

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

In the matter of:

**JIM MOSBY AND GUSTAVO
ALVAREZ
SANTA BARBARA COUNTY**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

ORDER R3-2023-0064

(Proposed)

SECTION I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team), Jim Mosby¹ (individually, Jim Mosby as “Landowner,” “Operator,” and “Discharger”), and Gustavo Alvarez² (individually, Gustavo Alvarez as “Lessee,” “Operator,” and “Discharger”) (collectively, Jim Mosby and Gustavo Alvarez are referred to as the Dischargers; and collectively, the Prosecution Team, Jim Mosby, and Gustavo Alvarez are referred to as the Parties) and is presented to the Central Coast Water Board, or its delegate, for adoption as an order by settlement pursuant to California Water Code (Water Code) section 13323 and California Government Code (Government Code) section 11415.60. This Stipulated Order resolves the alleged violation in Administrative Civil Liability Complaint R3-2023-0051 (Complaint) by imposing administrative civil liability against the Dischargers in the amount of **\$46,037**.

SECTION II: RECITALS

1. Irrigated agricultural discharges have been regulated by the Central Coast Water Board for over 15 years, since the adoption of the first agricultural order in 2004.³ On April 15, 2021, the Central Coast Water Board adopted the fourth

¹ The electronic Notice of Intent (eNOI) submitted for the relevant ranch identified the permittee and landowner and operator as “Jim Mosby,” an individual. However, based on publicly available information from Santa Barbara County tax assessor records, “Mosby James H & Virginia E (Trustees); Mosby Family Trust” are listed as the owners of Assessor’s Parcel Numbers 099-141-015 and 099-141-016.

² The lease agreement provided by the Dischargers is between James Mosby and Gustavo Alvarez dba Sweet Valley Farms. Based on publicly available information from the California Secretary of State, Gustavo Alvarez is the Chief Financial Officer for Sweet Valley Farms, Inc.

³ The first agricultural order was adopted on July 9, 2004, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order R3-2004-0117 (Agricultural Order 1.0).

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Agricultural Order *General Waste Discharge Requirements for Discharges from Irrigated Lands* Order R3-2021-0040 ([Agricultural Order](#)).⁴ The Agricultural Order requires that landowners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater in the central coast region to comply with the Agricultural Order.

2. Pursuant to Water Code section 13267, the Agricultural Order required landowners and operators of irrigated land used for commercial crop production to submit Total Nitrogen Applied reports (TNA Reports) annually by March 1.

3. On July 27, 2015, Jim Mosby submitted an electronic Notice of Intent (eNOI) and enrolled 755 East HWY 246 (Ranch ID AGL020027674) under Agricultural Order 2.0. Jim Mosby (and all associated ranches) was automatically enrolled under subsequent adopted Agricultural Orders. 755 East HWY 246 ranch was required to report TNA for the 2021 TNA reporting period (January 1, 2021 to December 31, 2021). The ranch eNOI, submitted on July 27, 2015, stated 755 East HWY 246 ranch was comprised of 20 acres of commercial irrigated land on Santa Barbara County Assessor's Parcel Numbers 099-141-015 and 099-141-016.

4. On or about November 10, 2020, Jim Mosby leased a 10-acre portion of the 755 East HWY 246 ranch identified as Santa Barbara County Assessor's Parcel Number 099-141-015 to Gustavo Alvarez dba Sweet Valley Farms.⁵

5. On July 27, 2022, the Central Coast Water Board issued a notice of violation to Jim Mosby for failure to submit the 2021 TNA Report required by the Agricultural Order via First Class Mail. On December 13, 2022, Central Coast Water Board staff sent the notice of violation to Jim Mosby, J.I. Mosby Enterprises, and James H. and Virginia E. Mosby via Certified Mail having not received a response to the July 27, 2022 notice of violation. On December 22, 2022, the Central Coast Water Board received a signed certified mail receipt for the December 13, 2022 letter. In addition to issuance of the notice of violation,

Agricultural Order 1.0 expired on July 9, 2009, and the Central Coast Water Board renewed Agricultural Order 1.0 several times (Order R3-2009-0050 on July 9, 2009; Order R3-2010-0040 on July 8, 2010; Order R3-2011-0208 on March 29, 2011; Order R3-2011-0017 on September 30, 2011). The second Agricultural Order was adopted on March 15, 2012, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order R3-2012-0011 (Agricultural Order 2.0). The third Agricultural Order was adopted on March 8, 2017, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order R3-2017-0002 (Agricultural Order 3.0).

