KRISTEN T. CASTAÑOS (SB #198672)
kristen.castanos@stoel.com
WESLEY A. MILIBAND (SB #241283)
wes.miliband@stoel.com
JULIET H. CHO (SB #271437)
juliet.cho@stoel.com
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for Respondent
THE MORNING STAR PACKING COMPANY, L.P.

BEFORE THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of The Morning Star Packing Company, L.P., Respondent.	ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2015 **REQUEST FOR RECONSIDERATION OF ADVISORY TEAM'S RULING ON MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO SUBPOENA DUCES TECUM; DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF; DECLARATION OF CHRIS RUFER IN SUPPORT THEREOF**

REQUEST FOR RECONSIDERATION

I. Introduction & Summary Of Argument

The Morning Star Packing Company, L.P. ("Morning Star") is *not* seeking to reverse the denial of the underlying motion to compel documents, but instead to remove the "caveats" attached to the Advisory Team's denial of that motion. In effect, the "caveats" granted the motion by compelling production of documents, and further stating somewhat threateningly that failure to produce certain documents may lead to the Advisory Team advising: "…the Board to take that lack of cooperation into consideration when arriving at a final assessed penalty."[1]

For legal, policy and factual reasons stated more fully herein, including the Declaration submitted concurrently herewith, the Advisory Team's rationale underlying its ruling is flawed and misguided, thus requiring the ruling to be modified by removing its "caveats," for at least the following reasons:

(1) *Morning Star was denied fundamental due process rights* by being denied the opportunity to respond in writing to the underlying motion to compel, despite its immediate request for such opportunity[2];

(2) *The Advisory Team, not the Hearing Officer, issued the ruling* despite the underlying motion to compel requesting the Hearing Officer (currently an unidentified individual unknown to Morning Star) issue a decision and that being the proper course rather than a team existing for purposes of "advising," not "ruling";

(3) *The ruling presumes to know all grounds for Morning Star's position* regarding the disputed document items in the underlying subpoena, while simultaneously denying an opportunity to hear from Morning Star, by stating Morning Star's "…flat refusal to turn over these documents is utterly without merit," *when in fact Morning Star articulated concerns as well as sought solutions.*[3]

---

[1] *See* Declaration Of Wesley A. Miliband In Support Of Request For Reconsideration Of Advisory Team's Ruling On Motion To Compel Production Of Documents In Response To Subpoena Duces Tecum ("Miliband Declaration"), Attachment "C".

[2] *Ibid.*, Paragraph 13, Attachment "B".

[3] *Ibid.*, Paragraphs 4 through 10.

(4) *The underlying subpoena seeks irrelevant documents* that have not been shown, nor are believed by Morning Star, to allow "economic benefit" to be calculated or extrapolated from pond expansions; and

(5) *Tax return documents are subject to privacy rights,* and similarly the requests for these documents are irrelevant and overbroad because they seek Morning Star's tax returns, which are as to the entire company, not the facility at issue in this matter.

Summarily stated, the grounds for withholding documents (to the extent such documents exist) include the following for each of the disputed categories:

(1) Subpoena Item 1 seeking tax returns is improper because the requested documents are confidential and protected by the tax return privilege, and moreover, are unnecessary and irrelevant to this proceeding, pursuant to Government Code section 11513, subdivision (e), Revenue and Taxation Code section 19282, and California Code of Regulations, title 23, section 648.5.1; and

(2) Subpoena Items 10 - 14 relate to Morning Star's private financial and business records and are irrelevant to this proceeding and overly broad and production of such documents is unduly burdensome to Morning Star.

Accordingly, Morning Star requests that the underlying ruling be modified so that it denies the underlying motion to compel rather than granting the motion under the guise of denial. Reconsideration is necessary because the ruling *compels production of the disputed documents under express threat of potentially higher fines resulting from non-disclosure.*

II. Factual Background

The Prosecution Team in this Administrative Proceeding against Morning Star served a Motion to Compel Production of Documents in Response to its Subpoena Duces Tecum ("Motion to Compel" or "Motion") requesting the Hearing Officer issue an Order requiring Morning Star to disclose six categories of documents that Morning Star contends are not relevant to the Prosecution Team's stated basis for seeking the information. The scope of the Prosecution Team's Subpoena ("Subpoena") is framed by the Administrative Civil Liability Complaint No.

