



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

23 December 2015

Pedro Escobedo
18027 S Elm Ave
Riverdale, CA 93656

Certified Mail No.
7015 1730 0000 9939 7731

ORDER APPROVING SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY, ORDER R5-2015-0547, FOR PEDRO ESCOBEDO

The enclosed Order approves the settlement agreement (Stipulation) between the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) and Pedro Escobedo.

The Order has been approved by the Central Valley Water Board's Executive Officer. On or about 6 November 2015, you endorsed the Stipulation by providing a signed copy to Board staff. To finalize the Stipulation and close your enforcement case with the Board, you must submit payment per the instructions provided in Stipulation 1 of the enclosed Order, and as described below:

Twenty-one thousand dollars (\$21,000) shall be paid to the State Water Board *Cleanup and Abatement Account*. The Order number (R5-2015-0547) should be indicated on the check. The original signed check must be sent to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812. A copy of the check must be sent to David Sholes, Central Valley Water Quality Control Board, 1685 E Street, Fresno, CA 93706.

Pursuant to the Order, you have 30 days from the date of the Executive Officer's approval to arrange payment.

If you have any questions regarding the enclosed settlement agreement, please contact David Sholes at (559) 445-6279, or via e-mail at David.Sholes@waterboards.ca.gov.

A handwritten signature in cursive script that reads "Clay L. Rodgers".

CLAY L. RODGERS
Assistant Executive Officer

Enclosure: Order R5-2015-0547

cc via email: Adam Laputz, Central Valley Water Board, Rancho Cordova
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Sue McConnell, Central Valley Water Board, Rancho Cordova
Kailyn Ellison, Office of Enforcement, SWRCB, Sacramento
Rob L'Heureux, Central Valley Water Board, Sacramento
Casey Creamer, Kings River Water Quality Coalition

Central Valley Regional Water Quality Control Board

23 Diciembre 2015

Pedro Escobedo
18027 S Elm Ave
Riverdale, CA 93656

Correo Certificado Numero.
7015 1730 0000 9939 7731

ORDEN APROVANDO EL ACUERDO Y ESTIPULACIÓN POR ENTRE DE OBLIGACIÓN CIVIL ADMINISTRATIVO, ORDEN R5-2015-0547, PARA PEDRO ESCOBEDO

El Orden adjunto aprueba el acuerdo (Estipulación) entre La Junta de Agua del Valle Central Regional de Control de Calidad de Agua (La Junta de Agua del Valle Central) y Pedro Escobedo.

El Orden fue aprobado por el Oficial Ejecutivo de La Junta de Agua del Valle Central. En o acerca de 6 Noviembre 2015, usted apruebo la estipulación al proporcionar una copia firmada para el personal de La Junta de Agua del Valle Central. Para finalizar la estipulación y cerrar su caso de realización con La Junta de Agua del Valle Central, usted debe mandar el pago acuerdo a las instrucciones incluidas en Estipulación 1 del Orden adjunto, y como descrito abajo:

Veinte un mil dólares (\$21,000) deberán ser pagados a la State Water Board *Cleanup and Abatement Account*. El Orden Numero (R5-2015-0547) debería ser indicado en el cheque. El cheque firmado original debe ser enviado a la Oficina de Contabilidad, y ser dirigido a Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812. Una copia del cheque debe ser enviada a David Sholes, Central Valley Water Quality Control Board, 1685 E Street, Fresno, CA 93706.

Acuerdo a él Orden, usted tiene 30 días de la fecha que el Oficial Ejecutivo apruebo el arreglo para el pago.

Si usted tiene alguna pregunta acerca de la estipulación adjunto, por favor de contactar a David Sholes al número (559) 445-6279, o por correo electrónico a David.Sholes@waterboards.ca.gov.



