

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY  
OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0555  
IN THE MATTER OF  
SEVEN HILL LLC

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 Seven Hill LLC (Discharger) (collectively 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 2 May 2016, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger. The Directive required the Discharger to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could obtain regulatory coverage by enrolling in Central Valley Water Board Order R5-2013-0100 (Individual Order) or Order R5-2014-0030 (General Order).
2. The Discharger received the Directive on 9 May 2016. To avoid formal enforcement, the Discharger was required to obtain regulatory coverage no later than 24 May 2016. On 23 June 2016, the Discharger submitted a NOI for the General Order and informed Central Valley Water Board staff that it was in the process of joining the Sacramento Valley Water Quality Coalition (Coalition). The Discharger remained out of compliance with the Directive until it enrolled in the Coalition.
3. After confirming the Discharger failed to join the Coalition, Central Valley Water Board staff sent the Discharger a "last chance" email on 27 January 2017. Staff confirmed receipt of the NOI to obtain regulatory coverage under the General Order, but informed the Discharger that it was not in compliance with the Directive because the Discharger failed to join the Coalition. Staff notified the Discharger that it may be subject to formal Board enforcement of the Directive, including monetary liability, if it did not enroll in the Coalition by 8 February 2017.
4. On 10 February 2017, 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 (ACL) for failure to obtain regulatory coverage

for commercial irrigated lands as required by the Directive. The pre-ACL letter notified the Discharger of its opportunity to meet with Central Valley Water Board staff to discuss the facts regarding the alleged violation, including the option of settlement. On 22 February 2017, the Discharger's representative contacted Board staff and scheduled a confidential settlement meeting with the Prosecution Team to discuss and resolve the violation.

5. The Prosecution Team and the Discharger's representative met on 14 March 2017. The Discharger joined the Coalition on 17 March 2017, 296 days after the Directive's due date.

### **Regulatory Considerations**

6. The Discharger violated Water Code section 13260 by failing to obtain regulatory coverage for a period of 296 days. The Central Valley Water Board may assess an ACL based on Water Code section 13261 for the violation.
7. Water Code section 13260, subdivision (a), requires that any person discharging waste, or proposing to discharge waste, 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.
8. 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 Water Code section 13261, subdivision (b).
9. 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.
10. 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**

11. 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 resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, no further action is warranted concerning the violations alleged herein, and this Stipulated Order is in the best interest of the public.
12. 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 \$27,720 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-seven thousand seven hundred and twenty dollars (\$27,720)** 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 Sue McConnell, Central Valley Water Quality Control Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670.
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, 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:  
Sue McConnell – Supervising Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200

Stipulated Administrative Civil Liability Order  
R5-2017-0555

Rancho Cordova, CA 95670  
(916) 464-3291

Paul Ciccarelli – Attorney  
Office of Enforcement, State Water Resources Control Board  
801 K Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814  
(916) 322-3227

For the Discharger:

Phuong Pham  
1738 44<sup>th</sup> Avenue  
San Francisco, CA 94112  
(415) 753-3000

Paul R. Minasian – Attorney  
Minasian, Meith, Soares, Sexton & Cooper, LLP  
1681 Bird Street  
Oroville, CA 95965  
(530) 533-2885

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 the Discharger 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 understand 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 their 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 waive 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 waive 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, the 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 the Discharger or its respective 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 the Discharger, or its 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.

Stipulated Administrative Civil Liability Order  
R5-2017-0555

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.**

*Original signed by*

1-23-18

\_\_\_\_\_  
Andrew Altevogt  
Assistant Executive Officer  
For the Central Valley Water Board Prosecution Team

\_\_\_\_\_  
Date

*Original signed by*

1-17-18

\_\_\_\_\_  
Phuong Pham  
For Seven Hill LLC

\_\_\_\_\_  
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 each of the factors prescribed in Water Code section 13327. 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.

*Original signed by*

\_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

4-16-18

\_\_\_\_\_  
Date

Attachment A: Penalty Calculation Methodology

The administrative civil liability (ACL) was derived following the State Water Resources Control Board's 2010 Water Quality Enforcement Policy (Enforcement Policy). The ACL takes into account such factors as Seven Hill LLC's (hereafter Discharger) 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:

**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 "per day" factor is calculated for each non-discharge violation considering the potential for harm and the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violations resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Staff 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.

