROWD and until the Regional Board has issued waste discharge requirements under section 13263 or waived such requirements under section 13269.
4. Pursuant to Water Code section 13269, the Regional Board adopted Order No. R4-2005-0080, the *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region* (Conditional Waiver), on November

3, 2005. The Regional Board renewed the Conditional Waiver in Order No. R4-2010-0186 on October 7, 2010, and in Order No. R4-2015-0202 on October 8, 2015. The Conditional Waiver regulates discharges of waste from irrigated lands including surface discharges (also known as irrigation return flows or tailwater), subsurface discharges through drainage systems that lower the water table below irrigated lands (also known as tile drains), discharges to groundwater, and stormwater runoff flowing from irrigated lands. Discharges from irrigated lands can and do contain wastes, as defined in Water Code section 13050, that could affect the waters of the state. Agricultural activities can generate pollutants such as sediment, metals, salts, nitrogen, pesticides, herbicides, nutrients, and fertilizers. Unregulated discharges of water containing these pollutants from irrigated agricultural operations to receiving water bodies can degrade water quality and impair beneficial uses.

5. Order No. R4-2005-0080 required all existing commercial irrigated farming operations in the Los Angeles Region to submit a Notice of Intent to enroll in the Conditional Waiver, submit a Monitoring and Reporting Program (MRP) Plan, and submit a Quality Assurance Project Plan (QAPP), individually or as a member of a Discharger Group, by August 3, 2006. Public notification regarding the adoption of the Conditional Waiver included a Notice of Public Hearing on August 30, 2005, a September 27, 2005 newspaper notice published in the Ventura County Star, Thousand Oaks Star, Oxnard Star, Simi Valley Star, Moorpark Star, and Camarillo Star, as well as a letter mailed to agriculture stakeholders (addressed to interested parties) on April 17, 2006.
6. Agricultural dischargers may comply with Water Code section 13264 for discharges of waste from their irrigated agricultural lands by submitting an individual ROWD under section 13260, leading to individual waste discharge requirements under section 13263, or by submitting a Notice of Intent, either individually or as a member of a Discharger Group, to comply with the Conditional Waiver. Agricultural dischargers in Ventura County may join Ventura County Agriculture Irrigated Lands Group (VCAILG), or another Regional Board-approved Discharger Group, as a cost-effective way to comply with the requirements of the Conditional Waiver.
7. According to available records, including, but not limited to, information from the Ventura County Assessor, a Regional Board staff site visit on November 17, 2009, and prior testimony and evidence provided by the Discharger, a commercial irrigated farming operation is operated on the Discharger's property. A significant portion of the property is used to grow commercial citrus crops. The Discharger uses furrow irrigation to irrigate its citrus orchards, and applies nutrients to the soil. Some of the acreage is operated by a tenant who grows row crops and some is utilized for non-irrigated purposes (e.g., roads, buildings, and support structures). By owning and/or operating irrigated land, the Discharger is subject to the Conditional Waiver.
8. On January 23, 2007, the Regional Board's Executive Officer sent an official notice to the Discharger entitled "Notice to Comply with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles

Region" (Notice to Comply). This Notice to Comply directed the Discharger to comply with the terms of the Conditional Waiver by first submitting a Notice of Intent, MRP Plan, and a QAPP, individually or as a member of a Discharger Group. Alternatively, if the Discharger did not enroll in the Conditional Waiver, the Discharger was required to submit a ROWD in order to apply for individual waste discharge requirements. Finally, if the property was not commercially irrigated agriculture, and therefore not subject to the Conditional Waiver, the Discharger was asked to provide such information to the Regional Board. This Notice to Comply was sent to Balcom Ranch's mailing address - 943 South Burnside Avenue, Los Angeles, CA 90036. Although the Discharger has denied that they had previously seen the letter, the Discharger signed for subsequent correspondence sent to this address (see below) and has acknowledged that this is one of the mailing addresses the Discharger uses.

9. The Discharger failed to respond to the January 23, 2007 Notice to Comply, either by: a) submitting a Notice of Intent, MRP Plan, and QAPP to comply with the Conditional Waiver individually, b) providing proof of Discharger Group membership, c) submitting a ROWD, or d) by providing information showing that the operation was not a commercial irrigated farming operation.
10. On November 15, 2007, the Executive Officer issued the Discharger a Notice of Violation for each parcel for failure to enroll under the Conditional Waiver. These Notices of Violation once again directed the Discharger to immediately comply with the terms of the Conditional Waiver and to submit a Notice of Intent, MRP Plan, and QAPP, or to join a Discharger Group. Regional Board staff mailed the November 15, 2007 Notices of Violation by certified mail, and received a return receipt for each Notice of Violation confirming delivery to the Discharger at the same mailing address as the January 23, 2007 Notice to Comply.
11. The Discharger failed to respond to the November 15, 2007 Notice of Violation either by submitting a Notice of Intent, MRP Plan, and QAPP to comply with the Conditional Waiver, providing proof of Discharger Group membership, or submitting a ROWD.
12. On November 17, 2009, Regional Board staff conducted a site visit of APNs 046-0-150-140 and 046-0-150-320. The purpose of the visit was two-fold: to find a contact person for the Discharger, who had not responded to staff's prior contacts; and to verify that the property had not been converted to a non-agricultural use. Regional Board staff drove the southern boundary of parcel 046-0-150-140 (South Mountain Road), then driving through an open gate, the eastern boundary of parcel 046-0-150-140 ("north-south dirt road"), and the southern boundary of parcel 046-0-150-320 ("east-west dirt road"). Regional Board staff stopped at a barn/work area in an attempt to locate Discharger personnel. No one was present. Otherwise, Regional Board staff did not leave the dirt road. South Mountain Road is a public street. From South Mountain Road, Regional Board staff could see that at least some portion of the property was used for citrus groves, thereby verifying that a portion of the property's land use is irrigated agriculture.

