Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:	)	**Complaint No. R4-2009-0053**
	)	**Administrative Civil Liability**
Donald and Marlene Henderson	)	**Pursuant to California Water Code § 13261**
14500 W Telegraph Rd Santa Paula, California 93060	)	**For Violations of**
		California Water Code § 13260
	)	
	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The facility owned by Donald and Marlene Henderson, a commercial irrigated farming operation (Assessor Parcel Number (APN) 098-0-010-025) located in Santa Paula, in Ventura County, with a mailing address of 14500 W Telegraph Road, Santa Paula, CA 93060 (hereinafter Discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose administrative civil liability pursuant to section 13261 of the California Water Code (CWC).

2. The Discharger is alleged to have violated CWC § 13260 by failing to submit a Notice of Intent to comply with the Regional Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 or, alternatively, by failing to submit a report of waste discharge, when so requested by the Regional Board.

3. A hearing will be conducted on this Complaint by the Regional Board or a Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on the Discharger pursuant to CWC §§ 13228.14 and 13323, unless the Discharger waives the hearing and pays the recommended penalty of $3,759 by June 4, 2009. The Discharger's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The Notice of Public Hearing that accompanies this Complaint contains the date, time, location, and specific procedures of the scheduled hearing.

4. At the hearing, the Regional Board will consider whether to affirm, increase, decrease, or reject the recommended administrative liability, or whether to refer the matter to the

Attorney General for recovery of judicial civil liability in a greater amount. The Regional Board may also take any other action appropriate as a result of the hearing.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

5. The Regional Board adopted the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 (Conditional Waiver) on November 3, 2005. The Conditional Waiver applies to wastewater (irrigation and stormwater runoff) discharged from irrigated agricultural operations in the Los Angeles Region, which includes the coastal watersheds of Los Angeles and Ventura Counties.

6. The Conditional Waiver required all commercial irrigated farming operations in the Los Angeles Region to submit a Notice of Intent, Monitoring and Reporting Program (MRP) Plan, and Quality Assurance Project Plan (QAPP), individually or as a member of a Discharger Group, to comply with the Conditional Waiver by August 3, 2006, pursuant to California Water Code Section 13260. Public notification regarding the adoption of this program 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.

7. According to available records, including information from the Ventura County Assessor and a Regional Board staff site visit on December 11, 2008, Donald and Marlene Henderson own and/or operate irrigated land and are subject to the Conditional Waiver.

8. On January 23, 2007, the Regional Board's Executive Officer sent an official notice entitled "Notice to Comply with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region." 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 report of waste discharge in order to apply for an individual waste discharge permit. 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.

9. The Discharger failed to respond to the January 23, 2007 notice, 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 report of waste discharge, 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 failure to enroll under the Conditional Waiver pursuant to California Water Code Section 13269. This Notice 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 Notice of Violation by certified mail, and received a return receipt confirming

delivery to the Discharger at the same mailing address as the January 23, 2007 Notice to Comply letter.

11. On December 11, 2008, Regional Board staff conducted a site visit of APN 098-0-010-025. Regional Board staff drove and walked the southwest and northwest boundary of the parcel and verified that a portion of the parcel's land use is irrigated agriculture.

12. 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 or providing proof of Discharger Group membership. As of the date of this Complaint, more than 537 days have passed since the Regional Board sent the Notice of Violation.

13. Agricultural activities can generate pollutants such as sediment, pesticides, and nutrients. Unregulated discharges of water containing these pollutants from irrigated lands to receiving water bodies can degrade water quality and impair beneficial uses.

14. The Discharger is alleged to have violated California Water Code section 13260 by failing to submit a report of waste discharge for an individual waste discharge permit or Notice of Intent to enroll under 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 California Water Code Section 13261. To date, the Discharger still has not enrolled under the Conditional Waiver.

POTENTIAL MAXIMUM CIVIL LIABILITY

15. CWC § 13261(a) states that "Any person failing to furnish a report 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)."

16. CWC § 13261(b)(1) states that "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."

17. Accordingly, the maximum civil liability authorized by CWC § 13261(b)(1) for violation of CWC § 13260 is $1,000 per day for each day in which the Discharger failed to submit a report of waste discharge, Notice of Intent, MRP Plan, and QAPP, or proof of Discharger Group membership, after requested so by the Regional Board. Thus, the total potential maximum civil liability as of the date of this Complaint, calculated from the November 15, 2007 Notice of Violation (which required the Discharger to submit a Notice of Intent, MRP Plan, and QAPP) through May 5, 2009, is $537,000.

18. While the Regional Board can assess penalties starting from the January 23, 2007 Notice to Comply, the Chief Deputy Executive Officer is recommending that penalties be calculated starting from the November 15, 2007 Notice of Violation. The November 15, 2007 Notice of Violation was selected as the date from which penalties would be calculated because there is documentation that the Notice of Violation was received by the Discharger. Regional Board staff mailed the November 15, 2007 Notice of Violation by certified mail and received a return receipt confirming delivery to the Discharger.