⁴ A copy of the Agricultural Order is available at:

https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

⁵ Section 3.C of the November 10, 2020 lease agreement states the following: "Tenant shall, at his sole cost and expense, properly comply with any and all laws, ordinances, rules, regulations, requirements, and orders, present or future, of the federal, state, county, or municipal government which may in any way apply to the use, maintenance of, occupation of, or operations on the Property, the production of crops thereon, or the sale or other disposition of such crops."

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Central Coast Water Board staff conducted the following outreach with growers, including Jim Mosby, regarding the requirement to submit TNA reports:

- a. E-mails on December 15, 2021, January 12, 2022, and February 16, 2022, reminding growers to submit the 2021 TNA report due on March 1, 2022.
- b. E-mail on March 29, 2022, notifying growers of their failure to submit 2021 TNA report.

6. Jim Mosby is enrolled in the Agricultural Order and is the only contact listed in the eNOI to receive email correspondence from the Central Coast Water Board. Jim Mosby was in receipt of the emails described in Finding 5. Jim Mosby did not submit a timely 2021 TNA Report because Jim Mosby did not collect the data required to submit the report. Although Jim Mosby was the landowner, Jim Mosby was waiting for Jim Mosby's Lessee, Gustavo Alvarez, to provide the TNA usage for the relevant period.

7. On February 6, 2023, the Central Coast Water Board Prosecution Team issued a letter notifying Jim Mosby of an assessment of administrative civil liabilities and providing Jim Mosby the opportunity to contact the Prosecution Team and discuss the matter. On February 9, 2023, the Central Coast Water Board received a certified mail receipt for the February 6, 2023 letter. The Prosecution Team received a response from Jim Mosby on February 22, 2023. After several communications, Jim Mosby submitted the 2021 TNA Report on March 10, 2023. The Prosecution Team met with Jim Mosby on April 6, 2023, to engage in confidential settlement negotiations. On July 21, 2023, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint R3-2023-0051 (Complaint) to Jim Mosby for Jim Mosby's failure to submit the 2021 TNA report by the required due date. The Prosecution Team met with Jim Mosby and lessee Gustavo Alvarez for additional confidential settlement negotiations on August 23, 2023.

8. For purposes of settlement, the Prosecution Team alleges Jim Mosby failed to submit the 2021 TNA Report by the March 1, 2022 deadline set forth in the Agricultural Order. Jim Mosby's failure to submit the 2021 TNA Report by the due date in the Agricultural Order subjects Jim Mosby to administrative civil liability under Water Code section 13268.

9. Pursuant to Water Code section 13268, subdivision (a), a person who fails to submit technical or monitoring reports required under Water Code section 13267 is subject to administrative civil liability under Water Code section 13268, subdivision (b) "in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

10. The Parties have engaged in confidential settlement negotiations and agree to settle the alleged violation in the Complaint and also described in Section II,

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paragraph 8, without administrative or civil litigation and to present this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

11. To resolve the alleged violation listed in Section II, paragraph 8 by consent, the Parties have agreed to the imposition of an administrative civil liability of **forty-six thousand and thirty-seven dollars (\$46,037)** against Jim Mosby who was unable to comply with the 2021 TNA Report requirement because of Jim Mosby's Lessee's failure to provide Jim Mosby with the necessary information to complete the 2021 TNA Report and Gustavo Alvarez for failing to provide the information to necessary to complete the 2021 TNA report. The administrative civil liability amount is the liability amount the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy ([Enforcement Policy](#)),⁶ as shown in Attachment A, which is incorporated herein by reference. The calculation of economic benefit is shown in Attachment B.