Procedural History

13. On February 18, 2010, the Executive Officer issued Administrative Civil Liability Complaint No. R4-2010-0023 (hereafter Original Complaint) against the Discharger for failing to submit a ROWD or Notice of Intent to comply with the Conditional Waiver after being so requested by the Regional Board. In addition to seeking civil liability, the intent of the Original Complaint was to encourage compliance. The Executive Officer recommended that the Regional Board assess the Discharger \$35,700, provided that the Discharger submitted the required documentation to come into compliance within 30 days of the date of the Original Complaint. The Executive Officer sought higher penalties in the amount of \$400 per day for each day past 30 days from the date of the Original Complaint up to the date that the Discharger submitted the required documentation.
14. The Discharger waived the 90-day hearing requirement in order to engage in settlement discussions. Settlement discussions were not successful and the matter was scheduled for a hearing.
15. On March 17, 2011, a hearing before a Regional Board Hearing Panel was held on the Original Complaint. Based on the written record and evidence presented at the hearing, the Panel determined that the Discharger violated Water Code section 13260 by failing to submit a ROWD or a Notice of Intent, either individually or as a member of a Discharger Group, to comply with the Conditional Waiver, despite at least two notices by the Regional Board. As of the date of that hearing, the Discharger had still not come into compliance by submitting the required documentation. Therefore, the Panel recommended that the Regional Board impose administrative civil liability in the amount of \$193,850 on the Discharger pursuant to Water Code section 13261 for the pre- and post-Complaint violation.
16. On March 21, 2011, the Discharger notified Regional Board staff that it intended to join VCAILG. The Discharger thereafter provided Regional Board staff with copies of the enrollment documents. Based on these documents, it appears that the Discharger submitted them via fax to VCAILG on March 22, 2011, and VCAILG processed the Discharger's enrollment on April 5, 2011. Regional Board staff confirmed that the Discharger's enrollment was completed.
17. On July 14, 2011, after considering the Hearing Panel's report and making an independent review of the record, the Regional Board concurred with the Panel's findings and recommendation and issued Order on Complaint No. R4-2010-0023, assessing administrative civil liability on Balcom Ranch in the amount of \$193,850.
18. On August 15, 2011, the Discharger appealed the Regional Board's decision to adopt Order on Complaint No. R4-2010-0023 by filing a petition with the State Water Resources Control Board (State Water Board). On October 2, 2012, the State Water Board dismissed the petition.

19. The Discharger sought a petition for writ of mandate in the Superior Court (Court) for the County of Ventura challenging Order on Complaint No. R4-2010-0023. On April 28, 2015, Judge O'Neill issued a minute order expressing concern with the "enormity of the penalty" imposed pursuant to Water Code section 13261 and indicated he would remand the matter for further proceedings. The Court found that the Regional Board's findings concerning the Discharger's failure to comply with Water Code section 13260 are supported by substantial evidence. The Court further noted that the remand is limited to the issue of the penalty calculation and the appropriate weight to be given to the factors applicable pursuant to Water Code section 13327. In no particular order, the Court specifically stated that the most significant evidentiary factors contributing to its conclusion were the following:
- a) The nature of the offense, which involves no allegation of unlawful discharges;
 - b) The mechanical daily formula used to compute the post-complaint portion (\$158,500), which constituted over 80% of the total penalty. The Court found it noteworthy that a much harsher penalty formula was applied despite the fact that most of that time was prior to the hearing;
 - c) The fact that many months of time on which the penalty was based, both pre- and post-complaint, consisted of periods where no enforcement took place due to no apparent fault of the Discharger;
 - d) Despite a mutual agreement in 2010 to postpone the formal hearing for what turned out to be several months to allow for settlement discussions, the penalty mounted at the rate of \$400 per day;
 - e) The failure to give any mitigating weight to the evidence concerning the Discharger's negative financial situation, which was unrebutted; and
 - f) The Discharger's prompt compliance once the hearing actually took place.
20. On June 4, 2015, the Court entered Judgment Granting Peremptory Writ of Administrative Mandate and issued a Peremptory Writ of Administrative Mandate against the Regional Board. The writ ordered the Regional Board to vacate the administrative civil liability of \$193,850.
21. On October 2, 2015, pursuant to the Court's writ of mandate, the Regional Board vacated Order on Complaint No. R4-2010-0023.
22. As a result of the pre-hearing conference on November 12, 2015, the remand hearing on this Complaint has been scheduled to be conducted before the Regional Board during its meeting on April 14, 2016. The purpose of the hearing is to consider relevant evidence, testimony, and legal argument regarding the penalty calculation and the appropriate weight to be given to the factors applicable pursuant to Water Code section 13327.

Violation in Administrative Civil Liability Complaint No. R4-2010-0023-R

23. The Discharger violated Water Code section 13260 by failing to submit a ROWD for individual waste discharge requirements or a Notice of Intent, either individually or as a member of a Discharger Group, to comply with the Conditional Waiver by August 3, 2006, despite at least two subsequent notices by the Regional Board, and is therefore subject to civil liability pursuant to Water Code section 13261. The Discharger's liability as to this violation is not an issue in this remand proceeding because the Court found that the Regional Board's findings concerning the Discharger's failure to comply with Water Code section 13260 are supported by substantial evidence. The purpose of the remand hearing is to consider relevant evidence, testimony, and legal argument regarding the penalty calculation and the appropriate weight to be given to the factors applicable pursuant to Water Code section 13327.
24. The Executive Officer alleges that the number of days of violation is 1,222 days beginning on November 15, 2007, the date of the Notice of Violation, through March 21, 2011, the date prior to the Discharger submitting documentation to join VCAILG. While the Regional Board can assess penalties starting from the January 23, 2007 Notice to Comply, the Executive Officer is recommending that penalties be calculated starting from the November 15, 2007 Notice of Violation because there is documentation that the two Notices of Violation were received by the Discharger at its mailing address. Regional Board staff mailed the November 15, 2007 Notices of Violation by certified mail and received a return receipt confirming delivery to the Discharger.

Calculation of Penalties Under Water Code Section 13261

25. Water Code section 13261, subdivision (a), states, "A person who fails to furnish a report [ROWD] or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
26. Water Code section 13261, subdivision (b)(1), states, "Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
27. Maximum Administrative Civil Liability Pursuant to Water Code section 13261: Pursuant to Water Code section 13261, subdivision (b)(1), civil liability may be administratively imposed by the Regional Board for violation of Water Code section 13260 in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. The Executive Officer alleges that the number of days of violation total 1,222 days spanning from November 15, 2007 through March 21, 2011.

The maximum administrative civil liability that may be assessed by the Regional Board during this timeframe for the violation pursuant to Water Code section 13261, subdivision (b)(1), is \$1,222,000 (one million two hundred twenty-two thousand dollars).

28. Minimum Administrative Civil Liability: Pursuant to the State Water Board's Water Quality Enforcement Policy (Enforcement Policy), administrative civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts or omissions that constitute the violation plus ten percent. The economic benefit gained by the Discharger's non-compliance has been calculated. The Executive Officer estimates that the Discharger's economic benefit of noncompliance is \$4,489.88. Therefore, the minimum administrative civil liability that must be assessed pursuant to the Enforcement Policy is \$4,938.87 (i.e.; $\$4,489.88 \times (\$4,489.88 \times 10\%)$).

