CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the Matter of:
Balbir K. Natt

ORDER R5-2018-0522 (Proposed)

SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER

I. Introduction

1. 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 Balbir K. Natt (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegatee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger owns approximately 192.82 acres of agricultural land in Tulare County, identified as Assessor’s Parcel Numbers (APN’s) 240-040-015 and 236-190-006. Both parcels are commercially irrigated for walnut production.

3. On 23 January 2018, the Assistant Executive Officer of the Central Valley Water Board issued an Administrative Civil Liability Complaint No. R5-2018-0500 (ACLC or Complaint) alleging that the Discharger failed to enroll her two commercially irrigated parcels in the Waste Discharge Requirements General Order for Discharges From Irrigated Lands Within the Central Valley Region for Dischargers not Participating in a Third Party Group (Order R5-2013-0100 or Individual General Order). The Complaint proposed an assessment of administrative civil liability for the failure to submit a RoWD for the Individual General Order in the amount of $85,470.

4. On 29 January 2018, the Discharger called staff and confirmed that she received the Complaint. It was through this conversation that staff first learned that their previous phone calls regarding the failure to submit a RoWD had not been with the Discharger and that the Discharger was unaware that this other individual was claiming to be Balbir K. Natt. The Discharger stated that the man who previously claimed to be Balbir does not handle any business-related matters and should not have been communicating with Board staff on her behalf.
5. On the same day, 29 January 2018, staff had an additional telephone conversation with the Discharger regarding steps to resolve the Complaint, including submission of the Waiver Form that was included as Attachment F to the Complaint. She stated that she would complete the Waiver and mail it to staff. Staff also discussed the Discharger's need to enroll in an appropriate coalition for the area in which her parcels are located. Staff agreed to email her instructions on where and how to enroll, as well as who to contact with questions.

6. On 6 February 2018, staff received the Discharger's signed Waiver Form electing to waive the 90-day hearing requirement in order to engage in settlement discussions.

7. On 12 February 2018, the Prosecution Team submitted its evidence package for ACLC R5-2018-0500. Included in the Prosecution Team's evidence submission were amended versions of the Complaint and proposed penalty assessment (Attachment E to the Complaint). The amended Complaint and amended proposed penalty assessment are attached hereto as Exhibit A and incorporated by reference.

8. On 21 February 2018, the Parties met for settlement discussions at the Central Valley Water Board Fresno office. Following settlement discussions, the Discharger enrolled her parcels with the appropriate coalition, including enrollment of APNs 240-040-015, 236-190-006, and 236-150-013 with the Tule Basin Water Quality Coalition, and APN 060-200-05 with the Kern River Watershed Coalition Authority.

III. Settlement

9. 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 delegatee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violation by consent and without further administrative proceeding, the Parties have agreed to the imposition of $33,264 in liability against the Discharger.

10. After discovering the Discharger was not the individual with whom they had been communicating in 2015 and 2017, and the Discharger's willingness to promptly engage with staff upon receipt of the Complaint, the Prosecution Team agreed that the actions of the other individual would not be attributable to the Discharger. Therefore, the Assistant Executive Officer found that the facts supported collapsing the number of days to the minimum provided under the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), thereby decreasing the number of days of violation from 74 to 42 days.

11. Additionally, the Prosecution Team had assessed the maximum multiplier for cleanup and cooperation based on the uncooperative nature of the individual they had been communicating with in 2015 and 2017. Having decided that the behavior of that individual would not be attributed to the Discharger, and acknowledging that the Discharger has since been responsive and engaged in settlement negotiations to
resolve this matter, the Assistant Executive Officer determined that the multiplier for cleanup and cooperation should be reduced from 1.5 to 1.2.