12. The Prosecution Team has determined that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violation except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

SECTION III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Jurisdiction:** The Parties agree the Central Coast Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

2. **Administrative Civil Liability:** Jim Mosby and Gustavo Alvarez hereby agree to the imposition of **forty-six thousand and thirty-seven dollars (\$46,037)** in administrative civil liability to resolve the violation set forth in Section II, paragraph 8. Jim Mosby or Gustavo Alvarez must submit payment by check or other authorized method of payment⁷ in the amount of **forty-six thousand and thirty-seven dollars (\$46,037)** no later than 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order. Payment must be made payable to the "State Water Board Cleanup and Abatement Account," reference "Order R3-2023-0064 CAA Payment," and be submitted to:

⁶ State Water Board, 2017 Water Quality Enforcement Policy, effective October 5, 2017, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_financial%20adopted%20policy.pdf

⁷ For more information see the State Water Board's website at the following address: https://www.waterboards.ca.gov/make_a_payment/

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State Water Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

Either Jim Mosby or Gustavo Alvarez must provide a copy of the check or payment confirmation via e-mail to the State Water Board, Office of Enforcement to Julie Macedo at Julie.Macedo@waterboards.ca.gov, and the Central Coast Water Board to Tamara Anderson at Tamara.Anderson@waterboards.ca.gov. Liability under the Agricultural Order is joint and several against Jim Mosby and Gustavo Alvarez, although several discussions as to how the Dischargers will resolve the payment have occurred.

3. Party Contacts for Communications related to Stipulated Order:

a. For the Central Coast Water Board:

Thea Tryon
Assistant Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Thea.Tryon@waterboards.ca.gov
(805) 542-4776

Tamara Anderson
Enforcement Coordinator
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tamara.Anderson@waterboards.ca.gov
(805) 549-3334

b. For Jim Mosby:

Jim Mosby
755 East Hwy 246
Lompoc, CA 93436
mosbyenterprises@aol.com

Jim Mosby's Counsel:
Chad Vierra
c/o Neasham & Kramer LLP
340 Palladio Parkway, Suite 535
Folsom, CA 95630

cvierra@neashamlaw.com
(916) 853-8030

c. **For Gustavo Alvarez:**

Gustavo Alvarez
P.O. Box 5784
Santa Maria, CA 93456
gustavoarredondo22@yahoo.com

4. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party agrees to 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 this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation in the Complaint and also described in Section II, paragraph 8, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 1.

6. **Public Notice:** Jim Mosby and Gustavo Alvarez understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Coast Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board or its delegate. Jim Mosby and Gustavo Alvarez agree that they may not rescind or otherwise withdraw their approval of this Stipulated Order, except as provided by law.

7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board, or its delegate, has the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Coast Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

8. **No Waiver of Right to Enforce:** The failure of the Central Coast 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

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Stipulated Order. The failure of the Central Coast Water Board to enforce any such provision shall not preclude later enforcement of the same or any other provision of this Stipulated Order. If Jim Mosby and Gustavo Alvarez fail to comply with this Stipulated Order, the Central Coast Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.

9. **Effect of this Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Central Coast Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.

10. **Compliance with Applicable Laws:** Jim Mosby and Gustavo Alvarez understand that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse Jim Mosby and Gustavo Alvarez from meeting any more stringent requirements, which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

11. **Covenant Not to Sue:** In exchange for this settlement agreement, Jim Mosby and Gustavo Alvarez covenant not to sue or pursue any administrative or civil claim(s) against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

12. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Jim Mosby is represented by counsel in this matter.

13. **Modification:** The Parties must not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

14. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

15. **Necessity for Written Approvals:** All approvals and decisions of the Central Coast Water Board, or its delegate, under the terms of this Stipulated Order must be communicated to Jim Mosby and Gustavo Alvarez in writing. No oral advice, guidance, suggestions, or comments from Central Coast Water Board employees or officials regarding submissions or notices shall be construed to relieve Jim

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Mosby or Gustavo Alvarez of their obligation to obtain any final written approval this Stipulated Order requires.

16. If the Order Does Not Take Effect: In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), unless the Parties agree otherwise. 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 the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

- a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. Waiver of Hearing: Jim Mosby and Gustavo Alvarez have been informed of their rights Water Code section 13323, subdivision (b) provides, and hereby waives their rights to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption. However, Jim Mosby and Gustavo Alvarez may appear at any Central Coast Water Board hearing where approval of this settlement is discussed, and if the settlement is not adopted and the matter proceeds to the Central Coast Water Board or State Water Board for a hearing, Jim Mosby and Gustavo Alvarez do not waive their right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.

