**Note: This document has been prepared by the Central Valley Water Board's Prosecution Team**

ITEM: 20

SUBJECT: BreitBurn Operting L.P., Dow Chanslor Lease, South Belridge Oil Field, Kern County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

BACKGROUND: In November 2013, the Central Valley Water Board issued California Water Code Orders pursuant to Section 13267 to multiple owners and operators of oil and gas operations in the Central Valley Region. BrietBurn Operating L.P. (Discharger) was a recipient of one of the Section 13267 Orders. The Discharger's Section 13267 Order sought information about the: (1) discharges of drilling fluids to land (i.e., including impoundments), and (2) discharges of well completion and/or workover fluids to land at any Discharger well during the reporting period from 1 January 2012 to the date the Orders were issued.

In February 2014, the Discharger responded that treatment fluids from 24 wells were discharged to 24 unlined impoundments. In May 2014, a Notice of Violation with a second Section 13267 Order to the Discharger sought clarifying information about the fluids reportedly discharged. In July 2014, the Discharger submitted a report with additional information about the discharges. The report stated that six of the 24 wells had positive pressure at the surface after hydraulic fracture treatment, which caused 10 barrels (420 gallons) to 20 barrels (840 gallons) of treatment fluid to discharge into each of six unlined impoundments. The report also stated that the other 18 wells initially reported as having treatment fluid discharges to impoundments did not have positive pressure at the surface after stimulation treatment and that all treatment fluids remained in those wells.

After evaluation of the July 2014 report and review of additional information submitted by the Discharger to the California Division of Oil, Gas, and Geothermal Resources, the Central Valley Water Board Prosecution Team determined that treatment fluids were discharged into the six unlined impoundments at the six wells identified in the report for a combined total of 17 days.

SETTLEMENT AGREEMENT: After engaging in confidential settlement negotiations in December 2014, the Discharger agreed with the Prosecution Team to the imposition of $67,700 in liability. A proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order R5-2015-0510 was prepared by the Prosecution Team for consideration by the Central Valley Water Board. On 4 March 2015, the Central Valley Water Board's Advisory Team rejected the proposed Settlement Agreement and instructed the Prosecution

Team to prepare a proposed Administrative Civil Liability Order for consideration by the Central Valley Water Board.

SETTLEMENT ISSUES:

*Discharger argument:*

The Discharger's legal brief to the Central Valley Water Board, dated 20 April 2015 (Brief), newly contends that the Discharger could have discharged no more than 40 barrels of primarily produced and fresh water to unlined impoundments at two wells (Brief, page 2, lines 1-2) instead of the previously reported six wells. The Discharger states (page 3, lines 12-13) that "…references in the records to discharges to the "pit" meant discharging to a steel tank - not to unlined sumps."

The Brief further states that the Discharger's maximum penalty should be $12,600 using a calculation of $10 per gallon, 20 barrels at each of two wells for 40 total barrels discharged, and 31.5 gallons per barrel (Brief, page 2, lines 7-8). However, an oil barrel is actually 42 gallons. Therefore, 40 barrels discharged is 1,680 gallons, and the correct maximum penalty is $16,800.

The Brief also asserts that a penalty using the "per day" calculation should not be utilized because it has been determined that there is an absence of protected water in the area of the Dow Chanslor Lease (Brief, page 2, lines 8-10). The State Water Board has concurred with the Discharger's determination that there is an absence of protected water from the ground surface to the hydrocarbon zone, within the lateral limits of the Diatomite development boundaries of the Dow Chanslor Lease (Exhibit 3).

*Prosecution argument:*

The Prosecution Team issued two Section 13267 Orders to the Discharger. The Discharger's report responding to the second Order clearly states on page 2 that "…only 6 of the sumps from these 24 wells actually received treatment fluids. The responses to the 13267 Orders, submitted under penalty of perjury, and discussed during settlement negotiations, were accepted by the Prosecution Team based on the field evidence. The field pressure was low enough to retain all fracking fluids downhole in the remaining 18 locations. No fracking fluids were discharged at the surface at these 18 locations…the six sumps (listed below that) received fracking fluids…" The Prosecution Team concurs that only six of the original 24 impoundments received treatment fluids.

However, the Discharger's new contention that treatment fluids only discharged to two impoundments instead of to six impoundments was not previously mentioned during settlement negotiations and conflicts with the above statement in the report responding to the second Order. In addition, the Discharger's own records use the term "pit" and "sump" interchangeably, undermining its new argument. Table 1 in the July 2014 report states that six *sumps* at six wells received hydraulic fracturing treatment fluid and the

'Volume' column states for all six wells "±10-20 bbls in *pit*." Because of this inconsistency, the Prosecution Team is not convinced that the use of the term "pit" in reports is equivalent to a tank and continues to believe that treatment fluids were discharged to six unlined pits or sumps at six wells.

The Prosecution Team considered the quality of groundwater when applying the Enforcement Policy Penalty Methodology. While underlying groundwater quality is poor and the State Water Board has concurred with the Discharger that there is an absence of protected groundwater, the assertion by the Discharger that a penalty using the "per day" calculation should not be utilized because underlying groundwater has poor quality has no merit. The Prosecution Team can use either a day or volume calculation when applying the Enforcement Policy Penalty Methodology. Using either a day or volume calculation is available to the Central Valley Water Board regardless of the water quality.

Notwithstanding the new allegation by the Discharger, using days instead of volume could still result in the $67,700 penalty even for discharges to only the two impoundments acknowledged by the Discharger. The Prosecution Team has calculated that discharged fluid was in the two impoundments for a minimum of 8 days and possibly for 38 days. Given the maximum penalties under Water Code Section 13350 of $5,000 per day, the agreed upon settlement amount still remains an acceptable figure despite any new arguments by the Discharger.

PROPOSED ACL ORDER:

The liability amount of $67,700 in the proposed Administrative Civil Liability Order R5-2015-0510 is the same amount that was rejected by the Central Valley Water Board in a proposed settlement agreement negotiated by the Prosecution Team and the Discharger. The Central Valley Water Board has discretion to modify the ACLO, including increasing or decreasing the liability amount.

SUMMARY: The Prosecution Team asserts that a penalty of $67,700 is appropriate, while the Discharger asserts that a penalty of $16,800 is appropriate (if the Prosecution Team is interpreting the Discharger's Brief correctly and the industry standard of 42 gallons per barrel is used; see what appears to be a math error on page 6, line 14 of the Brief).

RECOMMENDATION: The Prosecution Team recommends that the Board adopt the ACLO for $67,700, as proposed.

Mgmt. Review___CR____
Legal Review_____JM__