R5-2015-0549 ("ACL Complaint"), which alleges violations of the Waste Discharge Requirements ("WDRs") issued by the Central Valley Regional Water Quality Control Board ("Board") during November 2013, specifically that Morning Star improperly expanded the Cooling Pond and Settling Pond at its Williams, California facility ("Williams Facility").

A. *The ACL Complaint*

The ACL Complaint states that the Board is seeking civil penalties against Morning Star for violations of WDRs Order R5-2013-0144, specifically because the size of the Cooling Pond and Settling Pond at Morning Star's facility in Williams, have increased.[4] Based on the ten-step evaluation described in the State Water Resources Control Board's Water Quality Enforcement Policy to determine the civil liability assessed against a discharger, the Prosecution Team has recommended an administrative civil liability against Morning Star in the amount of one million five hundred thousand dollars ($1,500,000).

B. *The Subpoena, Meet-And-Confer Effort, And Motion To Compel*

The Prosecution Team inappropriately seeks:

(1) Federal tax returns for Morning Star for the years 2012, 2013, and 2014, sought in Item 1 of the Subpoena;

(2) All documents which refer or relate to Morning Star's revenue for 2014 and 2015, sought in Item 10 of the Subpoena;

(3) All documents which refer or relate to Morning Star's operating costs, sought in Item 11 of the Subpoena;

(4) All documents which refer or relate to Morning Star's cash overhead costs, sought in Item 12 of the Subpoena;

(5) All documents which refer or relate to Morning Star's non-cash overhead costs, sought in Item 13 of the Subpoena; and

(6) All documents which refer or relate to Morning Star's depreciation schedules for assets related to the operation of its facility in Williams, California, sought in Item 14 of the Subpoena.

Numerous material facts were not made part of the Motion to Compel or the subsequent ruling, despite Morning Star's efforts, all of which demonstrate Morning Star has raised legitimate grounds for non-disclosure and attempted to resolve those concerns. Morning Star

[4] ACL Complaint, pp. 4 through 5.

initiated a meet-and-confer process through legal counsel, specifically articulating its grounds for non-disclosure and seeking to meet with the Prosecution Team's economist to explore how the requested documents allow for economic benefit to be calculated, only to have the Prosecution Team reply that no such meeting will occur and Morning Star will instead need to issue objections.[5] In response to the Subpoena, Morning Star timely produced approximately 1,300 pages of responsive documents organized by category as requested in the Subpoena, as well as objections.[6] The Prosecution Team responded late the next business day - during the week of a major holiday - by serving its Motion to Compel.[7] Morning Star responded through legal counsel within less than three (3) business hours that it seeks to oppose the motion in writing and offered a short schedule for such, only to have the Advisory Team issue its ruling the following day and specifically denying Morning Star the opportunity to brief the issues and to state its grounds for non-disclosure.[8]

C. ***The Ruling On The Motion To Compel By The "Advisory" Team***

While the Advisory Team's determination denies the Prosecution Team's Motion to Compel, it requires Morning Star to produce the documents, or Morning Star will be disqualified from relying on any of the documents to argue "inability to pay," and concludes that failure to produce the documents could be a means for the Prosecution Team to increase the penalty.[9]

The Advisory Team's determination is based in large part on the issue of Morning Star's "ability to pay" under Step 6 of the Enforcement Policy, however, nothing within the Subpoena, the Motion to Compel, or the ACL Complaint cites to the Subpoenaed documents for proving Morning Star's "ability to pay." Also, Morning Star has not claimed "inability to pay," further negating the Prosecution Team's grounds for contending the disputed financial records are relevant.

---

[5] Miliband Declaration, Paragraphs 4 through 11.
[6] *Ibid.*, Paragraph 11.
[7] *Ibid.*, Paragraph 12, Attachment "A".
[8] *Ibid.*, Paragraph 13, Attachment "B", and Paragraph 14, Attachment "C".
[9] *Ibid.*, Paragraph 14, Attachment "C".

III. Argument

The Prosecution Team's Subpoena seeks documents that are protected tax documents, irrelevant, and not specifically tailored to the underlying operations, which relate to tomato processing operations that differ from many other types of dischargers' operations.