12. Through settlement discussions, the Prosecution Team was informed that the Discharger suffered an injury in January 2015 and subsequently underwent several surgeries and rehabilitation to repair the injury over the course of 2015 and 2016. It was during this time that staff attempted to contact the Discharger about the need to obtain regulatory coverage for her parcels and unknowingly communicated with another individual instead of the Discharger. The Discharger did not authorize that individual to present himself as Balbir K. Natt, nor was she aware of his communications with Central Valley Water Board staff. Therefore, the Assistant Executive Officer found that a reduction in the multiplier for culpability, from 1.4 to 1.2, was warranted.

13. The liability imposed by this Stipulated Order is consistent with a reasonable liability determination using the Enforcement Policy methodology. The Prosecution Team believes that this resolution of the alleged violation, as described in Exhibit A, is fair and reasonable and fulfills its enforcement objectives. No further action is warranted concerning the violation, except as provided in this Stipulated Order, and this Stipulated Order is in the best interest of the public.

IV. Stipulations

The Parties stipulate to the following:

14. Administrative Civil Liability: The Discharger hereby agrees to pay thirty-three thousand two-hundred and sixty-four dollars ($33,264) in administrative civil liability (ACL) 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.

15. 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 additional 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.
16. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:
David Sholes – Senior Engineering Geologist
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, California 93706
(559) 445-6279

Heather Mapes – Attorney
Office of Enforcement, State Water Resources Control Board
801 K Street, 23rd Floor
Sacramento, California 95814
(916) 341-5163

For the Discharger:
Balbir K. Natt
10963 Stallion Way
Rancho Cucamonga, CA 91737
(951) 751-5470

Zachary Stringham – Attorney
STRINGHAM & STRINGHAM, PLC
756 E. Tulare Avenue
Tulare, CA 93274
(559) 686-1747

17. **Attorney’s Fees and Costs:** Each Party shall bear all attorneys’ fees and costs arising from the Party’s own counsel in connection with the matters set forth herein.

18. **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 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 Paragraph 14.
19. **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 delegatee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegatee, 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 delegatee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board’s adoption of settlement by the Parties and review by the public, as reflected in this Stipulated Order, is lawful and 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.

21. **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.

22. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

23. **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 delegatee.

24. **If Order Does Not Take Effect:** In the event this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegatee, 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 solely on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

25. **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.

26. **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.

27. **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.

28. **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 directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
29. **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.

30. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.

31. **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.

32. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.

33. **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.

34. **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.

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**IT IS SO STIPULATED.**

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

Balbir K. Natt

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Date: 9/17/18

Date: 9/10/18
WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.

2. In adopting this Stipulated Order, the Central Valley Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13327 and has applied the Enforcement Policy methodology as show in Exhibit A, which is incorporated herein by reference. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Valley Water Board or its delegate by the Parties and members of the public.

3. 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.

4. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

I, PATRICK PULUPA, 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.

[Signature]
Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Date 6/25/18

Attachments:
Exhibit A: 12 February 2018 Amended Administrative Civil Liability Complaint R5-2018-0500 and proposed penalty assessment
This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code section 13323 to Balbir K. Natt (hereafter Discharger) for failing to submit a Report of Waste Discharge (RoWD) required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board or Board) alleges the following:

**BACKGROUND**

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in California Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050, subd. (e).) The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (Wat. Code, § 13263).

2. Attachment E of the Waste Discharge Requirements General Order for Discharges From Irrigated Lands Within the Central Valley Region for Dischargers not Participating in a Third-Party Group (Order R5-2013-0100 or Individual General Order) and the Waste Discharge Requirements General Order for Growers Within the Tulare Lake Basin Area that are Members of a Third-Party Group (Order R5-2013-0120) define “irrigated lands” as “land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands.”

3. Central Valley Water Board staff developed a list of landowners in Tulare County, including the Discharger, that were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.

4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (e.g., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and

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1 All references are to the California Water Code unless otherwise noted.
operators of agricultural lands who may be required to obtain regulatory coverage for these discharges. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.