Proposed Administrative Civil Liability

29. Pursuant to Water Code section 13327, in determining the amount of any discretionary civil liability imposed under Water Code section 13261, the Regional Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its 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 that justice may require.
30. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy, which governs enforcement proceedings by the regional water quality control boards and the State Water Board under the Porter-Cologne Water Quality Control Act. The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a 10-step methodology for assessing discretionary administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a discretionary civil liability as outlined in Water Code section 13327.
31. The proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A, attached hereto and incorporated herein by reference. The proposed administrative civil liability takes into account the factors outlined in Water Code section 13327.
32. As described above, the maximum administrative civil liability for the violation described herein is \$1,222,000. The Enforcement Policy requires that the minimum administrative civil liability imposed be at least 10% higher than the estimated economic benefit of \$4,489.88, so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$4,938.87. Based on consideration of the above

facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Regional Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$51,045**. The specific factors considered in this proposed penalty are detailed in Attachment A.

Regulatory Considerations

33. Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
34. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

BALCOM RANCH IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes an administrative civil liability in the amount of \$51,045. The amount of the proposed administrative civil liability is based upon existing evidence, a review of the factors cited in Water Code section 13327, as well as the State Water Board's Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violation.
2. As a result of the pre-hearing conference on November 12, 2015, the remand hearing on this Complaint has been scheduled to be conducted before the Regional Board during its meeting on April 14, 2016. This hearing date is conditioned on the Discharger's express waiver to hold a hearing within 90 days of issuance of this Complaint. At the pre-hearing conference, the Discharger specifically agreed to submit the Hearing Waiver Form waiving the 90-day hearing requirement no later than **January 12, 2016**. To do so, the Discharger should complete the attached Hearing Waiver Form (checking the box next to Option #2) and return it to the Prosecution Team and Advisory Team by **January 12, 2016**.
3. The Discharger may also waive its right to a hearing entirely and pay the proposed administrative civil liability. To do so, the Discharger should complete the attached Hearing Waiver Form (checking the box next to Option #1) and return it to the Prosecution Team, along with payment for the proposed administrative civil liability of **\$51,045**, by **January 19, 2016**.

4. If a hearing is held, the Regional Board will hear testimony and arguments and decide whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. If the matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented.

Samuel Unger

Samuel Unger, PE
Executive Officer

Jan. 8, 2016

Date

Hearing Waiver Form
Attachment A: 10-Step Penalty Calculation Methodology

**HEARING WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0023-R**

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

I am duly authorized to represent Balcom Ranch (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2010-0023-R (hereinafter the "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 [with the complaint]. 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 the recommended liability.

a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **\$51,045** by check that references "ACL Complaint No. R4-2010-0023-R" made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by **January 19, 2016**.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Executive Officer may withdraw the complaint, return payment and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. 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.

d. 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 extend the hearing date to April 14, 2016. I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Board schedule the hearing on April 14, 2016. This option must be selected no later than **January 12, 2016**.

(Print Name and Title)

(Signature)

(Date)

California Regional Water Quality Control Board, Los Angeles Region

HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0023-R

ISSUED TO
BALCOM RANCH
21099 SOUTH MOUNTAIN ROAD, SANTA PAULA, CA

SCHEDULED FOR APRIL 14, 2016

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

Background

On July 14, 2011, the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") issued Order on Complaint No. R4-2010-0023 for administrative civil liability to Balcom Ranch in the amount of \$193,850. Balcom Ranch subsequently filed an appeal of the Regional Board's decision to adopt Order on Complaint No. R4-2010-0023 to the State Water Resources Control Board, Balcom Ranch subsequently filed a petition for a writ of mandate on June 8, 2012 and the State Water Board dismissed the petition on or about October 2, 2012. On April 28, 2015, Judge O'Neill issued a minute order expressing concern with the "enormity of the penalty" imposed pursuant to Water Code section 13261 and indicated he would remand the matter for further proceedings. The Court noted that the remand is limited to the issue of the penalty calculation and the appropriate weight to be given to the factors applicable pursuant to Water Code section 13327. In no particular order, the Court specifically stated that the most significant evidentiary factors contributing to its conclusion were the following:

- (1) The nature of the offense, which involves no allegation of unlawful discharges.
- (2) The mechanical daily formula used to compute the post-complaint portion (\$158,500), which constitutes over 80% of the total penalty. It is noteworthy that a much harsher penalty formula was applied despite the fact that most of that time was prior to the hearing;
- (3) The fact that many months of time on which the penalty was based, both pre- and post-complaint, consisted of periods where no enforcement took place due to no apparent fault of Petitioner.
- (4) Despite a mutual agreement in 2010 to postpone the formal hearing for what turned out to be several months to allow for settlement discussions, the penalty mounted at the rate of \$400 per day;
- (5) The failure to give any mitigating weight to the evidence concerning Petitioner's negative financial situation, which was unrebutted; and
- (6) Petitioner's prompt compliance once the hearing actually took place.

On June 4, 2015, the Court entered Judgment Granting Peremptory Writ of Administrative Mandate and issued a Peremptory Writ of Administrative Mandate against the Regional Board. The writ ordered the Regional Board to vacate the administrative civil liability of \$193,850. The writ also noted in pertinent part that absent a settlement between the parties, the Regional Board would provide notice to Balcom Ranch, and with a prompt administrative hearing as to a proposed revised civil penalty, if any, and the formula used to calculate that proposed penalty. Lengthy confidential settlement efforts were made in an effort to settle the litigation since the writ was issued, but these efforts were ultimately unsuccessful.

NOTE: THE SUBMISSION OF EVIDENCE, TESTIMONY, AND LEGAL ARGUMENT, INCLUDING REBUTTAL, FOR PURPOSES OF THIS REMAND HEARING IS SPECIFICALLY LIMITED TO THE ISSUE OF THE PENALTY CALCULATION AND THE APPROPRIATE WEIGHT TO BE GIVEN TO THE FACTORS APPLICABLE PURSUANT TO WATER CODE SECTION 13327.

Overview

Pursuant to Water Code section 13323, the Executive Officer of the Regional Board has issued an Administrative Civil Liability (ACL) Complaint to Balcom Ranch (hereafter Discharger), alleging violation of Water Code section 13260 by failure to submit a Notice of Intent to comply with the Regional Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region, Order Nos. R4-2005-0080 and R4-2010-0186 or, alternatively, by failing to submit a report of waste discharge for individual waste discharge requirements, when so requested by the Regional Board. Regional Board staff, represented by the Regional Board Staff Prosecution Team ("Prosecution Team"), propose in the ACL Complaint that the Regional Board impose, pursuant to Water Code section 13261, administrative civil liability on the Discharger in the amount of \$51,045.