A. *Morning Star Is Entitled To Protect Its Tax Documents*

"California courts…have interpreted state taxation statutes as creating a statutory privilege against disclosing tax returns."[10] The Revenue and Taxation Code considers disclosure of personal income tax returns by any member of the Franchise Tax Board a misdemeanor offense.[11] The policy behind this statute is to ensure that taxpayers are willing to make full and truthful declarations in their returns, without any fear that the information provided in their returns will be used against them. Accordingly, the statute creates a privilege against the disclosure of income tax returns, even to corporations.[12]

Here, the Prosecution Team readily acknowledges that courts have recognized this tax return privilege when there is "no rational purpose" served by requiring disclosure.[13] It is clear that Courts have only made exceptions to the taxpayer privilege when the public policy outweighs the privilege. However, the Prosecution Team has failed to cite to any legal authority that this instance is one that falls outside of the privilege. Instead, the Prosecution Team insists that it is of "utmost concern…to protect the beneficial uses of waters of the State of California and compliance with the Board's regulations and requirements."[14] While indeed a noble notion, and one that Morning Star supports, there is nothing in the Motion that makes the connection between poring over Morning Star's federal tax returns and the necessity to effectuate this policy. The person seeking to compel production of personal information has the burden of showing the documents are not just relevant but that they are *directly relevant* to the issues in the matter.[15]

---

[10] *Weingarten v. Superior Court* (2002) 102 Cal.App.4th 268, 274.
[11] *See* Rev. and Tax. Code § 19282.
[12] *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513, affirmed in *Sav-On Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 6.
[13] *See* Motion to Compel, pp. 3 - 4.
[14] Motion to Compel, p. 3.
[15] *See Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-54 [emphasis added].

Ultimately, to require Morning Star to disclose its tax returns is a violation of Morning Star's tax return privilege. Moreover, utilizing tax returns as a baseline reference for profits is all the more improper here for seeking company-wide returns despite one facility being at issue in this matter, thus making the Prosecution Team's efforts a speculative fishing expedition.

B. *The Subpoena Seeks Irrelevant Documents*

The Prosecution Team bears the burden of proof to establish that the Subpoena is "carefully tailored to avoid, if possible, the securing of improper records."[16] The Civil Discovery Act permits discovery of information that is "relevant to the subject matter involved in the pending actions" and "appears reasonably calculated to lead to the discovery of admissible evidence."[17] A discovering party must demonstrate the necessity of obtaining certain information to prove its case when the party seeks confidential information.

"Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense" is a misuse of the discovery process.[18] Even if the Hearing Officer were to find that the subpoenaed documents have some marginal relevance, the Hearing Officer must consider whether the proposed discovery is "unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake" in this proceeding.[19]

Here, the Prosecution Team has failed to "carefully tailor" its requests and has requested improper records, as described more fully herein. The crux of the Prosecution Team's argument to support the documents demanded under Items 1 and 10 - 14 is the assertion that these documents are necessary to determine the "economic benefit" under Step 8 of the Enforcement Policy.

The premise of the ACL Complaint is based on the alleged violation of the 2013 WDRs, specifically the expansion of the Cooling Pond and Settling Pond.[20] The Prosecution Team alleges that "the *amount* the Discharger spent in *planning and implementing the Cooling Pond*

[16] *Wood v. Superior Court* 91985) 166 Cal.App.3d 1138, 1149.
[17] Code Civ. Proc., § 2017.010.
[18] Code Civ. Proc., § 2023.010, subd. (c).
[19] Code Civ. Proc., § 2019.030, subd. (a)(2).
[20] ACL Complaint, pp. 4 - 5.

expansion is not currently known to the Prosecution Team."[21] Attachment A to the ACL Complaint also alleges that "Discharger indicated that it expanded the production by 75 percent in 2015 increasing production of fresh tomatoes to paste from 1.3 million tons to 2.01 million tons. The Discharger is continuing to generate income largely due to its expanded size, three additional evaporators, and larger Cooling Pond and Settling Pond…[t]his information is needed in order to more fully assess the economic benefit of noncompliance."[22]