Penalty Category	Calculation	Total
Failure to submit: a) report of waste discharge, or b) Notice of Intent, MRP Plan, and QAPP, individually or as a member of a Discharger Group, to comply with Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080)	CWC § 13261(b)(1): 537 days x $1,000/day	$537,000
Potential Maximum Civil Liability (as of the date of this Complaint)		**$537,000**

19. The intent of this enforcement action is to encourage compliance with the Conditional Waiver and to ensure that commercial irrigated farming operations are meeting their legal responsibility to comply with the Conditional Waiver and to protect water quality.

20. The Discharger is hereby notified that the Regional Board's Chief Deputy Executive Officer is also seeking civil penalties for each day past 30 days from the date of this Complaint up to the date that the Discharger submits either: (a) Notice of Intent, MRP Plan, and QAPP to individually comply with the Conditional Waiver, (b) proof of current membership in a Regional Board approved Discharger Group, such as the Ventura County Agriculture Irrigated Lands Group, or (c) a report of waste discharge for an individual waste discharge permit. Thus, the total potential maximum civil liability referenced above and the recommended civil liability referenced below will increase for each day past 30 days from the date of this Complaint that the Discharger continues to fail to submit a Notice of Intent, MRP Plan, and QAPP, proof of Discharger Group membership, or report of waste discharge. As such, the Discharger has the burden of submitting the required documentation in order to stop the accrual of penalties. For the Discharger's convenience, a copy of the Notice of Intent form, MRP Plan, and QAPP, as well as a list of the Discharger Groups that are currently on record with the Regional Board as submitting Notices of Intent and other required information, accompanies this Complaint.

RECOMMENDED CIVIL LIABILITY

21. Pursuant to section 13327 of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:

    a. Nature, circumstances, extent, and gravity of the violations:

    The Discharger has been given sufficient notice to either submit: (1) a Notice of Intent, MRP Plan, and QAPP to individually enroll under the Conditional Waiver, (2) proof of Discharger Group membership, or (3) a report of waste discharge for an individual waste discharge permit. The Discharger has received at least two notices from the Regional

Board requiring compliance. Enrollment is essential to Regional Board regulation in order to ensure compliance with the requirements of the Conditional Waiver. Moreover, the Conditional Waiver program requires water quality monitoring, which is fundamental to evaluating the health of waterbodies in the Region. Therefore, a reduction from the maximum civil liability is not warranted.

b. Susceptibility to cleanup or abatement of the discharge:

The violation in this Complaint involves non-submittal of a Notice of Intent to enroll under the Conditional Waiver or report of waste discharge for an individual waste discharge permit. Therefore, the susceptibility to cleanup or abatement carries a less relevant consideration as compared to other factors. Therefore, a reduction from the maximum civil liability is warranted.

c. Degree of toxicity of the discharge:

The Regional Board does not have any specific information on the toxicity of potential discharges from this site. However, agriculture operations often use pesticides, fertilizers and/or other chemicals that are known to cause aquatic toxicity. Additionally, monitoring data, collected under the Conditional Waiver program, has reported toxic discharges in other locations that receive discharges from agriculture operations.

d. The ability of the Discharger to pay:

During the Regional Board staff site visit on December 11, 2008, staff determined that the Discharger grows oranges. Based on the 2007 Ventura County Crop report, the production of Navel oranges was 9.52 tons per acre and Valencia oranges was 9.25 tons per acre. The value of this crop was $485.61/ton for Navel oranges and $490.69/ton for Valencia oranges. The value of Navel oranges per acre is estimated at $4,623.00. The value of Valencia oranges per acre is estimated at $4,538.88.

Based on information from the Ventura County Assessor, the value of APN 098-0-010-025 is $512,430. Based on the value of crops produced at the site and the assessed value of the property, a reduction from the maximum civil liability is warranted.

e. The effect on the Discharger's ability to continue its business:

Based on the value of the Discharger's crop and the number of acres this landowner has in production (< 13.41 acres), a reduction from the maximum civil liability is warranted.

f. Any voluntary cleanup efforts undertaken:

The Regional Board is unaware of any voluntary cleanup efforts undertaken by this Discharger.

g. Prior history of violations:

The Regional Board is unaware of any prior violations. Therefore, a reduction from the maximum civil liability is warranted.

h. Degree of culpability:

The Discharger is culpable because two official notices for the need to submit a Notice of Intent, MRP Plan, and QAPP, provide proof of Discharger Group membership, or submit a report of waste discharge were ignored. The Discharger was sent a Notice to Comply on January 23, 2007 and a Notice of Violation on November 15, 2007. The Discharger knew about the requirement to submit a Notice of Intent, MRP Plan, and QAPP, provide proof of Discharger Group membership, or submit a report of waste discharge and still did not comply. Therefore, a reduction from the maximum civil liability is not warranted.

i. Economic benefit or savings, if any, resulting from the violations:

The Discharger realized cost savings by failing to pay fees and failing to perform required water quality monitoring or participate in the Discharger Group option established under the Conditional Waiver. The Discharger realized additional cost savings by failing to attend required education courses. According to Ventura County Assessor records, the Discharger owns approximately 13.41 acres in Ventura County. Regional Board staff estimates the cost savings for non-compliance to be approximately $1,004 (including monitoring costs, State Water Resources Control Board waiver fees, and education costs). Since the Discharger realized only minor cost savings, a reduction from the maximum civil liability is warranted.

j. Other matters as justice may require:

An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violations and preparing this Complaint and related documents. The Regional Board charges a rate of $135 per hour for recovery of staff costs. With total staff time at approximately 20 hours, staff costs incurred by the Regional Board are estimated at $2,700.