A remand hearing on this matter is currently scheduled to be conducted before the Regional Board during its meeting on April 14, 2016. The purpose of the hearing is to consider relevant evidence, testimony, and legal argument regarding the penalty calculation and the appropriate weight to be given to the factors applicable pursuant to Water Code section 13327. At the hearing, the Regional Board will hear evidence, determine facts, make conclusions of law and consider whether to issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel or continued to the next scheduled meeting. A continuance of the hearing will not automatically extend any deadlines set forth herein.

The public hearing will commence at 9:00 am or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

Metropolitan Water District of Southern California (Board Room)
700 North Alameda Street
Los Angeles, California 90012

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's website at <http://www.waterboards.ca.gov/losangeles/>. Please check the Board's website for the most up-to-date public hearing date and location as they are subject to change.

Hearing Procedures

The hearing will be a formal adjudicative proceeding and will be conducted in accordance with these Hearing Procedures. The procedures governing adjudicatory hearings before the Regional Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at <http://www.waterboards.ca.gov>. Copies will be provided upon request.

In accordance with section 648(d), any procedure not provided by these Hearing Procedures is deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

Objections to these hearing procedures must be in writing and must be received by the Advisory Team no later than the deadline listed under "Important Deadlines" below, or they will be waived. Objections about the matters contained in these Hearing Procedures will not be entertained at the hearing. Failure to comply with the deadline and requirements contained herein may result in the exclusion of documents and/or testimony. The Discharger shall attempt to resolve objections to these Hearing Procedures with the Prosecution Team BEFORE submitting objections to the Advisory Team.

The procedures and deadlines herein may be amended by the Regional Board Chair or by the Advisory Team.

Separation of Prosecutorial and Advisory Functions

The Regional Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. To ensure the fairness and impartiality of this proceeding, those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (the "Prosecution Team") are separate from those who will provide legal and technical advice to the Regional Board (the "Advisory Team"). Members of the Advisory Team are: Deborah Smith (Chief Deputy Executive Officer) and David Coupe (Attorney IV). Members of the Prosecution Team are: Samuel Unger (Executive Officer), Paula Rasmussen (Assistant Executive Officer), Hugh Marley (Chief, Compliance and Enforcement Section), Jenny Newman (Chief, TMDL Unit 3), Jennifer Fordyce (Attorney III), and Mayumi Okamoto (Attorney III).

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. Samuel Unger regularly advises the Regional Board in other, unrelated matters, but is not advising the Regional Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons."

Designated Parties are those subject to the ACL Complaint and other persons or organizations anticipated to have a substantial interest in the outcome of the hearing. Designated Parties may present written evidence, summarize their evidence orally at the hearing and cross-examine other parties' witnesses (if they are called). "Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceedings. Designated Parties can cross examine and are subject to cross-examination about any evidence they present.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team
2. Balcom Ranch

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written

and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination.

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

Requesting Designated Party Status

Persons or organizations who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses, etc.), along with a statement explaining why the Designated Parties listed above do not adequately represent the person's or organization's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below. All participants will be notified before the hearing whether the request for designated party status is granted.

Primary Contacts

Advisory Team:

Deborah Smith, Chief Deputy Executive Officer
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 576-6609
Email: Deborah.Smith@waterboards.ca.gov

David Coupe, Attorney IV
c/o San Francisco Bay Regional Water Quality Control Board
Physical Address: 1515 Clay Street, Suite 1400, Oakland, CA 94612
Mailing Address: Same as above
Phone: (510) 622-2306
Email: David.Coupe@waterboards.ca.gov

Prosecution Team:

Jenny Newman, Chief, TMDL Unit 3
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 576-6691
Email: Jenny.Newman@waterboards.ca.gov

Jennifer Fordyce, Attorney III
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, 22nd Floor, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 324-6682
Email: Jennifer.Fordyce@waterboards.ca.gov

Discharger:

Balcom Ranch
c/o Mark Kester Brown
11150 West Olympic Boulevard, Suite 1020
Los Angeles, CA 90064
Phone: (310) 739-3900
Email: mkesterbrown@gmail.com

Hugh Knowlton
1831 Camden Avenue, No. 12
Los Angeles, CA 90025
Phone: (310) 479-8789
Email: knowlaw@roadrunner.com

Ex Parte Communications

While this adjudicative proceeding is pending, the California Government Code forbids Designated Parties and Interested Persons from engaging in ex parte communications regarding this matter with Regional Board members and the Advisory Team, except during the public hearing itself. An ex parte communication is a written or verbal communication, either direct or indirect, that relates to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Regional Board member or a member of the Advisory Team that occurs in the absence of other parties and without notice and opportunity for all parties to participate in the communication (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Therefore, any written communication to Regional Board members or the Advisory Team before the hearing must also be copied to all other Designated Parties. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all Designated Parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, arguments, or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined total of **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide opening and/or closing statements. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal or technical argument requires extra time, and why it could not have been provided in writing by the applicable deadline. Decisions will be based

upon the complexity and the number of issues under consideration, the extent to which the Designated Parties have coordinated and/or have similar interests, and the time available for the hearing.

A timer will be used, but will not run during questions from the Regional Board and the Advisory Team or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence, Argument and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing, which must be received no later than the deadline listed under "Important Deadlines" below:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Regional Board members will not generally receive copies of materials incorporated by reference unless copies are provided by the Designated Party proffering the evidence as part of the Designated Party's evidentiary submission. Referenced materials are generally not posted on the Regional Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies (which must include, at a minimum, all documents cited in the ACL Complaint or other material submitted by the Prosecution Team); and the witness information required under items 3-4 for all witnesses, including Regional Board staff. As previously noted, the submission of evidence, testimony, and legal arguments for purposes of this remand hearing is specifically limited only to the issues outlined by the Court in its Minute Order, dated April 28, 2015, and Judgment entered June 4, 2015. The Prosecution Team shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Designated Parties (including the Discharger): All Designated Parties shall submit comments, arguments or analysis regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Regional Board staff. As previously noted, the submission of evidence, testimony, and legal arguments for purposes of this remand hearing is specifically limited only to the issues outlined by the Court in its Minute Order, dated April 28, 2015, and Judgment entered June 4, 2015. Designated Parties shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party who would like to submit evidence, legal or technical arguments, or policy statements to rebut information submitted by other Designated Parties, shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Final Hearing Package and Proposed Order: The Prosecution Team will submit the Final Hearing Package and a proposed Order so that it is submitted no later than the deadline listed under "Important Deadlines" below.