18. Waiver of Right to Petition or Appeal: Except in the instance where the Stipulated Order is not adopted by the Central Coast Water Board or its delegate, Jim Mosby and Gustavo Alvarez hereby waive their right to petition the Central Coast Water Board's adoption of this Order for review by the State Water Resources Control Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate-level court.

19. Authority to Bind: Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to

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execute this Stipulated Order on behalf of and to bind the entity on whose behalf they execute the Stipulated Order.

20. No Third-Party Beneficiaries: This Stipulated Order is not intended to confer any rights or obligations 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.

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

22. Counterpart Signatures; Electronic Signature: This Stipulated 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. Further, this Stipulated Order may be executed by electronic signature, and any such electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature were an original signature.

23. Effective Date: This Stipulated Order becomes effective and binding on the Parties upon the date the Central Coast Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION, PROSECUTION TEAM**

By: _____

Thea S. Tryon
Assistant Executive Officer
Central Coast Water Board

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IT IS SO STIPULATED.

JIM MOSBY

*Original Signed by Jim Mosby
On April 1, 2024*

Date: _____

By: _____

Jim Mosby

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IT IS SO STIPULATED.

GUSTAVO ALVAREZ

*Original Signed by Gustavo Alvarez
On April 1, 2024*

Date: _____

By: _____

Gustavo Alvarez

ORDER OF THE CENTRAL COAST WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Central Coast Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy. The Central Coast Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.
3. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that 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 section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.
4. The Executive Officer of the Central Coast Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Jim Mosby and Gustavo Alvarez fail to perform any of their obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, Central Coast Region.

Ryan E. Lodge
Executive Officer
California Regional Water Quality Control Board
Central Coast Region

Attachment A: Factor Consideration and Penalty Calculation Methodology

Attachment B: Economic Benefit Analysis

ATTACHMENT A

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2023-0064

JIM MOSBY AND GUSTAVO ALVAREZ
755 EAST HWY 246

AGRICULTURAL IRRIGATED LANDS
SANTA BARBARA COUNTY

(GEOTRACKER GLOBAL ID# AGL020027674)

This document provides details on the proposed administrative civil liability penalty methodology related to Jim Mosby and Gustavo Alvarez, referred to as “Dischargers,” for failure to submit the 2021 Total Nitrogen Applied Report (TNA Report) for 755 East HWY 246 ranch (GeoTracker Global Identifier AGL020027674) by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team derived the proposed administrative civil liability by following the State Water Resources Control Board’s (State Water Board) 2017 Water Quality Enforcement Policy ([Enforcement Policy](#)), which was adopted on April 4, 2017, and became effective on October 5, 2017.¹ The proposed administrative civil liability takes into account such factors as the Dischargers’ culpability, cooperation in returning to compliance, ability to pay the proposed liability, and other factors as justice may require.

SECTION I: APPLICATION OF THE STATE WATER BOARD’S ENFORCEMENT POLICY

The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code (Water Code) section 13327, which require the Central Coast Water Board to consider several factors when determining the amount of civil liability to impose, including “...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 its 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 that justice may require.”

¹ Link to State Water Board 2017 Enforcement Policy:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

The Prosecution Team developed the proposed administrative civil liability based on the procedures included in the Enforcement Policy methodology. The steps used to calculate the proposed liability are discussed and summarized in the table below.

SECTION II: REGULATORY BASIS OF ALLEGED VIOLATION AND PROPOSED LIABILITY

The Central Coast Water Board regulates discharges from irrigated agricultural lands to protect surface water and groundwater by requiring enrollment in General Waste Discharge Requirements for Discharges from Irrigated Lands Order R3-2021-0040 ([Agricultural Order](#)).² Jim Mosby is enrolled in the Agricultural Order. The Dischargers have failed to submit the 2021 TNA Report for 755 East HWY 246 ranch by March 1, 2022, a violation of Agricultural Order Monitoring and Reporting Program section B.1.

Failure to submit the 2021 TNA Report is a violation of Water Code section 13267. Pursuant to Water Code section 13268, subdivision (b), a violation of a Water Code section 13267 requirement subjects the Dischargers to administrative civil liability up to \$1,000 per day for each day in which the violation occurs.