5. Evaluation of county assessor data indicates that the Discharger owns approximately 192.82 acres of agricultural land in Tulare County, as identified as Assessor’s Parcel Numbers (APN’s) 240-040-015 and 236-190-006.

Tulare County APN 240-040-015

6. On 8 January 2015, Board staff conducted a field inspection of Tulare County APN 240-040-015, and observed commercially irrigated walnuts on the property. A copy of the inspection report is provided as Attachment A.

7. On 16 January 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger for APN 240-040-015, sent via certified mail. The Directive was sent based on staff’s observations of commercially irrigated walnuts during the field inspection and confirmation that the subject parcel did not have regulatory coverage for its activities. A copy of the Directive, including the certified mail receipt, is provided as Attachment B.

8. The Directive required the Discharger to obtain regulatory coverage for all irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could comply by joining the Tule Basin Water Quality Coalition (Coalition or TBWQC), or by submitting a Report of Waste Discharge (RoWD)/ Notice of Intent (NOI) for coverage under the Individual General Order.

9. The Discharger received the Directive for APN 240-040-015 on 22 January 2015, which provided notice to the Discharger of the requirement to obtain coverage for all commercially irrigated land that he/the Discharger owns. The Discharger did not obtain regulatory coverage by 6 February 2015, as required in the 16 January 2015 Directive, and did not contact the Board within 15 calendar days.

10. However, on 10 February 2015, the Discharger did submit a Notice of Intent to obtain regulatory coverage and comply with Order R5-2012-0116, which is the General Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group. Based on the location of parcel 240-040-015 (Tulare County), this was the incorrect form to submit to obtain regulatory coverage as Order R5-2012-0116 does not include lands within Tulare County. Even if this order geographically included the Discharger’s parcel, there was no proof of membership in any coalition or third-party group and therefore, this order would be inapplicable to the Discharger’s activities. A check for $200 was submitted with the form, but was not cashed due to the noted deficiencies of the NOI. A copy of the NOI and check is provided as Attachment D.
11. Because the Discharger failed to join the Coalition or submit a RoWD/NOI for coverage under the Individual General Order by the 6 February 2015, a Notice of Violation (NOV) was sent via certified mail to the Discharger on 24 February 2015 and was received by the Discharger on 28 February 2015. A copy of the NOV and certified mail receipt are provided as Attachment C. The Discharger neither obtained regulatory coverage nor contacted the Board in response to the NOV.

**Tulare County APN 236-190-006**

12. On 12 February 2015, Board staff conducted a field inspection of an additional parcel owned by the Discharger, identified as Tulare County APN 236-190-006. Staff similarly observed commercially irrigated walnuts on the property. A copy of this inspection report is provided as Attachment A.

13. On 9 March 2015, based on staff's observations of commercially irrigated walnuts during the field inspection and confirmation that APN 236-190-006 did not have regulatory coverage for its activities, the Assistant Executive Officer of the Central Valley Water Board issued an additional Directive to the Discharger for APN 236-190-006, sent via certified mail. The Discharger was again directed to obtain regulatory coverage for his commercially irrigated lands. A copy of this Directive, including the certified mail receipt, is provided as Attachment B.

14. The Discharger received the Directive for APN 236-190-006 on 12 March 2015, further reminding him that regulatory coverage was required for all parcels on which commercial irrigation was occurring. The Directive required the Discharger to obtain regulatory coverage within 15 calendar days of receipt of the Directive.

15. On 4 June 2015, staff contacted the Discharger by phone to discuss the Discharger's need to enroll in a coalition. The Discharger stated that he would not join the Coalition, and did not have water. He additionally stated that he applied manure and pesticides to his farm, and that it could not impact water quality. The Discharger asked staff to not call again.

16. On 21 December 2017, staff contacted the Discharger regarding receipt of letters received from Central Valley Water Board. The Discharger stated that he was not going to join the Coalition and was not going to pay money to the state because taxes were already too high. The Discharger also requested staff to “get off his back and go ahead and do whatever staff needed to do”.