Copies: Regional Board members and the Advisory Team will receive copies of all submitted materials. If hard copies of the submitted materials are provided to the Regional Board members and the Advisory Team, the materials will be printed or copied double-sided in black and white on 8.5"x11" paper. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra ten paper copies for the Regional Board and the Advisory Team. For voluminous submissions, the Regional Board members and Advisory Team may receive copies in electronic format only. Electronic copies may also be posted on the Regional Board's website. Designated Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Regional Board will not reject materials solely for failure to provide electronic copies.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" below to be included in the Regional Board's hearing package. Interested persons should be aware that this matter may settle without further notice, and therefore timely submittal by the deadline may be the only opportunity for an Interested Person to comment on the subject of the ACL Complaint. If the hearing proceeds as scheduled, the Regional Board will also receive oral comments from Interested Persons during the hearing. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board Chair may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will *not* be considered by the Regional Board and will *not* be included in the administrative record for this proceeding.

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

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination by Designated Parties.

Administrative Record and Availability of Documents

The ACL Complaint and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submittals received for this proceeding will be added to the administrative record absent a contrary ruling by the Regional Board Chair. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

The administrative record previously prepared for the Court on Order on Complaint No. R4-2010-0023 shall be considered part of the official administrative record for this remand hearing.

These documents may be inspected and copied between the hours of 8:00 a.m. and 5:00 p.m. at the Regional Board's office located at 320 West Fourth Street, Suite 200 Los Angeles, California 90013. Arrangements for document review and/or obtaining copies of the documents may be made by contacting the Prosecution Team Primary Contact above. Appointments are encouraged so the documents can be readily available upon arrival.

Questions

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

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date below.^{1,2} Where both electronic and hard copy formats are required to be submitted to the Prosecution Team, a complete electronic copy must be received by 5:00 p.m. on the respective due date below, and a complete hard copy may follow via overnight delivery so that it is received by the Prosecution Team the next day.

January 8, 2016	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedures and other related materials. <p><u>Hard Copies to:</u> All other Designated Parties (by certified mail) <u>Electronic or Hard Copies to:</u> All known Interested Persons, Advisory Team</p>
January 12, 2016	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit <i>Hearing Waiver Form</i>.³ <p>At the pre-hearing conference, Balcom Ranch's counsel specifically agreed to file the Hearing Waiver Form no later than this date. <u>Electronic or Hard Copy to:</u> Prosecution Team, Advisory Team</p>
January 18, 2016	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedures. ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
February 2, 2016	<ul style="list-style-type: none"> ▪ Deadline to submit objections to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
February 17, 2016	<ul style="list-style-type: none"> ▪ Interested Persons' written comments are due. <p><u>Electronic or Hard copies to:</u> All Designated Parties, Advisory Team</p>
February 19, 2016*	<ul style="list-style-type: none"> ▪ Advisory Team transmits decision on requests for designated party status. ▪ Advisory Team transmits decision on objections to Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
February 29, 2016*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence, Argument and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>

¹ With the exception of the deadline to submit the Final Hearing Package and proposed Order.

² Where a deadline falls on a weekend or holiday, the deadline is extended to the next business day.

³ Pursuant to California Water Code section 13323, subdivision (b), persons subject to an ACL Complaint have the right to a hearing before the Regional Board within 90 days of receiving the ACL Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing and unless a settlement is reached, the Board will hold a hearing prior to imposing administrative civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

March 18, 2016*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence, Argument, and Policy Statements" above. This includes all written comments regarding the ACL Complaint, subject to the limitations described in these Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team</p>
March 25, 2016*	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections. ▪ Deadline to request Prehearing Conference. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team</p>
March 28, 2016*	<ul style="list-style-type: none"> ▪ Deadline to submit requests for additional time at the hearing. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
April 1, 2016*	<ul style="list-style-type: none"> ▪ Prosecution Team sends Final Hearing Package and proposed Order. <p><u>Electronic or Hard Copies to:</u> [Regional Board members, Advisory Team, All other Designated Parties</p>
April 4, 2016*	<ul style="list-style-type: none"> ▪ Advisory Team transmits hearing time limits <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
April 14, 2016*	<ul style="list-style-type: none"> ▪ Hearing

**ATTACHMENT A TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0023-R
10-STEP PENALTY CALCULATION METHODOLOGY**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a ten-step penalty calculation methodology for determining discretionary administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Violation of Water Code Section 13260 for Failure to Submit a Report of Waste Discharge for Individual Waste Discharge Requirements or, alternatively, by Failing to Submit a Notice of Intent to Comply with the Conditional Waiver, when so Requested by the Regional Board:

Regional Board Order No. R4-2005-0080 (Conditional Waiver) required all existing commercial irrigated farming operations in the Los Angeles Region to submit a Notice of Intent to enroll in the Conditional Waiver, submit a Monitoring and Reporting Program (MRP) Plan, and submit a Quality Assurance Project Plan (QAPP), individually or as a member of a Discharger Group, by August 3, 2006. Alternatively, if a commercial irrigated farming operation chose not to enroll in the Conditional Waiver, it was required to submit a Report of Waste Discharge (ROWD) and obtain individual waste discharge requirements. Regional Board staff identified Balcom Ranch (Discharger) as an owner/operator of a commercial irrigated farming operation in Santa Paula, California and confirmed that it was, in fact, subject to the Conditional Waiver. Despite numerous notices specifically sent by Regional Board staff to the Discharger, including the original February 18, 2010 Administrative Civil Liability Complaint (hereafter Original Complaint), the Discharger did not submit a Notice of Intent to comply with the Conditional Waiver until March 22, 2011.

On remand, the Prosecution Team has reevaluated its proposed administrative civil liability and the appropriate weight to be given to the factors in Water Code section 13327. In determining an appropriate liability, the Prosecution Team has relied on evidence and testimony during the prior proceeding, including new facts and evidence revealed for the first time at the March 17, 2011 hearing.

Calculation of Penalty for Violation:

Step 1 - Potential for Harm for Discharge Violations

This step does not apply since the violation is not a discharge violation.

Step 2 – Assessment for Discharge Violations

This step does not apply since the violation is not a discharge violation.

Step 3 – Per Day Assessments for Non-Discharge Violations

The “per day factor” is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm: The Enforcement Policy requires determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or

threat to beneficial uses. The Enforcement Policy states, "Most incidents would be considered to present a moderate potential for harm." (p. 16). In this case, the Prosecution Team has determined that the potential for harm is **moderate** because the characteristics of the violation present a substantial threat to beneficial uses and the circumstances of the violation indicate a substantial potential for harm.