In support of this calculation, the Motion to Compel argues that the Cooling Pond expansion is a direct result of the facility expansion, and therefore, any financial increase or decrease related to the facility expansion is an inevitable result of the Cooling Pond and Settling Pond expansion, and demonstrates Morning Star's "economic benefit" from its violation of the WDRs. The Prosecution Team further contends that Morning Star's financial documents describing its overall business, liabilities, and assets are necessary because they are "illustrative of what benefits Morning Star has derived for noncompliance with WDRs in multiple ways" and "the revenue generated as a result of tomato paste production is related to the economic benefit of the company. The expansion of that production, and the revenue generated thereby, is the essential function of the company. The expansion of the Cooling [P]ond and Settling [P]ond are necessary elements of the increased production of the company, in light of their decision not to use other method so to operate their facility in compliance with the WDRs."[23] Here, the Prosecution Team's premise and conclusion that the pond expansions are "necessary elements of the increased production of the company" is fundamentally flawed, thus misguiding the Prosecution Team's approach for calculating Morning Star's economic benefit. Instead, Morning Star made operational business decisions regarding its manufacturing process for operations, including as to the Cooling Pond and Settling Pond. Specifically, with choices before it, Morning Star elected expansion of these ponds rather than alternative operational methods, and with the

[21] ACL Complaint, Attachment A, p. 16, [emphasis added].
[22] Attachment A, p. 16.
[23] Motion to Compel, p. 6.

benefit of water and energy conservation.[24] Thus, the pond expansions were not "necessary" as contended by the Prosecution Team in order for the facility to expand production, thereby negating the Prosecution Team's purported grounds for relevance. Indeed, as the Prosecution Team acknowledges, the decision not to use other methods to operate the facility may be relevant to economic benefit[25], but revenues from increased production are not.

To the extent any such economic benefit results from the pond expansions, including from utilizing a cooling pond to cool water, the methodology for calculating economic benefit should be derived from economic analysis of alternatives - such as either the cost of cooling towers or an additional water pump to pump more water from a 60 acre pond - to do the same work done by the pond expansions, also taking into account that expansions to the Cooling Pond and Settling Pond bear construction and maintenance costs.[26]

Further negating any potential relevance or liability is the fact that the ACL Complaint is based on alleged violations of the WDRs, Section A.3 (Prohibition), despite those same WDRs explicitly contemplating and acknowledging that the facility will increase production.[27]

Ultimately, the facility increase was not dependent on the Cooling Pond and Settling Pond expansion, and in fact, Morning Star's operations could have continued in its expanded capacity with the previously sized Cooling Pond and Settling Pond. Therefore, equating any economic benefit of the facility production increase to the pond expansions is incorrect and the documents sought by the Prosecution Team cannot reasonably be relied on to calculate any such economic benefit.[28]

In addition, if the Prosecution Team's policy is to ensure "compliance with the Board's regulations and requirements" and "calculate economic benefit", the Prosecution Team wholly fails to demonstrate beyond anecdotal, generic comments how this information can be extrapolated from federal tax returns or the other documents requested. In short, the Prosecution

---

[24] *See* Declaration Of Chris J. Rufer In Support Of Request For Reconsideration Of Advisory Team's Ruling On Motion To Compel Production Of Documents In Response To Subpoena Duces Tecum ("Rufer Declaration"), Paragraphs 7 through 9.

[25] Motion to Compel, p. 6.

[26] Rufer Declaration, at Paragraph 10.

[27] *See, e.g.,* 2013 WDRs, Paragraph 28.

[28] *See,* e.g., Rufer Declaration, Paragraph 11.

Team has failed to specifically illustrate a methodology of how the disputed documents could be used to identify "economic benefit."

While it is true that the Prosecution Team is not obligated to demonstrate during the discovery process how it intends to utilize each document at a contested hearing, the Prosecution Team still bears its obligation to establish sufficient grounds for relevancy, and when as here the requested documents are not reasonably calculated to allow the purported calculations, , the demand for the documents should be denied. A governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.[29]

Accordingly, any information and documents that are attributable or otherwise a derivative of the facility expansion, should not be included as part of the Subpoena. It is against public policy to argue that any potential derivative of economic benefit is attributable to an alleged violation related to the Cooling Pond, and this cannot be the measure to meet the standard under the Enforcement Policy.