In the table below, the Central Coast Water Board Prosecution Team presents the procedural steps used to calculate the proposed liability for failure to submit the 2021 TNA Report for 755 East HWY 246 ranch.

² A copy of the Agricultural Order is available at:
https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 1 – Actual or Potential for Harm for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 2 – Assessments for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 3 – Per Day Assessments for Non-Discharge Violations	<p>Potential for Harm – Moderate</p> <p>Deviation from Requirement – Major</p> <p>Per Day Factor for Non-Discharge Violation – 0.55</p> <p>Initial Liability Amount – \$206,250</p>	<p>The per day assessment for non-discharge violations considers potential for harm and the extent of deviation from applicable requirements. Failing to submit a TNA Report substantially impairs the Central Coast Water Board’s ability to perform its regulatory functions, because the Central Coast Water Board uses TNA Reports to assess threats to water quality and compliance with Agricultural Order requirements. Therefore, a moderate potential for harm score is appropriate. Failing to submit the TNA Report also rendered the requirements ineffective in its essential function. Therefore, a major deviation from requirement is appropriate. Table 3 in the Enforcement Policy (page 16) is used to determine the initial penalty factor for a violation. Based on the potential for harm and the deviation from requirement determinations, a per day factor for a non-discharge violation of 0.55 is appropriate.</p> <p>The days of violation are alleged from March 1, 2022 to March 10, 2023 (375 days). The Prosecution Team calculated days of violation up to the date the Dischargers submitted the 2021 TNA Report on March 10, 2023.</p>

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
		<p>The initial liability amount is calculated by multiplying the days of violation by the per day factor for non-discharge violations (0.55) by the statutory maximum liability pursuant to Water Code section 13268 (\$1,000 per day of violation).</p> <p>Initial liability amount: 375 days x 0.55 x \$1,000 per day = \$206,250</p>
Step 4 – Adjustment Factors (Conduct Factors)	Degree of Culpability – 1.3	<p>A discharger’s degree of culpability is determined by evaluating what a reasonable and prudent person would have done or not done under similar circumstances. This Adjustment Factor should result in a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. The Dischargers failed to submit the 2021 TNA Report, as required by the Agricultural Order, despite the Central Coast Water Board sending numerous reminders, a notice of violation, and a follow-up letter. Jim Mosby submitted the 2021 TNA Report after meeting in person to discuss settlement and with additional follow-on communication. Because the Dischargers’ failure to submit this report demonstrates, at best, a negligent deviation from the standard of care, a score of 1.3 is appropriate.</p>
Step 4 – Adjustment Factors (Conduct Factors)	History of Violations – 1.0	<p>Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Jim Mosby has a history of not submitting reports. However, there has not been formal enforcement for those missing reports. Therefore, this factor remains neutral at 1.0.</p>

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 4 – Adjustment Factors (Conduct Factors)	Cleanup and Cooperation – 1.3	The Cleanup and Cooperation Adjustment Factor is determined by evaluating the discharger’s voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance. This Adjustment Factor should result in a multiplier between 0.75 to 1.5 , using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and higher multiplier where there is not. Jim Mosby finally submitted the 2021 TNA Report after numerous communications including a settlement meeting with the Prosecution Team, therefore, a score of 1.3 is appropriate.
Step 4 – Adjustment Factors (Multiple Day Violations)	Multiple Day Violations – 46 days	For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Coast Water Board must make express findings that the violation: a) is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program; b) results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. The violation is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program. Therefore, the Prosecution Team has collapsed the number of days of violation for purposes of settlement from 375 days to 46 days.