This conclusion is, in part, based on the size of the Discharger's irrigated land parcels (approximately 100 acres) and the parcels' close proximity to the Santa Clara River. The Santa Clara River is listed on the Clean Water Act section 303(d) list of impaired water bodies in the Los Angeles Region for nutrients, chloride, total dissolved solids, and toxicity, which are pollutants commonly used in agricultural operations. In addition, the Regional Board established the Santa Clara River Nitrogen and Related Effects Total Maximum Daily Load (TMDL) in 2003 and the Santa Clara River Bacteria TMDL in 2010, which both identify agriculture as sources of these pollutants and assign load allocations to agriculture for these pollutants. The fact that the Discharger was not regulated, when it is so closely adjacent to the Santa Clara River, puts that waterbody at risk.

The Discharger's failure to enroll in the Conditional Waiver or submit a ROWD for individual waste discharge requirements presents substantial threats to beneficial uses. The failure to enroll in the Conditional Waiver or submit a ROWD means that the Discharger's commercial irrigated farming operation went unregulated for several years. Unregulated discharges of such wastes can present a substantial threat to beneficial uses and/or indicate a substantial potential for harm to beneficial uses. Agricultural operations often use pesticides, fertilizers, and/or other chemicals that are known to cause aquatic toxicity. In addition, irrigated cropland can be a source of sediment, nitrates, bacteria, and other wastes that are then discharged to waters of the state. Monitoring data collected under the Irrigated Lands program has reported toxic discharges in other locations that receive discharges from agricultural operations.

In its VCAILG enrollment documents, the Discharger identified its farm type as "conventional" (as opposed to organic). At the March 17, 2011 hearing, the Discharger testified that the majority of the property is used to grow commercial citrus crops, specifically Valencia oranges. For the citrus crops, the Discharger testified that they add nutrients (fertilizers) to the soil, but that they do not use pesticides. In addition, the Discharger testified that they utilize furrow irrigation to irrigate its citrus orchards. Furrow irrigation is an inefficient system of irrigation that can result in more tailwater and associated nutrient discharges compared to more efficient irrigation systems, such as drip irrigation. The Hearing Panel found that, based on Regional Board staff's best professional judgment, the Discharger's irrigated agricultural practices discharged waste to groundwater and possibly to surface water. At the hearing, the Discharger testified that runoff through the Discharger's agricultural lands discharged into the Santa Clara River during flood conditions in the aftermath of fires, rains, freezes, and floods in 2003-2005. The Discharger did not provide evidence that it contained its irrigation water on-site.

In addition, a portion of the Discharger's property is operated by a tenant farmer that grows row crops. As of 2011, the tenant was identified as Coastline Farms in the Discharger's VCAILG enrollment documents. The Regional Board lacks information concerning the Discharger's tenant practices as the Discharger was not able to answer questions of that nature at the March 17, 2011 hearing. The Discharger has not provided information to the Regional Board concerning the types of crops that are grown, whether pesticides or fertilizers are used, and what type of irrigation practices are utilized. The only indication provided concerning the irrigation practices by the tenant farmer is the notation of "Rainbirds/row crops" in the Discharger's VCAILG enrollment documents. "Rainbirds" refer to a type of overhead sprinkler

irrigation system, which is, like furrow irrigation, an inefficient irrigation system that can result in excessive tailwater and associated nutrient discharges. Given the lack of information on the tenant farmer's practices, the portion of the property operated by the tenant farmer can also pose a substantial potential for harm.

As stated in Finding 16 of Order No. R4-2005-0080, the intent of the Conditional Waiver is to attain water quality objectives in receiving waters by regulating discharges from irrigated lands within the region to ensure that such discharges are not causing or contributing to exceedances of applicable water quality standards. From a programmatic perspective, unregulated discharges thwart this intent and undermine the irrigated lands regulatory program, thus presenting a substantial potential for harm. Failure to timely file a ROWD or to enroll in the Conditional Waiver negatively impacts the Regional Board's ability to oversee and regulate the Discharger's property or determine whether the Discharger's management practices are adequate. Enrollment is essential to Regional Board regulation in order to ensure compliance with the requirements of the Conditional Waiver. Dischargers regulated under the program either conduct monitoring or contribute to monitoring efforts to identify water quality problems associated with their operations. In addition, dischargers report on the practices in which they engage to protect water quality. By failing to timely provide that information, the Discharger frustrates the Regional Board's efforts to assess potential impacts and risks to water quality, and circumvents the Regional Board's ability to regulate discharges of waste and ensure compliance with water quality standards.

The greater the size of the operation, the greater the potential risk, since any management practices being implemented by the Discharger that are detrimental to water quality may impact a much greater area. Additionally, the regulatory program is compromised when Regional Board staff resources are directed to bringing dischargers into compliance rather than being available for outreach and assistance with regulatory compliance. Since the violation thwarts the Regional Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This, in turn, presents a threat to beneficial uses and indicates a substantial potential for harm.

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 Prosecution Team has determined that the deviation from the applicable requirement (i.e., the requirement to submit a ROWD or Notice of Intent to comply with the Conditional Waiver) is determined to be **Major**, which is defined as "*The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).*" Over several years, the Discharger completely disregarded the regulatory requirement to submit a ROWD or Notice of Intent to comply with the Conditional Waiver, even as of the date of the March 17, 2011 hearing, thus constituting a major deviation from the requirement. The Discharger, as an existing commercial irrigated farming operation, was required to enroll in the Conditional Waiver by August 3, 2006. The Discharger did not do so. The Discharger did not actually submit documentation to enroll in the Conditional Waiver until March 22, 2011, over 4 years and 7 months after the date required in the Conditional Waiver. Further, the Discharger completely disregarded the January 23, 2007 Notice to Comply and the November 15, 2007 Notice of Violation, which informed the Discharger of its regulatory requirements. From the date of the November 15, 2007 Notice of Violation, the Discharger was in violation for 1,222 continuous days. While the Discharger eventually did come into compliance, it did not so by the Regional Board's deadline, or after being requested by the Board.

The failure to submit a ROWD or submit a Notice of Intent to comply with the Conditional Waiver necessarily means that the Discharger operated its business entirely outside of the scope of the Regional Board's regulatory authority. The Discharger has undermined the efforts of the Regional Board's Irrigated Lands regulatory program by disregarding the requirement to obtain the appropriate regulatory coverage for their waste discharges. A discharger's regulatory coverage is foundational to the Regional Board's efforts to protect water quality. Orders adopted by the Regional Board specify the expectations and requirements for water quality protection, which do not apply until a discharger is covered by an appropriate order. The requirements in the applicable orders are rendered ineffective when a discharger has not gone through the process of becoming subject to the order.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for those violations in which the potential for harm is moderate and the deviation from the requirement is major. From the range given in Table 3, the middle range of 0.55 is the appropriate per day factor based on the evidence. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown below.