Ultimately, demanding documents that expose Morning Star's operational costs, liabilities, and depreciation schedules for its assets, amounts to a fishing expedition by the Prosecution Team into Morning Star's financial records, and should be strictly forbidden by the Board.[30]

Accordingly, Morning Star respectfully requests outright denial of the disputed requests for document.

C. ***The Subpoena Is Overly Broad***

The Prosecution Team contends Requests 11 - 14 are necessary because the "entire financial position of the company leading up to and during their period of noncompliance[]"will demonstrate the "benefits Morning Star has enjoyed" from the alleged failure to comply with the WDRs.[31] These statements are antics without support, as set forth *supra* and *infra.*

---

[29] *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 796.

[30] *See* Calcar Space Facility v. Superior Court (1997) 53 Cal.App.4th 216,225 (citing Greyhound Corp. v. Superior Court (1961) 56 Cal.2d 355); see, e.g., Tylo v. Superior Court (1997) 55 Cal.App.4th 1379, 1387 ["the rules of discovery do not allow unrestricted access to all species of information"].

[31] Motion to Compel, pp. 6 - 7.

The rules of discovery do not allow unrestricted access to all species of information.[32] The person seeking to compel production of personal information has the burden of showing the documents are not just relevant but that they are *directly relevant* to the issues in the matter.[33]

Federal tax returns, all revenue for 2014 and 2015, Morning Star's operating costs, cash overhead costs, non-cash overhead costs, and depreciation schedules are overbroad for the Prosecution Team's investigation for economic benefit under the ACL Complaint. The Board should be wary of permitting the Prosecution Team to demand documents that are overbroad. Moreover, the Prosecution Team fails to identify how the *entire* financial position of Morning Star's business is directly relevant to the discrete issue of expansion of the ponds for the purpose of managing the tomato processing operations.

"When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden."[34]

Here, the information related to Morning Star's overall business operations, not solely limited to any tomato processing for production of tomato paste, are overbroad and it can be inferred that the Prosecution Team intends to harass and improperly burden Morning Star, and therefore, should not be permitted to extrapolate any information regarding "economic benefit."

The Prosecution Team has made no *specific* showing or connection of any legitimate or "compelling need" for *how* the information *sought* presents probative value or admissibility, although perhaps such can be done by evaluating alternatives to the pond expansions that would accomplish the same productivity.

Accordingly, Morning Star respectfully requests the disputed documents be deemed overly broad.

---

[32] *Tylo v. Superior Court* (1977) 55 Cal.App.4th 1379, 1387.

[33] *See Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-54 [emphasis added]; *see also City of Santa Barbara v. Adamson* (1980) 27 Cal. 3d 123, 130; *Valley Bank of Nev. v. Superior Court* (1975) 15 Cal. 3d 652, 657.

[34] *Obregon v. Superior Court* (1988) 67 Cal.App.4th 424, 431.

IV. Conclusion

Morning Star respectfully requests reconsideration of the ruling such that the Motion to Compel be denied without "caveats" or qualifications because disclosure of these documents would violate the federal tax return privilege, privacy rights, and lack relevance due to lack of potential probative value.

DATED: January 5, 2016

STOEL RIVES LLP

By: _____
KRISTEN T. CASTAÑOS
WESLEY A. MILIBAND
JULIET H. CHO
Attorneys for Respondent

DECLARATION OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of Sacramento and my business address is 500 Capitol Mall, Suite 1600, Sacramento, California 95814.

On January 5, 2016, at Sacramento, California, I served the attached document(s):

REQUEST FOR RECONSIDERATION OF ADVISORY TEAM'S RULING ON MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO SUBPOENA DUCES TECUM; DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF; DECLARATION OF CHRIS RUFER IN SUPPORT THEREOF

on the following parties:

Wendy Wyels
Central Valley Regional Water Quality Control Board
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670
Tel: (916) 464-4835
Wendy.Wyels@waterboards.ca.gov

Mayumi Okamoto
State Water Resources Control Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 95812
Tel: (916) 341-5674
Mayumi.Okamoto@waterboards.ca.gov

Nickolaus Knight
State Water Resources Control Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 95812
Tel: (916) 327-0127
Nickoluas.Knight@waterboards.ca.gov

Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670
Tel: (916) 464-4839
Pamela.Creedon@waterboards.ca.gov

Andrew Deeringer
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Tel: (916) 341-5199
Andrew.Deeringer@waterboards.ca.gov