The Discharger failed to timely submit a Report of Waste Discharge (RoWD) or enroll under an applicable General Order<sup>1</sup> for discharges from irrigated cropland despite evidence indicating that the Discharger irrigates cropland. Irrigated cropland can be a source of sediment, pesticide residue, nitrate, and other waste discharges to 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. Board staff investigated the Discharger's irrigated parcels and found a potential for wastes to discharge to surface waters. This finding increases the potential for harm.

The Discharger undermined the regulatory program because it failed to file a RoWD or timely enroll under an applicable General Order. Dischargers regulated under an applicable General Order either conduct monitoring or contribute to monitoring efforts

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<sup>1</sup> The following General Orders are applicable to the Discharger: 1) 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); and 2) Order R5-2014-0030, *Waste Discharge Requirements General Order for Growers Within the Sacramento River Watershed that are Members of a Third-Party Group*.

to identify water quality problems associated with their operations. Regulated dischargers also report on the practices they engage to protect water quality. By failing to provide monitoring results or information on its practices, the Discharger impaired the Central Valley Water Board's efforts to assess potential impacts and risks to water quality, and circumvented the Central Valley Water Board's ability to take enforcement actions to address problems.

Additionally, 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 Central Valley Water Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This, in turn, presents a threat to beneficial uses and indicates a substantial potential for harm.

#### Deviation from Requirement

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements.

The deviation from the requirement is major. During the period of non-compliance, the Discharger disregarded the regulatory requirements and rendered those requirements ineffective. The Discharger undermined the efforts of the Central Valley Water Board's Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for its waste discharges. 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 a discharger is covered by an appropriate Order. The requirements in the applicable Orders are rendered ineffective when a discharger has not gone through and completed the process to obtain coverage under an applicable Order.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for violations with a moderate potential for harm and a major deviation from requirement. Based on the above factors, a per day factor of 0.55 is appropriate (see Table 3 on p. 16 of the Enforcement Policy).

**Multiple Day Violations:** On 2 May 2016, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger, which required it to obtain regulatory coverage within 15 calendar days or face potential ACL. The Discharger received the Directive on 9 May 2016. To avoid formal enforcement, the Discharger was required to obtain regulatory coverage no later than 24 May 2016. The Discharger failed to meet this deadline. The Discharger eventually submitted a Notice of Intent for General Order R5-2014-0030 to the Central Valley Water Board on 23 June 2016, but did not join a coalition until after it received a pre-ACL letter from the Assistant Executive Officer. The Discharger joined

the Sacramento Valley Water Quality Coalition (Coalition) on 17 March 2017, 296 days after the Directive's due date.

Violations under Water Code section 13261 are assessed on a per day basis. However, the violations at issue qualify for the alternative approach to penalty calculation under the Enforcement Policy (Page 18). 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 RoWD or NOI and join a coalition 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 RoWD or 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.

The above finding justifies use of the alternate approach to penalty calculation for multiple day violations. The minimum number of days of violation to be assessed under the alternate approach in this case is 15. The nature of this case, including the current and near future irrigated acreage of the parcels, warrants using 35 days as the appropriate days of violation for the penalty calculation.

#### **Initial Liability Amount**

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

$$\$1,000/\text{day} \times 35 \text{ days} \times 0.55 = \$19,250$$

#### **Step 4. Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's history of violations. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the amount for each violation to determine the revised amount for that violation.

a) *Culpability: 1.2*

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was given the score of 1.2, which increases the fine.

A member of Seven Hill LLC, Ms. Phuong Pham, claims that language barriers caused her to not fully understand the difference between submitting a NOI and joining the Coalition. The Discharger also asserts that a groundskeeper at the Discharger's property was the first person to receive and review the Directive. The groundskeeper allegedly was unable to properly advise Ms. Pham of the Directive's obligations and the consequences of non-compliance. However, neither Ms. Pham nor the groundskeeper contacted Central Valley Water Board staff with questions about the Directive's requirements until after the due date to obtain regulatory coverage.

The Discharger had knowledge of the Directive's requirements and was aware that it could be subject to an ACL for the failure to enroll in the Coalition by the Directive's due date. A reasonably prudent person under the Discharger's circumstances would have contacted Central Valley Water Board staff for clarifications or obtained outside counsel for advice on the Directive's requirements upon receipt of the Directive. The Discharger's conduct that led to the violation was at least simple negligence. Therefore, a culpability factor of 1.2 is warranted.

b) *Cleanup and Cooperation: 1.2*

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a score of 1.2, which increases the fine.