Multiple Day Violations

The Discharger failed to enroll under the Conditional Waiver or submit a ROWD for individual waste discharge requirements, after so requested by the Regional Board, for a period of 1,222 days calculated from the November 15, 2007 Notice of Violation through March 21, 2011, the date prior to the Discharger submitting documentation to join VCAILG. While the Regional Board can assess penalties starting from the January 23, 2007 Notice to Comply, the Executive Officer is recommending that the period of violation start from the November 15, 2007 Notice of Violation because there is documentation that the two Notices of Violation were received by the Discharger at its mailing address.

Violations under Water Code section 13260 are assessed on a per day basis. However, at the discretion of the Regional Board, pursuant to the Enforcement Policy, an alternate approach to the penalty calculation for multiple day violations assessed on a per day basis may be used if one of three findings is made by the Regional Board. The Prosecution Team determined that this multiple-day approach is appropriate since the failure to submit a ROWD or Notice of Intent to comply with the Conditional Waiver result in no economic benefit from the illegal conduct that can be measured on a daily basis. Rather, the economic benefit here is associated with costs of permit/Discharger Group fees, education classes, etc. Therefore, in accordance with the Enforcement Policy, for violations that last more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of the violation, plus an assessment for each 5 day period of violation until the 30th day, plus an assessment for each 30 days of violation thereafter. Since this violation lasted 1,222 days, this accrues a total of 42 days' worth of violations based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, and so forth for every additional 30 days of violation.

Initial Liability Amount

The initial liability amount for the violation calculated on a per-day basis is as follows:

$$42 \text{ days} \times \$1,000 \times 0.55 = \$23,100$$

Total Initial Liability = **\$23,100**

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 compliance history.

Culpability – Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used, with a high multiplier for negligent or intentional conduct. The Discharger has a high degree of culpability for the violation as it intentionally failed to timely submit a ROWD or Notice of Intent to comply with the Conditional Waiver. The Regional Board sent the Discharger two official notices – a Notice to Comply on January 23, 2007 and a Notice of Violation on November 15, 2007. Both notices spelled out what the Discharger had to do to come into compliance and provided contact information so that the Discharger could discuss compliance with Regional Board staff. The Discharger was therefore given sufficient notice (at least 2 official notices, as well as the Original Complaint) to submit the required documentation to come into compliance. Despite knowledge of the regulatory requirements, which is exemplified by the notices described above, the Discharger failed to timely comply. The notices and failure to come into compliance suggest that the Discharger acted intentionally in ignoring the requirement to get regulatory coverage. Upon receiving the first notice, a reasonable and prudent person would have enrolled in the Conditional Waiver to come into compliance. Therefore, the Prosecution Team selected **1.5**, which is the highest multiplier in the given range.

Cleanup and Cooperation – 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 Prosecution Team determined that a multiplier value of **1.3** is appropriate because of the delayed cooperation exhibited by the Discharger to return into compliance. The Discharger did not voluntarily cooperate in returning to compliance until March 21, 2011, 1,222 days after being notified by the Regional Board in the Notice of Violation. The Regional Board issued the Discharger the Notice to Comply and Notices of Violation in an effort to allow the Discharger to address the violation prior to the issuance of a complaint. The Discharger did not respond and cooperate with the Regional Board despite being awarded ample time in which to do so. Despite opportunities to come into compliance, the Discharger did not make any attempt to timely cooperate with the Regional Board. The Discharger only came into compliance after the threat of penalties at the March 17, 2011 hearing, at which time the Hearing Panel unanimously found that the Discharger had no intention of enrolling in the Conditional Waiver or submitting a ROWD. The fact that the Discharger finally did enroll in the Conditional Waiver by joining VCAILG is not evidence of its historic cooperation. Furthermore, the Discharger abandoned its purported proposal to form a new discharger group. If this was a demonstration of cooperation, nothing to bring the Discharger into compliance came of that effort.

Non-submittal of a ROWD or Notice of Intent to comply with the Conditional Waiver constitutes a non-discharge violation. Therefore, the susceptibility to cleanup or abatement of the discharge is not applicable to the recommended administrative civil liability in this Complaint.

History of Violations – Regional Board staff is unaware of any prior violations by the Discharger prior to those described herein. Therefore, the minimum multiplier of 1.0 was used, which is a neutral multiplier.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$23,100 \times 1.5 \times 1.3 \times 1.0 = \$45,045$$

Total Base Liability = **\$45,045**

Step 6 – Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. Per the Enforcement Policy, “[t]he ability of a discharger to pay an ACL is determined by its revenues and assets.” Based on information substantiated at the March 17, 2011 hearing and publicly available information about the Discharger’s assets and revenues known to the Prosecution Team since the hearing, the Prosecution Team contends that the Discharger has an ability to pay the Base Liability Amount and to continue in business, based on the discussion below.

A significant asset of the Discharger is the two parcels owned by the Discharger that are the subject of this Complaint. At the March 17, 2011 hearing, the Prosecution Team presented information from the Ventura County Assessor that the 2010-2011 tax assessment value of APN 046-0-150-140 is \$986,754 and the 2010-2011 tax assessment value of APN 046-0-150-320 is \$1,004,655, totaling \$1,991,409 for the two parcels. Since that time, the tax assessed value has significantly increased. The 2015-2016 tax assessment value of APN 046-0-150-140 is \$1,288,154 and the 2015-2016 tax assessment value of APN 046-0-150-320 is \$1,299,619, totaling \$2,587,773 for the two parcels.

In addition, after the March, 17, 2011 hearing, the Prosecution Team learned through the Discharger’s VCAILG enrollment documents that the Discharger owns another nearby parcel, identified as APN 046-0-150-130. The Ventura County Assessor states that the parcel is approximately 11.51 acres and describes the property use as “LCA Orchards (Mixed).” The 2015-2016 tax assessment value of this parcel is \$515,122. Therefore, this parcel constitutes another significant asset of the Discharger. With this parcel, the Discharger’s combined land value for all three parcels is \$3,102,895.

A source of income to the Discharger is the valuable crops that the Discharger grows and sells. At the March 17, 2011 hearing, the Discharger testified that the majority of the property was planted with Valencia orange trees. According to the 2008 County of Ventura Agricultural Commissioner’s Annual Crop and Livestock Report (Ventura County Crop Report), the production

of Valencia oranges was 15.44 tons per acre and the value of this crop was \$264.37 per ton. The value of Valencia oranges in 2008 per acre was estimated at \$4,082. Since then, the value of Valencia oranges has increased. According to the most recent crop report, the 2014 Ventura County Crop report, the production of Valencia oranges was 14.21 tons per acre and the value of this crop was \$495.82. The value of Valencia oranges in 2014 was \$7045.60.