CLAY L. RODGERS
Oficial Ejecutivo Asistente

Adjunto: Orden R5-2015-0547

cc via email: Adam Laputz, Central Valley Water Board, Rancho Cordova
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Sue McConnell, Central Valley Water Board, Rancho Cordova
Kailyn Ellison, Office of Enforcement, SWRCB, Sacramento
Rob L'Heureux, Central Valley Water Board, Sacramento
Casey Creamer, Kings River Water Quality Coalition

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY
OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0547
IN THE MATTER OF
PEDRO ESCOBEDO

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and Mr. Pedro Escobedo (Discharger)(collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

1. On 29 May 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger. The Directive required the Discharger to obtain regulatory coverage for his irrigated agricultural parcels within 15 calendar days of receipt of the Directive. The Directive was received by the Discharger on 3 June 2015. As detailed in the Directive, the Discharger could obtain coverage by joining the appropriate coalition, or by submitting a Report of Waste Discharge (RoWD).
2. Because the Discharger failed to obtain regulatory coverage by the 18 June 2015 deadline, a Notice of Violation (NOV) was sent via certified mail to the Discharger on 9 July 2015.
3. The Discharger neither obtained regulatory coverage nor contacted the Board in response to the NOV.
4. On 5 October 2015, the Assistant Executive Officer of the Central Valley Water Board issued a pre-Administrative Civil Liability letter (pre-ACL letter) describing a forthcoming assessment of administrative civil liability for failure to submit a Report of Waste Discharge as required by the Directive. The pre-ACL letter stated that the maximum penalty for the violation described above as of 5 October 2015 was one hundred ten thousand dollars (\$110,000), based on a calculation of the total number of per-day violations times the statutory maximum penalty (110 total days of violation multiplied by \$1,000). After conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board proposed a penalty amount of thirty four thousand three hundred twenty dollars (\$34,320). This calculation partially collapsed the

days of violation to thirty-two (32), when the minimum collapsed days of violation was nine (9).

5. Following subsequent conversations and information learned in settlement negotiations with the Discharger, which required the services of a Spanish translator, the Assistant Executive Officer found that the facts supported a reduction in the days of violation to twenty-one (21), resulting in a penalty of twenty-two thousand five hundred twenty-three dollars (\$22,523).
6. Pursuant to Enforcement Policy section VI.B (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the ACL amount to twenty-one thousand dollars (\$21,000) in consideration of hearing and/or litigation risks.
7. On 19 October 2015, the Discharger joined the Kings River Water Quality Coalition. Board records indicate that the Discharger enrolled four parcels comprising 83.2 acres in the Kings River Water Quality Coalition. On 19 October 2015, the Discharger submitted a Notice of Intent (NOI) and the NOI processing fee to the Central Valley Water Board.

Regulatory Considerations

8. As of the date of the pre-ACL letter, the Prosecution Team concluded that the Discharger violated Water Code section 13260 by failing to obtain regulatory coverage for a period of 110 days. The Central Valley Water Board may assess an ACL based on Water Code section 13261 for that violation.
9. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge water within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Water Quality Control Board (Regional Board) a RoWD containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement.
10. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Water Code section 13260 when so requested by a Regional Board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
11. Water Code section 13261, subdivision (b)(1), states that civil liability may be administratively imposed by a Regional Board or the State Water Resources Control Board (State Water Board) in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 of the Water Code for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.

12. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board is required to take into consideration the 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 violation, and other matters as justice may require. Attachment A, which is hereby fully incorporated into this Order by reference, describes the penalty calculation.

Settlement

13. The Parties agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public given that it involves less acreage and fewer days of violation compared to most of the cases where the Central Valley Water Board has issued an order for similar violations in the context of the Irrigated Lands Regulatory Program, and presents a unique language barrier issue that was not present in the earlier cases.
14. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of \$21,000 against the Discharger.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an ACL totaling **twenty-one thousand dollars (\$21,000)** to the Central Valley Water Board to resolve the alleged Water Code violation. The ACL shall be paid to the State Water Board *Cleanup and Abatement Account*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board *Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to David Sholes, Central Valley Water Quality Control Board, 1685 E Street, Fresno, California 93706.

- 2. Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

- 3. Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:
Clay Rodgers – Assistant Executive Officer
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, California 93706
(559) 445-5102

Kailyn Ellison – Attorney
Office of Enforcement, State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, California 95812
(916) 445-9557

For the Discharger:
Pedro Escobedo
18027 Elm Avenue
Riverdale, California 93656
(559) 385-4142

- 4. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
- 5. Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified in Stipulation 1.
- 6. Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley

Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

7. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
8. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Order.
9. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
10. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
11. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code

sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
- b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

12. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
13. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
14. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
15. **Water Boards not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
16. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute

this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

17. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
18. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
19. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
20. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.