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 5 – Determination of Total Base Liability Amount	Total Base Liability Amount – \$42,757	After each of the above factors is considered for the violation, the applicable factors are multiplied by the initial liability amount proposed for the violation considering the adjusted number of days of violation to determine the total base liability amount for the violation. 46 days x 0.55 x \$1,000 x 1.3 x 1.0 x 1.3 = \$42,757.
Step 6 – Ability to Pay and Ability to Continue in Business	Ability to pay and continue in business – No adjustment	The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team finds that the Dischargers have the ability to pay the proposed liability. 755 East HWY 246 ranch consists of 20 acres of tomatoes, broccoli, and carrots, which is valued at \$22,127, \$6,697, and \$22,127 per acre, respectively, according to the Santa Barbara County 2021 Crop Report. Assuming that the total acreage is used, and the crop types are equally divided, the estimated annual crop value of the operation is (6.7 acres x \$22,127) + (6.7 acres x \$6,697) + (6.7 acres x \$22,127) = \$339,676.
Step 7 – Economic Benefit	Economic Benefit Amount - \$1.00	The economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. Using the United States Environmental Protection Agency’s (USEPA) BEN Model Version 2022.0.0 revised June 2022, the economic benefit was calculated to be \$1.00. This represents the cost the discharger saved by delaying the submittal of the 2021 TNA Report. In this instance, the economic benefit does not capture any value to the regulatory system of information expected from this report.

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 8 – Other Factors as Justice May Require	Other factors as justice may require – \$3,280	The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Coast Water Board has incurred over \$3,280 in staff costs associated with the investigation and enforcement of the alleged violation. No attorney or management staff costs were included in this calculation.
Step 9 – Maximum and Minimum Liability Amounts	Minimum Liability – \$1.10 Maximum Liability – \$375,000	<u>Minimum Liability</u> : \$1.10 (economic benefit plus 10 percent) <u>Maximum Liability</u> : \$375,000 (\$1,000 per day per violation under Water Code section 13268)
Step 10 – Final Liability Amount	Final Liability Amount – \$46,037	Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is the sum of the Total Base Liability Amount (\$42,757) and other factors as justice may require (staff costs of \$3,280) totaling \$46,037. The Final Liability Amount is between the Minimum and Maximum Liability Amounts.

ATTACHMENT B

**ECONOMIC BENEFIT ANALYSIS FOR
SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2023-0064**

**JIM MOSBY AND GUSTAVO ALVAREZ
755 EAST HWY 246
AGRICULTURAL IRRIGATED LANDS
SANTA BARBARA COUNTY**

(GEOTRACKER GLOBAL ID# AGL020027674)

This document provides details on the proposed administrative civil liability economic benefit analysis related to Jim Mosby and Gustavo Alvarez (Dischargers) for failure to submit the 2021 Total Nitrogen Applied Report (TNA Report) for 755 East HWY 246 ranch (GeoTracker Global Identifier AGL020027674 by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team derived the economic benefit by following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy ([Enforcement Policy](#)), which was adopted on April 4, 2017, and became effective on October 5, 2017.¹⁰ The economic benefit analysis considers actions required to comply with a permit or order, how often these actions are required, what actions should have been taken to avoid the violation, whether the actions are avoided or simply delayed, and an estimate of costs.

The benefit of non-compliance was calculated using United States Environmental Protection Agency's BEN Model Version 2022.0 revised June 2022. The inputs and assumptions for the violation are as follows:

1. The tax schedule is assumed to be "For Profit (Other than C-Corporation)" for this analysis.
2. According to the General Waste Discharge Requirements for Discharges from Irrigated Lands Order R3-2021-0040 ([Agricultural Order](#)),¹¹ Attachment A, Finding 82.c dated April 15, 2021, TNA tracking and reporting is estimated to cost between approximately \$8.97 and \$23.22 per acre over the course of five years. Using the lower

¹⁰ Link to State Water Board 2017 Enforcement Policy:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

¹¹ A copy of the Agricultural Order is available at:
https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

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value and averaging it over a five-year period, the cost to prepare the TNA Report is assumed to be \$1.79 per acre per year.

3. 755 East HWY 246 ranch comprises 20 acres per the electronic Notice of Intent submittal. As such, total costs to prepare the TNA report is \$36.
4. The expenditure type is assumed to occur once and is non-depreciable.
5. The cost basis assumes labor costs only.
6. Date of non-compliance is March 1, 2022, the date which the TNA Report was due.
7. Date of compliance is March 10, 2023, the date the Discharger submitted the 2021 TNA Report. Because the Discharger submitted the TNA Report, the cost is “delayed.”

Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be \$1.00. This represents the costs the Discharger saved by not submitting the TNA Report on time. The Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is \$1.10.