The Discharger was awarded ample time and opportunities to submit the NOI and join the Coalition. The following events occurred after 24 May 2016 (due date to obtain regulatory coverage):

- On 3 June 2016, a representative of the Discharger called Central Valley Water Board staff to ask questions on the Directive. Staff explained the compliance options and recommended contacting the Coalition for questions related to Coalition fees;
- On 23 June 2016, Ms. Pham submitted the NOI for General Order R5-2014-0030 after she called and spoke with Central Valley Water Board staff. Ms. Pham said that she was still in the process of joining the Coalition;

- On 16 December 2016, Central Valley Water Board staff was unable to leave Ms. Pham a “last chance” phone message because the message in-box was full;
- On 27 January 2017, Central Valley Water Board staff sent a “last chance” email to Ms. Pham, informing her that although she submitted the NOI, Seven Hill LLC was not in compliance with the Directive because it failed to join the Coalition. Staff provided Ms. Pham with the Coalition’s contact information and gave another opportunity to come into compliance. Staff explained that in order to avoid Board enforcement of the Directive, including monetary liability, the Discharger needed to enroll in the Coalition by 8 February 2017. The Discharger failed to meet this deadline;
- On 10 February 2017, the Assistant Executive Officer sent the Discharger a pre-ACL letter;
- On 22 February 2017, a representative of the Discharger called Central Valley Water Board staff to arrange a settlement meeting to discuss and resolve the violation; and
- The Discharger joined the Coalition and came into compliance soon after meeting with the Prosecution Team.

The Discharger made some effort to voluntarily cooperate in returning to compliance. As set forth above, the Discharger submitted a NOI for coverage under General Order R5-2014-0030, but did not join the Coalition until after the pre-ACL was issued.

Cleanup is not applicable here.

c) *History of Violations:* 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger was given the score of 1.0 because the Discharger does not have a history of enforcement actions.

**Step 5. Determination of Total Base Liability Amount**

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

- a) *Total Base Liability Amount:* **\$27,720.** (Initial Liability (\$19,250) x Adjustments (1.2)(1.2)(1.0)).

**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.” The Discharger has the ability to pay the Total Base Liability Amount based on the value of the Discharger’s property and estimated revenue from crops. According to the Shasta County Assessor’s Office, the properties

owned by the Discharger (APNs 094-050-021 and 094-050-025) have an assessed value of \$4,576,622. Revenue generated from the Discharger's 15 acres of wine grapes was approximately \$14,760 in 2015<sup>2</sup>; and revenue from the Discharger's 30 acres of irrigated pasture was approximately \$4,200 in 2015. Thus, the Discharger has the ability to pay the ACL based on revenue and assets and there are no factors under this category that warrant an adjustment.

### **Step 7. Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require" but only if express findings are made.

The costs of investigation and enforcement are "other factors as justice may require," and could be considered in relation to the Total Base Liability Amount to increase the Final Liability Amount. The Central Valley Water Board Prosecution Team has incurred a significant amount of staff costs associated with the investigation and enforcement of the violation. While staff costs could be added to the penalty, the Prosecution Team, in its discretion, elected not to pursue staff costs in this matter.

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

### **Step 8. Economic Benefit<sup>3</sup>**

#### ***Economic Benefit: \$12,300***

The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. Economic benefit was calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)<sup>4</sup> penalty and financial modeling program, version 5.6.0. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit in this case. The benefit is calculated by identifying the regulation at issue, the appropriate compliance action, the date of noncompliance, the compliance date, and the penalty payment date.

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

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<sup>2</sup> Information provided by the 2015 Shasta County Agricultural Crop Report, available at: <http://www.co.shasta.ca.us/docs/Ag/crop-reports/shasta-county-2015-crop-report.pdf?sfvrsn=2>

<sup>3</sup> 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 these Dischargers, rather than a broad class of dischargers.

<sup>4</sup> US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

grower,” or filing a NOI for regulatory coverage under a third-party group Order and joining a coalition. Because the Central Valley Water Board cannot force a Discharger to join a coalition, the economic benefit calculation is based on the assumption that General Order R5-2013-0100 (Individual General Order) applied to the Discharger during its period of non-compliance.