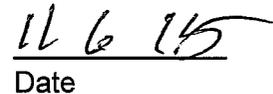
Clay Rodgers
Assistant Executive Officer
For the Central Valley Water Board Prosecution Team



Date



Pedro Escobedo

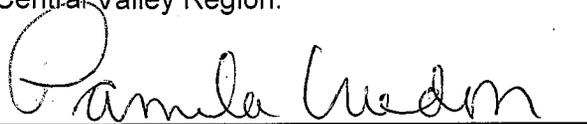


Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for ACL. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.
3. In adopting this Stipulated Order, the Central Valley Water Board, or its delegee, has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.



Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board

12/23/2015
Date

ATTACHMENT A

**Calculation of Penalty per SWRCB
Water Quality Enforcement Policy**

Calculation of Penalty per SWRCB Water Quality Enforcement Policy

The proposed administrative civil liability was derived following the State Water Resources Control Board's ("State Board") Water Quality Enforcement Policy ("Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version 5.4.1" ("Penalty Calculation Worksheet"). The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Each factor of the Enforcement Policy and its corresponding score for the violation is presented below:

Calculation of Penalty for Violation

Step 1. Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The Discharger has failed to submit a Notice of Intent ("NOI") to comply with the Report of Waste Discharge ("RoWD") requirements or enroll in the Kings River Water Quality Coalition ("Coalition") for discharges from irrigated cropland despite evidence that the Discharger owns such cropland. Irrigated cropland can be a source of sediment, pesticide residue, nitrate, and other waste discharged to the waters of the state. Unregulated discharges of such wastes can present a substantial threat to beneficial uses and/or indicate a substantial potential for harm to beneficial uses.

Using Table 3 in the Enforcement Policy, staff 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, which is 83.2 acres total (Fresno County Assessor Parcel Numbers 055-480-23S, 055-480-25, 055-480-21S, and 055-480-22S).

By failing to file a RoWD or to enroll under an applicable General Order, the Discharger has undermined the regulatory program. Dischargers regulated under an applicable General Order 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 provide that information, the Discharger frustrates the Central Valley Regional Water Quality Control Board's ("Central Valley Water Board" or "Board") efforts to assess potential impacts and risks to water quality, and circumvents the Board's ability to take necessary enforcement actions to address problems.

The greater the size of the operation, the greater the potential risk, since any practices being implemented by the Discharger that are detrimental to water quality may impact a much greater area. Moreover, the regulatory program is compromised when 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 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.

The deviation from the requirement is major. Mr. Escobedo has undermined the efforts of the Central Valley Waters Board's Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for waste discharges and rendering that requirement ineffective. A discharger's regulatory coverage is foundational to the Board's efforts to protect water quality. The Orders adopted by the Board specify the expectations and requirements for water quality protection, which do not apply until the 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.

On 29 May 2015, the Central Valley Water Board issued a Directive Letter pursuant to California Water Code section 13260 ("Directive"), which required Mr. Escobedo to obtain regulatory coverage within 15 calendar days of receipt or face a potential civil liability. The Directive was received on 3 June 2015; hence, regulatory coverage was required by 18 June 2015.

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 requirement is major. Based on the above factors, a per day factor of 0.55 is appropriate. (See pg. 16 of the Enforcement Policy).

Step 4. Adjustment Factors

a) *Culpability*: 1.3

The Discharger was given the score of 1.3 for the Culpability factor. Central Valley Water Board staff sent notices on 14 February 2014 and 28 April 2014 to Mr. Escobedo for his parcels in Fresno County describing the new water quality regulations and the required actions to comply therewith. Mr. Escobedo also received the 13260 Directive and Notice of Violation requiring the Discharger to obtain coverage. Despite knowledge of the regulatory requirements, which is exemplified by the notices described above, Mr. Escobedo failed to come into compliance. The failure to come into compliance suggests Mr. Escobedo acted intentionally in ignoring the requirement to get regulatory coverage, resulting in a multiplying factor of 1.3.

b) *Cleanup and Cooperation: 1.5*

The Discharger was given the score of 1.5 for the Cleanup and Cooperation factor. The Central Valley Water Board issued the Discharger a Notice 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 Central Valley Water Board despite being awarded ample time in which to do so. Cleanup is not applicable in this case.

c) *History of Violations: 1.0*

The Discharger was given the score of 1.0, as there is no evidence that Mr. Escobedo has a history of violations.