22. After consideration of the factors in §13327 of the California Water Code, the Chief Deputy Executive Officer recommends that the Regional Board impose administrative civil liability on Donald and Marlene Henderson in the amount of $3,759. This amount is recommended only if the Discharger enrolls (individually or as a Discharger Group member) in the Conditional Waiver for Irrigated Lands Program (Order No. R4-2005-0080) or submits a report of waste discharge for an individual waste discharge permit within 30 days from the date of this Complaint. This recommended civil liability includes staff costs and is calculated as follows:

An assessment of $7 per day for the 537 days in which Donald and Marlene Henderson failed to submit a Notice of Intent or report of waste discharge, after so requested by the Regional Board.

537days x $7 per day = $3,759

23. If the Discharger does not enroll in the Conditional Waiver for Irrigated Lands Program (Order No. R4-2005-0080) or submits a report of waste discharge within 30 days from the date of this Complaint, then the Chief Deputy Executive Officer recommends that the Regional Board impose administrative civil liability on Donald and Marlene Henderson in the additional increased amount of $400 per day for each day past 30 days that they do

not submit the required documentation. Thus, this recommended civil liability would be calculated as follows:

An assessment of $3,759 plus $400 a day for the number of days past 30 days in which Donald and Marlene Henderson fails to submit a Notice of Intent or report of waste discharge, after so requested by the Regional Board.

$3,759 + ($400 x # of days past 30 days) = $XXXXX*

* As previously noted, the Regional Board's Chief Deputy Executive Officer is seeking penalties for each day past 30 days from the date of this Complaint up to the date that the Discharger submits either: (a) a Notice of Intent, MRP Plan, and QAPP to individually comply with the Conditional Waiver, (b) proof of Discharger Group membership, or (c) a report of waste discharge for an individual waste discharge permit. Thus, the recommended civil liability referenced above will increase for each day past 30 days from the date of this Complaint that the Discharger continues to fail to submit a Notice of Intent and other documentation, proof of Discharger Group membership, or report of waste discharge. As such, the Discharger has the burden on submitting the required documentation in order to stop the accrual of penalties.

RECOMMENDED CIVIL LIABILITY

Penalty Category	Calculation	Total
Failure to submit: (a) report of waste discharge, or (b) Notice of Intent, MRP Plan, and QAPP, individually or as a member of a Discharger Group, to comply with Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080)	CWC § 13261(b)(1): 537 days x $7/day If documents are submitted <u>within</u> 30 days of the date of this Complaint. **OR**	$3,759
	CWC § 13261(b)(1): $3,759+ ($400 x # of days past 30 days) If documents are submitted <u>after</u> 30 days of the date of this Complaint.	$XXXX
TOTAL RECOMMENDED PENALTY (AS OF THE DATE OF THIS COMPLAINT)		$3,759

24. Donald and Marlene Henderson may waive their right to a hearing and pay the recommended civil liability. Should Donald and Marlene Henderson choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it, along with a check in the amount of $3,759 to the Regional Board at 320 W. 4th Street, Suite 200, Los Angeles, CA 90013 by 5:00 pm on June 4, 2009. The check must be made payable to the "State Water Pollution Cleanup and Abatement Account" and reference "ACL Complaint No. R4-2009-0053."

25. If the Discharger waives its right to a hearing and pays the civil liability recommended herein, this Complaint only resolves liability that the Discharger incurred through the date of this Complaint, for the violations specified herein, and does not relieve the Discharger from liability for any violations after the date of this Complaint or any violations not alleged in this Complaint.

26. If the Regional Board does not receive a waiver and full payment of the recommended civil liability by June 4, 2009, this Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§13228.14 and 13323. The Notice of Public Hearing accompanying this Complaint contains the date, time, location, and specific procedures of the scheduled hearing on this matter.

27. Nothing in this Complaint relieves the Discharger of any reporting obligation under the Conditional Waiver, including the obligation to submit the required Notice of Intent, conduct water quality monitoring (individually or as part of a Discharger Group), and implement Best Management Practices (BMPs), as necessary. Failure to submit the Notice of Intent, conduct water quality monitoring, and implement necessary BMPs may subject the Discharger to additional enforcement action, including penalties accrued after the date of this Complaint.

28. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.

Deborah J. Smith
Chief Deputy Executive Officer
Los Angeles Regional Water Quality Control Board

May 5, 2009

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2009-0053

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

I am duly authorized to represent Donald and Marlene Henderson (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2009-0053 (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 Water Board.

b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **$3,759** by check that references "ACL Complaint No. R4-2009-0053" made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Water Board by June 4, 2009 or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.

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 Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant 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 Water Board, and that the Regional Water 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.

See next page for Option 2

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

a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future.

b. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s).

c. By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)