For economic benefit, the non-compliance date is assumed to be 22 January 2015, thirty days after the Discharger purchased the parcels at issue, including the 45 acres of irrigated lands. The compliance date is assumed to be 17 March 2017, the date on which the Discharger joined the coalition and paid the applicable fees. Based on these assumptions, the Discharger avoided the following costs: \$3,936 for annual permit fees, \$3,204 for groundwater monitoring, \$9,942 for surface water monitoring costs, and \$2,400 for Annual Monitoring Reports. The Discharger also enjoyed \$4,800 in delayed costs associated with its Farm Water Quality Plan. Based on the specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$12,300, as detailed in the attached table.

#### **Step 9. Minimum and Maximum Liability Amounts**

a) *Minimum Liability Amount: \$13,530*

The Enforcement Policy recommends that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Discharger’s economic benefit obtained from the violation is \$12,300. Therefore, the minimum liability is \$13,530.

b) *Maximum Liability Amount: \$296,000*

The maximum administrative liability amount is the maximum amount allowed by Water Code section 13261, which is \$1,000 for each day in which the violation occurs. The Discharger was in violation for 296 days, which results in a maximum liability of \$296,000.

#### **Step 10. Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount for failure to timely submit a RoWD as required under Water Code section 13260 is **twenty-seven thousand seven hundred and twenty dollars (\$27,720)**.

## Economic Benefit Analysis

Seven Hill LLC

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
2015 Permit Fee	\$ 1,312	GDP	3/30/2017	N	1/21/2015	3/17/2017	3/17/2017	7.40%	\$ 879
2016 Permit Fee	\$ 1,312	GDP	3/30/2017	N	1/21/2016	3/17/2017	3/17/2017	7.30%	\$ 828
2017 Permit Fee	\$ 1,312	GDP	3/30/2017	N	1/21/2017	3/17/2017	3/17/2017	7.30%	\$ 783
FWQP	\$ 4,800	ECI	3/30/2017	Y	2/20/2016	3/17/2017	3/17/2017	7.30%	\$ 171
2015 GW Monitoring - Labor	\$ 642	ECI	3/30/2017	N	8/15/2015	3/17/2017	3/17/2017	7.40%	\$ 416
2015 GW Monitoring - Lab	\$ 960	GDP	3/30/2017	N	8/15/2015	3/17/2017	3/17/2017	7.40%	\$ 623
2016 GW Monitoring - Labor	\$ 642	ECI	3/30/2017	N	8/15/2016	3/17/2017	3/17/2017	7.30%	\$ 393
2016 GW Monitoring - Lab	\$ 960	GDP	3/30/2017	N	8/15/2016	3/17/2017	3/17/2017	7.30%	\$ 587
1SA16 SW Monitoring - Labor	\$ 2,880	ECI	3/30/2017	N	2/20/2016	3/17/2017	3/17/2017	7.30%	\$ 1,809
1SA16 SW Monitoring - Lab	\$ 2,091	GDP	3/30/2017	N	2/20/2016	3/17/2017	3/17/2017	7.30%	\$ 1,314
2SA16 SW Monitoring - Labor	\$ 2,880	ECI	3/30/2017	N	11/1/2016	3/17/2017	3/17/2017	7.30%	\$ 1,740
2SA16 SW Monitoring - Lab	\$ 2,091	GDP	3/30/2017	N	11/1/2016	3/17/2017	3/17/2017	7.30%	\$ 1,265
2016 AMR	\$ 2,400	ECI	3/30/2017	N	5/1/2016	3/17/2017	3/17/2017	7.30%	\$ 1,493

**Income Tax Schedule:** Corporation      **Analyst:** Bryan Elder      **Total Benefit:** \$ **12,300**

**USEPA BEN Model Version:** Version 5.6.0 (April 2016)      **Date/Time of Analysis:** 3/30/2017 13:16

**Assumptions:**

- 1 Cost estimates provided by Regional Board staff.
- 2 Permit Fees and laboratory costs are adjusted using the Gross domestic Product (GDP) index.
- 3 Groundwater Monitoring (GWM) labor and reporting/plan development are adjusted using the Employment Cost Index (ECI).
- 4 Non-compliance dates for each compliance action is the deadline to submit to the Regional Board.
- 5 Past due fees, monitoring, and reporting cannot be corrected and therefore are considered avoided expenses. The compliance date is assumed to be March 17, 2017 for computational purposes.
- 6 The Farm Water Quality Plan (FWQP) remains a required document and therefore is considered a delayed expense. The compliance date is assumed to be March 17, 2017.
- 7 The Discharger is assumed to operate as a for-profit entity and therefore compliance costs are considered tax deductible.