Multiple Day Violations: On 29 May 2015, the Discharger was sent a Directive, which required him to obtain regulatory coverage within 15 calendar days of receiving the Directive or face a potential civil liability. The Directive was received by the Discharger on 3 June 2015. Thus, regulatory coverage was required by 18 June 2015. As of 5 October 2015, the date on which pre-ACL letter was sent to the Discharger, the Discharger was 110 days late in meeting that requirement.

Violations under Water Code section 13260 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy (pg. 30). Under that approach, for violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used.

Here, the Central Valley Water Board finds that the Discharger's failure to submit a NOI is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Discharger's failure to submit a NOI has detrimentally impacted the environment on a daily basis, since obtaining regulatory coverage does not result in an immediate evaluation of, or changes in, practices that could be impacting water quality. There is no daily detrimental impact to the regulatory program because information that would have been provided by the Discharger pursuant to the regulatory requirements would have been provided on an intermittent, rather than daily basis.

Moreover, the Discharger's failure to submit a NOI results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is associated predominately with costs of permit fees, which are outlined below.

Either of the above findings justifies use of the alternate approach to penalty calculation for multiple day violations. The minimum number of days to be assessed in this case under the alternate approach is 9. However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent, and because the Discharger's inaction undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 21 days of violation.

Step 5. Determination of Total Base Liability Amount

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

- a) *Total Base Liability Amount: \$22,523.* (Initial Liability (\$1,000/day x 21 days x 0.55) x Adjustments (1.3)(1.5)(1.0)).

BASE LIABILITY AND FACTORS APPLIED TO THE VIOLATION

The Base Liability Amount for the Violation is **\$22,523**. The following factors apply to the Base Liability Amount for the violation.

Step 6. Ability to Pay and Continue in Business

As per the Enforcement Policy, "[t]he ability of a discharger to pay an ACL is determined by its revenues and assets." (pg. 19.) The Discharger has the ability to pay the Base Liability Amount. The value of the Fresno County properties owned by the Discharger is a significant asset. According to the Fresno County Assessor's offices, the 2013-2014 assessed value of the parcels was listed as \$581,157. In 2014, the Discharger's ownership of approximately 83.2 acres of almonds generated an estimated \$610,302 in revenue¹. Therefore, there are no factors under this category that warrant an adjustment.

Step 7. Other Factors as Justice May Require

There are no factors under this category that warrant an adjustment.

Step 8. Economic Benefit²

Under the Irrigated Lands Regulatory Program, an individual may choose to comply with the program by either filing an NOI to get regulatory coverage as an "individual grower" under General Order R5-2013-0100 *Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-party Group* (Individual General Order), or filing an NOI for regulatory coverage under a third-party group Order and joining the Coalition.

¹ Information provided by the 2014 Fresno County Crop Report.

² Order R5-2013-0100 includes an estimate of average annual costs per acre related to that Order. The average annual costs are not used in this economic benefit analysis, since the costs represent an average cost, if the Order were applied Central Valley-wide. The cost estimates made in this analysis are based on the circumstances and facts related to this Discharger, rather than a broad class of Dischargers.

Through the settlement process, the Discharger joined the Coalition. The economic benefit is the delayed costs of joining the Coalition and submitting the NOI to the Central Valley Water Board. The cost of joining the Coalition was \$384 (acreage fee of \$4.30/acre x 83.2 acres plus the annual membership fee of \$26). The fee associated with filing the NOI was \$200. Considering these are delayed costs, the economic benefit associated with noncompliance is negligible.

Step 9. Maximum and Minimum Liability Amounts

a) Minimum Liability Amount

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violation cited herein is determined to be negligible.

b) Maximum Liability Amount

As of 5 October 2015, the date on which pre-ACL letter was sent to the Discharger, the Discharger was out of compliance for 110 days. The maximum liability under Water Code section 13261, subdivision (b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of one hundred ten thousand dollars (\$110,000).

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for failure to submit a NOI to comply with the RoWD requirements under Water Code section 13260 is twenty-two thousand five hundred twenty-three dollars **(\$22,523)**.