

Note: This Summary Sheet was prepared by the Prosecution Team

ITEM: 24
SUBJECT: Larry W. & Shireen I. Slate, Merced County

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

BACKGROUND: Larry W. & Shireen I. Slate ("Slate") own 108 acres of agricultural land in Merced County. This land is divided into five Assessor's Parcels ranging from three to 49 acres.

On 4 September 2013, staff conducted inspections of the Slate agricultural parcels and found commercial-scale irrigated orchards. Aerial imagery also indicates that the land use of parcels owned by Slate is commercial irrigated agriculture.

On 7 October 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter ("Directive") to Slate. The Directive required Slate to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. Slate could comply by joining the East San Joaquin Water Quality Coalition ("Coalition"), or by submitting a Report of Waste Discharge.

The Certified mail receipt for the Directive was signed as received by Slate on 9 October 2013; however, Slate failed to respond to the Directive. A Notice of Violation was therefore sent to Slate on 13 November 2013. As with the Directive, Slate was given 15 days from receipt of the NOV to obtain regulatory coverage for their irrigated agricultural parcels. The certified mail receipt was returned to sender unsigned on 27 November 2013.

On 21 January 2014, staff sent Slate a notification letter ("pre-ACL letter") that an Administrative Civil Liability (ACL) in the amount of \$3,080 would be issued if Slate did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 31 January 2014. The certified mail receipt for the pre-ACL letter shows that it was unclaimed by Slate and returned to sender on 18 February 2014.

On 10 May 2014, Prosecution staff issued an ACL Complaint to Slate. The proposed penalty was calculated to account for the size of the Slate's farming operation (108 acres). Given the size of the operation, the Assistant Executive Officer elected to impose a penalty of three thousand eighty dollars \$3,080 (\$10 per acre plus \$2,000). The certified mail receipt for the Complaint shows that Shireen Slate received it on 12 May 2014.

On 11 July 2014, the Advisory Team issued a memorandum (memo) to the Prosecution Team tentatively rejecting proposed settlement agreements for two enforcement cases (David L. & Linda M. Davis Trust and William R. Sinks, et al.) similar to the Slate case. In this memo, the Advisory Team requested that the Prosecution Team further explain how the proposed settlements adequately address the Central Valley Water Board's regulatory interests.

On 17 July 2014, the Assistant Executive Officer rescinded ACL Complaint R5-2014-0529 in order to address issues raised in the Advisory Team memo. The Prosecution Team concluded that these issues applied to the Slate enforcement case, and hence the ACL Complaint R5-2014-0529 was rescinded.

BACKGROUND:
(cont.)

The Prosecution Team revised the penalty methodology in response to the Advisory Team memo, and on 12 September 2014 issued ACL Complaint R5-2014-0564 to Slate. This Complaint proposes a penalty amount of \$9,152.

ISSUES:

In preparing the September 2014 ACL Complaint, the Prosecution Team attempted to address the Advisory Team's 11 July 2014 concerns, comply with the Enforcement Policy Penalty Calculation Methodology, and arrive at a proposed penalty that would be an effective deterrent for recalcitrant growers who ignore directives to get regulatory coverage.

For non-discharge violations such as in the Slate case, the Penalty Calculation Methodology prescribes a number of factors used to calculate the penalty, most of which include some amount of judgment. The Prosecution Team took what it felt was a reasoned approach in applying the Penalty Calculation Methodology, while leaving room for the Board to make adjustments in this case and future related cases.

The Prosecution Team understands that the Board strives to ensure that the penalty applied in this case not only conforms to the Enforcement Policy, but is also a fair penalty, provides a sufficient deterrent, and is generally consistent with how the Board handles similar cases.

With respect to deterrence, the Prosecution Team recognizes that there may be a relationship between factors that incentivize growers without regulatory coverage to come into compliance. For example, both high penalty amounts and the timeliness with which enforcement actions are brought contribute to the deterrent effect of an enforcement program. In bringing enforcement actions, the Prosecution Team considers these variables and strives to strike a balance that provides the maximum benefit for water quality.

The Prosecution Team believes that the adoption of the proposed fine will send a strong signal to similarly situated non-compliant growers to come into compliance.

ACLO

RECOMMENDATION: The Prosecution Team recommends that the Board adopt the proposed ACL Order assessing a \$9,152 Administrative Civil Liability.

Mgmt. Review aa
Legal Review nsk

4/5 December 2014 Meeting
Central Valley Regional Water Quality Control Board meeting
11020 Sun Center Dr. #200, Rancho Cordova, CA 95670