Another source of income to the Discharger is rental income from the tenant farmer. Although unsubstantiated with any written evidence, Mark Brown, one of the Discharger's general partners, testified that it receives about \$25,000 in annual rental income from the tenant farmer.

At the March 17, 2011 hearing, the Discharger provided testimony of David Park, a certified public accountant who has served as the Discharger's accountant since 1992. Mr. Park testified concerning the Discharger's alleged financial condition. Mr. Park testified that the Discharger averaged approximately \$236,000 of loss over the prior 12 years and was subject to loan balances as of the end of 2009 of \$2,359,000. However, no corroborating written evidence had been provided to the Prosecution Team or the Regional Board either prior to or at the hearing for review and/or analysis. To date, the Prosecution Team has yet to receive any written evidence to support the contentions made at the hearing. Further, Mr. Park was not able to answer many questions concerning the Discharger's income, assets, or individual partners. Mr. Park did not know whether the Discharger received rental income, he did not know how many real estate parcels or other assets the Discharger owns, and he was unclear about the source of the Discharger's income and could not answer questions about the income or assets of Mark Brown or the individual general partner (identified as "Mel"). He did testify that general partner Zonal, a corporation, had no income. Although the Discharger's counsel stated that Mr. Park was offered as an expert witness, Mr. Park did not offer an opinion about the Discharger's ability to pay or continue in business and did not appear to possess sufficient factual information to do so. Mr. Park's testimony was the only evidence the Discharger offered about its ability to pay and continue in business. The Discharger chose not to introduce any other evidence of its inability to pay or continue in business for the Prosecution Team or Regional Board to consider, either before, at, or after the hearing. The Hearing Panel therefore found that the Discharger's purported evidence of inability to pay or continue in business was inconclusive and incomplete.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are "other factor as justice may require." The Prosecution Team recommends that it is appropriate to increase the Total Base Liability Amount by \$6,000 in consideration of investigation and enforcement costs incurred in prosecuting this matter prior to issuance of the Original Complaint. This represents approximately 40 hours of Regional Board staff time devoted to investigating the violation and preparing the Original Complaint and other related documents at \$150 per hour. Increasing the Total Base Liability amount in this matter serves to create a more appropriate general and specific deterrent against future violations. It should be noted that the costs of investigation and enforcement that the Prosecution Team are hereby seeking include only those costs originally incurred during the original investigation and prosecution of this matter prior to issuance of the Original Complaint and specifically exclude those additional costs incurred by the Prosecution Team after issuance of the Original Complaint and during this remand proceeding.

It should be noted that the Regional Board, in Order on Complaint No. R4-2010-0023, found that Regional Board staff incurred an additional \$13,350 in investigation and enforcement costs (equating to 89 hours at \$150 per hour) between issuance of the Original Complaint and the March 17, 2011 hearing, and added those costs to the final penalty. As noted above, the

Prosecution Team is no longer seeking these additional costs incurred after issuance of the Original Complaint. The Prosecution Team believes this concession addresses the Court's concern regarding the parties' mutual agreement in 2010 to postpone the formal hearing to allow for settlement discussions.

Step 8 – Economic Benefit

The Enforcement Policy requires that administrative civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts or omissions that constitute the violation plus ten percent. The Prosecution Team estimates the cost-savings for the Discharger's delayed compliance to be approximately \$4,489.88. This is a conservative estimate based on the most cost-effective method of compliance, joining a Discharger Group to comply with the Conditional Waiver, which is what the Discharger ultimately did to come into compliance. The economic benefit in this matter has been calculated based on the verifiable costs associated with obtaining regulatory coverage under the Conditional Waiver as a member of VCAILG, as well as estimates of other avoided costs that were required of the Discharger to comply with the Conditional Waiver.

The Discharger's failure to timely comply resulted in annual avoided cost savings for the Discharger. Avoided costs include expenditures that a discharger should have incurred to avoid the incident of noncompliance. By not coming into compliance until March 22, 2011, the Discharger avoided paying yearly fees from the 2006-2007 to the 2010-2011 fiscal years to participate in VCAILG. The Discharger realized additional cost savings by failing to attend required education courses. According to Ventura County Assessor records, the Discharger owns approximately 108 acres in Ventura County. However, according to the Discharger's VCAILG enrollment documentation, only 97 acres are irrigated acres. VCAILG charges its fees based on irrigated acres. Based on the group per-acre costs assessed by VCAILG (including average annual costs of administration and monitoring) and education costs, Regional Board staff estimates the cost savings for non-compliance to be approximately \$4,489.88, as indicated below.

Estimated Cost Saved for VCAILG Enrollment		
Enrollment Year	Group Cost (average annual costs of administration and monitoring)	Total*
2006-07	\$4.70/acre	\$455.90
2007-08	\$6.89/acre	\$668.33
2008-09	\$7.32/acre	\$710.04
2009-10	\$12.06/acre	\$1,169.82
2010-11	\$7.07/acre	\$685.79
Education cost (personal time)	\$100/hour x 8 hours	\$800
	Total	\$4,489.88
*Based on 97 total irrigated acres as indicated in the Discharger's VCAILG enrollment documents submitted March 22, 2011		

As to fairness to other irrigated agricultural landowners, property owners who do not comply with the Conditional Waiver, or obtain individual waste discharge requirements, not only realize cost savings for themselves, but they experience an unfair business advantage and threaten the integrity of the irrigated lands program for those who are making a good-faith effort to obey the law.

The Prosecution Team has determined that the adjusted Total Base Liability Amount is at least 10 percent higher than the Economic Benefit Amount, thus the amount was not adjusted.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: The Enforcement Policy requires that the administrative civil liability amount not be less than the minimum liability amount. The Enforcement Policy also requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Executive Officer's estimate of the Discharger's economic benefit obtained from the violation cited herein is \$4,489.88. This number plus ten percent results in a Minimum Liability Amount of \$4,938.87.

Maximum Liability Amount: The maximum administrative civil liability amount is the maximum amount allowed by Water Code section 13261, which is \$1,000 for each day in which the violation occurs. The Discharger was in violation for 1,222 days. Therefore, the statutory maximum liability amount is \$1,222,000.

Step 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the Final Liability Amount proposed for the violation is **\$51,045**. This Final Liability Amount is within the statutory minimum and maximum liability amounts.

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; or (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.