17. Central Valley Water Board records indicate that as of the date of this ACL Complaint, the Discharger has not submitted a RoWD, proof of coalition membership, or a revised NOI to the Central Valley Water Board.
ALLEGED VIOLATION

18. The Discharger failed to submit a RoWD for enrollment in the Individual General Order or obtain coalition membership as required by Water Code section 13260. The 16 January 2015 Directive issued to the Discharger required either submittal of a RoWD or, in lieu of submitting a RoWD, submittal of a NOI to enroll in a coalition within 15 days of receipt of that Directive. Compliance with the 16 January 2015 Directive would have required the Discharger to enroll all lands that the Discharger was commercially irrigating. For purposes of this Complaint, the Prosecution Team in its enforcement discretion is alleging one violation for the two parcels and basing the days of violation on the 6 February 2015 deadline to obtain regulatory coverage for all parcels. As of 23 January 2018, the Discharger’s RoWD or NOI is 1,083 days past due.

REGULATORY CONSIDERATIONS

19. The Central Valley Water Board’s authority to regulate waste discharges that could affect the quality of waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).

20. 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 board a RoWD containing such information and data as may be required by the regional board, unless the regional board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Discharger’s land is located.

21. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

22. Water Code section 13261, subdivision (b)(1), states:

Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars ($1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

23. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall 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.

24. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.

25. The proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment E. The proposed administrative 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.

**Maximum and Minimum Penalties**

26. The statutory maximum penalty under Water Code section 13261, subdivision (b)(1) is $1,000 per day of violation. As of the date of this ACL Complaint, the Discharger was out of compliance for 1,083 days (6 February 2015 through 23 January 2018), resulting in a maximum penalty of $1,083,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit of non-compliance so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll under Order R5-2013-0100 is estimated at $42,824,163,20,70. Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent ($42,824,163,20,70).

27. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may occur after issuance of this ACL Complaint.

28. Issuance of this ACL Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

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2 On October 5, 2017, the Office of Administrative Law approved the 2017 Water Quality Enforcement Policy that was adopted by the State Water Resources Control Board on April 4, 2017 (2017 Enforcement Policy). However, based on the dates of the alleged violation, which began prior to October 5, 2017, the 2010 Enforcement Policy was applied when calculating the penalty.
BALKIR K. NATT IS HEREBY GIVEN NOTICE THAT:

29. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of eighty-five thousand four hundred seventy dollars ($85,470). The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the proposed penalty amount is explained in Attachment E.

30. A hearing on this matter will be conducted at the Central Valley Water Board Meeting scheduled on 5/6 April 2018, unless the Discharger does any of the following by 6 February 2018:

a) The Discharger waives the right to a hearing by completing the waiver form provided as Attachment F (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability amount of eighty-five thousand four hundred seventy dollars ($85,470). The check must be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814 with a copy of the check mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA 93706, Attn: David Sholes; OR

b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option 2 on the waiver form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; OR

c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option 3 on the waiver form, and returns it to the Board along with a letter describing the issues to be discussed.

31. The hearing will be governed by the Hearing Procedure, which is provided as Attachment G. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

32. The Assistant Executive Officer reserves the right to amend the proposed amount of the administrative civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this ACL Complaint, and through completion of the hearing.
Attachment A: 8 January 2015 and 12 February 2015 Inspection Report
Attachment B: 16 January 2015 and 9 March 2015 California Water Code 13260 Directives
Attachment C: 24 February 2015 Notice of Violation and mail receipt
Attachment D: NOI and Check
Attachment E: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
Attachment F: Waiver Form
Attachment G: Hearing Procedure
Attachment H: ACL Fact Sheet
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 Water Board) Water Quality Enforcement Policy (Enforcement Policy). 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 "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 Discharger has failed to submit a Report of Waste Discharge (RoWD) or enroll under an applicable General Order 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 total approximately 193 acres. Additionally, one both of the Discharger's parcels (assessor's parcel number 240-040-015 and 236-190-006) lies immediately adjacent to a surface water distribution canal, indicating potential for surface water impacts.

