Gurmail Kaur (Owner)
ACL Complaint No. R5-2016-0543

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. Gurjit Manjal appeared on behalf of the Kaur family (Dischargers). Susie Loscutoff, 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 Madera 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 approximately 74 acres of agricultural land, as identified as Madera County Assessor's Parcel Number (APN) 040-072-004.

6. On 30 January 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger, sent via certified mail. The Directive was sent based on information that the subject parcel contained commercially irrigated land without regulatory coverage.

7. 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).

8. The January 2015 Directive issued to the Discharger was returned to the Board as "Unclaimed" on 3 March 2015.

9. On 15 June 2016, the Assistant Executive Officer of the Central Valley Water Board issued a second Directive to the Discharger, sent via Federal Express.

10. The Dischargers received the Directive on 20 June 2016 and the Dischargers were required to obtain regulatory coverage by 5 July 2016. The Dischargers neither obtained regulatory coverage nor contacted the Board.

11. On 21 June 2016, Board staff conducted a field inspection of the Discharger's Madera County APN 040-072-004 and found evidence of commercial irrigated agricultural operations based on the crop grown (grapes) and the size of the operation (74 acres).

12. On 13 July 2016, the Central Valley Water Board received a NOI from the Discharger to enroll in a coalition, and thereby obtain regulatory coverage under the Eastern San Joaquin Order. Although a NOI was submitted, as of the date of the ACL Complaint the Discharger has not enrolled with the applicable coalition (the East San Joaquin Water Quality Coalition).

13. On 8 August 2016, the Assistant Executive Officer of the Central Valley Water Board, issued an ACL Complaint R5-2016-0543 to the Discharger in the amount of thirty-two thousand one hundred seventy five dollars ($32,175) for failure to obtain coalition membership or submit a RoWD as required by Water Code section 13260.

14. On 11 August 2016, the Discharger enrolled in the East San Joaquin Water Quality Coalition and paid the Coalition dues and back dues, thus came into compliance with the Directive.

15. 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.

16. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of nineteen thousand nine hundred sixty-five dollars ($19,965) 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. R5-2016-0543 pursuant to Water Code section 13261 is $32,175.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of $19,965 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