William and Maria Egleston (Owners)
ACL Complaint No. R5-2016-0542

HEARING PANEL REPORT

This matter was heard on November 3, 2016 in Fresno, California before a panel consisting of Central Valley Regional Water Quality Control Board members Jon Costantino, Denise Kadara, and Board Chair Karl Longley. Assistant Executive Officer Adam Laputz, Andrew Deeringer and Patrick Pulupa were Panel Advisors. No person appeared on behalf of William and Maria Engleston (Dischargers). Kailyn Ellison, Brett Stevens, and Sue McConnell appeared for the Prosecution Team.

The Panel makes the following determinations:

FINDINGS OF FACT

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[1] 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 discharges 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) and Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3) define "irrigated lands" as "[l]and 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 Merced County, including the Dischargers, which 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.

[1] All references to the Water Code refer to the California Water Code unless otherwise noted.

4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., 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 operators of agricultural lands who may not have complied with the Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued requiring landowners to obtain regulatory coverage for lands irrigated for a commercial purpose.

5. Evaluation of county assessor and FMMP data indicates that the Dischargers own 19.5 acres of agricultural land, as identified as Merced County Assessor's Parcel Number (APN) 056-040-049.

6. On 6 February 2013 and 18 April 2013, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and options available to comply with the regulations.

7. In 2013, the Dischargers enrolled in the East San Joaquin Water Quality Coalition (Coalition). In July 2014, the Dischargers' membership was canceled for failure to pay Coalition dues.

8. On 7 November 2014, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive letter (Directive) to the Dischargers, sent via certified mail. The Directive was sent based on information that the Dischargers' irrigated lands no longer had regulatory coverage.

9. The Directive required Dischargers to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, Dischargers could comply by joining the East San Joaquin Water Quality Coalition (Coalition), or by submitting a Report of Waste Discharge (RoWD) with a Notice of Intent (NOI).

10. The Dischargers received the Directive on 8 November 2014 and the Dischargers were required to obtain regulatory coverage by 23 November 2014. The Dischargers neither obtained regulatory coverage nor contacted the Board.

11. On 17 December 2015, Board staff conducted a field inspection of the Dischargers' property at Merced County APN 056-040-049, and found evidence of land irrigated for a commercial purpose based on the type of crop, almonds, and the size of the operation, 19.5 acres.

12. Because the Dischargers failed to obtain coverage by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Dischargers on 8 January 2015. The Dischargers received the NOV on 10 January 2015. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.

13. On 12 January 2016, Board staff contacted the Dischargers to discuss the impending ACL and a proposed penalty. Staff explained that the Dischargers should promptly obtain regulatory coverage or face a potential ACL Complaint.

14. On 13 January 2015, the Dischargers submitted a Notice of Intent (NOI) to join the Coalition and a $200 administrative fee to the Board. However, the Dischargers did not obtain regulatory coverage by joining a Coalition or other means.

15. On 5 February 2016, the Prosecution Team sent the Dischargers a notification letter (pre-ACL letter) via certified mail that an ACL Complaint in the amount of $21,021 would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 24 February 2016. A settlement was not reached and regulatory coverage was not obtained by that date.

16. On 28 March 2016, the Dischargers re-enrolled in the Coalition and paid the Coalition dues and back dues, thus came into compliance with the Directive.

17. On 8 August 2016, Andrew Altevogt, Assistant Executive Officer of the Central Valley Water Board, issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0542 to the Dischargers in the amount of twenty-two thousand, twenty-two dollars ($22,022) for failing to timely obtain Coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260.

18. The required factors under Water code section 13327 have been considered using the methodology in the Enforcement Policy as explained in detail in Attachment A to the Order, which is incorporated herein by reference.

19. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of twenty-three thousand, seven hundred sixteen dollars ($23,716) should be imposed on the Dischargers pursuant to Water Code section 13261 for violation of Water Code section 13260.

CONCLUSIONS OF LAW

1. The failure to submit a RoWD constitutes a violation of Water Code section 13260.

2. Pursuant to Water Code section 13261, subdivision (b)(1), the Regional Board may impose administrative civil liability up to $1,000 for each day of violation.

3. The total maximum amount of Administrative Civil Liability assessable for the violations alleged in Complaint No. R5-2016-0542 pursuant to Water Code section 13261 is $491,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of $23,716 on the Dischargers for violations found herein to have been committed by the Dischargers.

I, ADAM LAPUTZ, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the recommendation issued by this Hearing Panel for the California Regional Water Quality Control Board, Central Valley Region.

Adam Laputz
Assistant Executive Officer

12.6.16
Date