By failing to file a RoWD or to enroll under an applicable General Order, the Discharger has undermined the regulatory program. Dischargers that are 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 impairs the Regional Board's efforts
to assess potential impacts and risks to water quality, and circumvents the Regional 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. 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.

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

The deviation from the requirement is major. To date, the Discharger has disregarded the regulatory requirements and rendered those requirements ineffective. The Discharger 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 his 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 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.

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

**Multiple Day Violations:**
On 16 January 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) that required the Discharger to obtain regulatory coverage for all commercially irrigated lands within 15 calendar days of receipt of the Directive or face a potential administrative civil liability. The Directive was received by the Discharger on 22 January 2015. Thus, the Discharger needed to either submit a RoWD for enrollment in the Individual General Order or submit a NOI to enroll in the Tule Basin Water Quality Coalition by 6 February 2015. Although a Directive was issued on 9 March 2015 for an additional parcel owned by the Discharger, compliance with the 16 January 2015 Directive would have required the Discharger to enroll all lands that he the Discharger was commercially irrigating. For purposes of this Complaint, rather than alleging two separate violations based on each Directive issued and calculating separate days of violation for each parcel, the Prosecution Team in its enforcement discretion is alleging one violation for the two parcels and basing the days of violation on the 6 February 2015 deadline to obtain
regulatory coverage for all parcels. The Discharger has yet to obtain regulatory coverage and as of 23 January 2018, the Discharger is 1,083 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 (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 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.

Moreover, the Discharger’s failure to submit a RoWD or NOI results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is associated with avoided costs of permit fees, groundwater monitoring, and preparing an Annual Monitoring Report, 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 42. However, because this amount does not result in a sufficient deterrent, the days of violation are increased to 74.

**Initial Liability Amount**
The total maximum penalty for the violation is $1,083,000.
The initial liability amount for the violation calculated on a per-day basis is as follows:

\[(\text{Maximum per day liability}) \times (\text{Assessed number of days}) \times (\text{Per day Factor})\]

Initial Liability: $1,000/day \times 74 \text{ days} \times 0.55 = $40,700

**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 proposed amount for each violation to determine the revised amount for that violation.

a) **Culpability: 1.4**

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 1.4, which increases the fine. Central Valley Water Board staff sent 13260 Directives and a Notice of Violation requiring the Discharger to obtain coverage. The documents were sent via certified mail, as well as FedEx, and their receipt by the Discharger has been confirmed. Despite knowledge of the regulatory requirements, the Discharger failed to come into compliance. The multiple notices and failure to respond suggest the Discharger acted intentionally or negligently in ignoring the requirement to get regulatory coverage, resulting in a multiplying factor of 1.4.

b) **Cleanup and Cooperation: 1.5**

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 the score of 1.5. The Regional Board issued the Discharger a Notice of Violation and made several phone calls to the Discharger in an effort to allow the Discharger to address the violation prior to the issuance of a complaint. The Discharger did not comply or cooperate with the Regional Board despite being awarded ample time in which to do so. Cleanup is not applicable in this case.

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, as there is no evidence that the Discharger has a history of violations.

**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: $85,470.** (Initial Liability ($1,000/day x 74 days x 0.55) x Adjustments (1.4)(1.5)(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 Base Liability Amount based on the value of property owned by the Discharger. The agricultural land is a significant asset with a 2017 assessed value $1,126,794 according to Tulare County Tax Assessor records. The Discharger appears to have 163 acres of mature walnuts that were in commercial production during the violation period. The Tulare County Agricultural Commissioner's 2014, 2015, and 2016 Annual Crop Reports suggest that the Discharger's 163 acres of Walnuts are capable of generating an annual gross revenue in the range of $634,533,000 to $848,000,068,000\(^1\). Therefore, the Discharger has the ability to pay the proposed administrative civil liability based on his assets and revenue, 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 added to the 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 violations alleged herein. While staff costs could be added to the penalty, the Prosecution Team, in its discretion, is electing not to pursue staff costs in this matter.