Patrick Pulupa
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Tel: (916) 341-5189
Patrick.Pulupa@waterboards.ca.gov

Alex MacDonald
Senior Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670
Tel: (916) 464-4625
Alex.MacDonald@waterboards.ca.gov

Andrew Altevogt
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670
Tel: (916) 464-4656
Andrew.Altevogt@waterboards.ca.gov

X	**BY FIRST CLASS MAIL:** I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and mailing at the offices of Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.
X	**BY EMAIL:** On the date written above, I emailed a copy of the attached documents to the addressee, as shown on the service list.
	BY FACSIMILE: On the date written above, I caused a copy of the attached document to be transmitted to a fax machine maintained by the person on whom it is served at the fax number shown on the service list. That transmission was reported as complete and without error and a transmission report was properly issued by the transmitting fax machine.
	BY OVERNIGHT MAIL: I am readily familiar with my employer's practice for the collection and processing of correspondence for overnight delivery. In the ordinary course of business, correspondence would be deposited in a box or other facility regularly maintained by the express service carrier or delivered to it by the carrier's authorized courier on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and overnight delivery at the offices of Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope, with delivery fees prepaid or provided for, addressed as shown on the service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on January 5, 2016, at Sacramento, California.

Marilyn Sykes

KRISTEN T. CASTAÑOS (SB #198672)
kristen.castanos@stoel.com
WESLEY A. MILIBAND (SB #241283)
wes.miliband@stoel.com
JULIET H. CHO (SB #271437)
juliet.cho@stoel.com
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for Respondent
THE MORNING STAR PACKING COMPANY, L.P.

BEFORE THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of The Morning Star Packing Company, L.P., Respondent.	ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2015 **DECLARATION OF CHRIS J. RUFER IN SUPPORT OF REQUEST FOR RECONSIDERATION OF ADVISORY TEAM'S RULING ON MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO SUBPOENA DUCES TECUM**

I, Chris J. Rufer, hereby declare as follows:

1. I am the founder and President and the Managing Partner of The Morning Star Packing Company, L.P. ("Respondent" or "Morning Star"), in the above-captioned matter.

2. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would testify competently to those facts. This Declaration is made in support of Morning Star's Request for Reconsideration submitted concurrently herewith, relating specifically to Morning Star's facility commonly known as the Williams Facility.

3. I founded Morning Star Packing in 1987, and am chief designer of Morning Star factories.

4. In 1972, I graduated from University of California, Los Angeles with a Bachelor of Arts in Economics.

5. In 1973, I graduated from California Polytechnic State University, San Luis Obispo with a Master of Science in Agriculture.

6. In 1975, I graduated from University of California, Los Angeles with a Master of Business Administration with emphasis on finance and corporate planning.

7. Based upon my formal training and professional experience, a cooling pond is a substitute for cooling towers or additional pumping capacity, and serves as an integral part of tomato processing operations.

8. Based upon my formal training and professional experience, Morning Star's method for cooling water results in water conservation and energy conservation, regardless of the production capacity of the facility, because Morning Star utilizes the natural processes of its Cooling Pond to do the same thing as a cooling tower, which is the traditional method to cool water by using energy to pump the water to the top of a tower for fans to drive air through the tower.

9. Based upon my formal training and professional experience, expansion of a settling pond, such as Morning's Star Settling Pond, conserves water and creates process efficiency regardless of the production capacity of the facility, just as described above for expansion of the Cooling Pond.

10. Based upon my formal training and professional experience, I believe that the methodology for calculating "economic benefit," to the extent any such benefit exists from pond expansions, including from utilizing a cooling pond to cool water, should be derived from economic analysis of alternatives - such as either the cost of cooling towers or an additional water pump for pumping more water from a 60 acre pond - to do the same work done by the pond expansions, also taking into account that expansions to the Cooling Pond and Settling Pond bear construction and maintenance costs.

11. Based upon my formal training and professional experience, I believe the disputed document items at issue in the underlying Motion to Compel - namely company-wide tax returns and financial statements and related financial information as requested - do not allow for economic benefits to be computed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and where stated that I believe matters to be true, I so state those matters to the best of my belief based upon my formal training and professional experience.

Executed on the 5th day of January, 2016 at Sacramento, California.

CHRIS J. RUFER