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

**Step 8. Economic Benefit\(^2\)**

*Economic Benefit: $41,658,148,337*

The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes a violation. Economic benefit was calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)\(^3\) penalty and financial modeling program, version 5.7.0. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes.

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\(^2\) 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.

\(^3\) 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](http://www2.epa.gov/enforcement/penalty-and-financial-models); the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.
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 actions, 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 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 appropriate coalition for the area in which the discharger's land is located. As of the date this Complaint was issued, the Discharger has not chosen to join a coalition. The Central Valley Water Board cannot compel the Discharger to join a coalition, but can "...prescribe requirements although no discharge report has been filed" (Water Code section 13263(d)). The Central Valley Water Board would prescribe such requirements by issuing a Notice of Applicability to the Discharger as an individual discharger under General Order R5-2013-0100 after holding a hearing. Economic benefit was, therefore, calculated based on the assumption that General Order R5-2013-0100 (Individual General Order) will apply to the Discharger.

The economic benefit in this case has been calculated based on the verifiable costs associated with obtaining regulatory coverage under the Individual General Order, as well as estimates of other avoided costs that were required of the Discharger to comply with the Individual General Order.

The State Water Board charged a permit fee of $2,692 plus $3.40 per acre for farms 101 to 500 acres during the 2014-15, and 2015-16, and 2016-17 billing year. The Discharger has 193 crop acres, which results in an annual permit fee of $3,348.20 for the two-three billing years. The Discharger has avoided paying this permit fee for these two-three years. During the 2016-17 billing year, the State Water Board charged a permit fee of $3,123 plus $3.94 per acre for farms 101 to 500 acres, resulting in an avoided annual permit fee of $3,883. The Discharger has avoided paying this permit fee for one year. Collectively, the Discharger has avoided $10,579.04 in annual permit fees.

Under the Individual General Order, the Discharger would also be required to prepare and submit a Farm Water Quality plan at an estimated cost of $2,5004.800. The Discharger has delayed completion of the required Farm Water Quality Plan until the date on which they obtain coverage. The Discharger would also need to prepare annual monitoring plans for 2015, 2016, and 2017 at a cost of $2,400 per year for the first year and $1,440 for the remaining two years. The Discharger has therefore avoided $7,2005.280 in costs associated with preparing annual monitoring plans. Additionally, the Discharger would be required to conduct groundwater monitoring for 2015, 2016, and 2017, at an estimated cost of $1,4222.724 per year. The groundwater

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monitoring cost estimate is based on sampling one-two wells\(^5\) one time for the constituents listed in the Individual Grower Order and includes labor costs and lab fees. The Discharger has avoided a total of $3,368,172 in groundwater monitoring expenses.

For the purposes of computing the economic benefit using BEN, the penalty payment date is assumed to be the tentative date of administrative hearing, April 5, 2018. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately $11,658,14,837.

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

a) **Minimum Liability Amount:** $12,824,16,320.70

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 violations cited herein is $11,658,14,837. This number plus ten percent results in a Minimum Liability of $12,824,16,320.70.

b) **Maximum Liability Amount:** $1,083,000

**Discussion:** 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 is 1,083 days past due in complying with the 16 January 2015 Water Code section 13260 Directive.

**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 RoWD under California Water Code section 13260 is **eighty-five thousand four hundred seventy dollars** ($85,470).

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\(^5\) Based on the multiple parcels listed in the ACL Complaint, staff estimated that the Discharger would have two irrigation supply wells that would need to be sampled once per year.