Alex V. & Vera A. Kobets (Owners)
ACL Complaint No. R5-2016-0554

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, Patrick Pulupa, and Andrew Deeringer were Panel Advisors. Alex Kobets appeared on behalf of Alex V. and Vera A. Kobets (Dischargers). Kailyn Ellison and David Sholes 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 Tulare Lake Basin Area that are Members of the Third-Party Group (Order R5-2013-0120) define "irrigated lands" as "land 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 Fresno 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 39 acres of agricultural land, as identified as Fresno County Assessor's Parcel Numbers (APN) 015-080-35S.

6. On 21 February 2014 and 28 April 2014, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and actions available to comply with the regulations.

7. On 18 March 2015, Board staff conducted a field inspection from public roadways of Fresno County APN 015-080-35S and found evidence of 39.1 acres of commercially irrigated grapes.

   On 26 March 2015, 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 stated that, *"You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations."* The Directive was sent based on information that the subject parcel contained commercially irrigated land without regulatory coverage. The Directive further stated in bold that, "If you own irrigated commercial cropland within the Tulare Lake Basin Area that is not identified on the above table of parcel numbers, it will also require regulatory coverage."

8. 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 Kings River Water Quality Coalition (Coalition), or by submitting a Report of Waste Discharge (RoWD) with a Notice of Intent (NOI).

9. The Dischargers received the Directive on 7 April 2015, The Dischargers were required to obtain regulatory coverage by 22 April 2015.

10. Using aerial imagery, on 11 June 2015, Board staff identified another parcel owned by the Dischargers, Fresno County APN 015-080-34S, with an additional 40 acres of commercially irrigated grapes, for a combined total of 79 acres of commercially irrigated grapes.

11. 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 9 July 2015. The Dischargers received the NOV on 10 July 2015. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.

12. On 10 December 2015, Board staff spoke with Mr. Alex V. Kobets by telephone and explained the Irrigated Lands Regulatory Program. Mr. Kobets stated that he would review the previous notices and begin the process of enrolling in the Coalition.

13. On 7 January 2016, the Coalition confirmed that the parcels subject to the ACL Complaint were not enrolled in the Coalition.

14. On 12 January 2016, the Prosecution Team sent the Dischargers a notification letter (pre-ACL letter) via certified mail that an ACL Complaint in the amount of $26,813 would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 26 January 2016. A settlement was not reached and regulatory coverage was not obtained by that date.

15. On 4 August 2016, Board staff met with Mr. Alex V. Kobets at his residence and explained the Irrigated Lands Regulatory Program, provided him with a copy of the Coalition's enrollment form and a NOI, and explained the process for joined the Coalition and completing the NOI.

16. On 12 August 2016, Clay Rodgers, Assistant Executive Officer of the Central Valley Water Board, issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0554 to the Dischargers in the amount of twenty-six thousand, eight hundred thirteen dollars ($26,813) for failing to obtain Coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260.

17. Central Valley Water Board records indicate that as of the date of this Hearing Panel Report, the Dischargers have not obtained regulatory coverage.

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 ten thousand dollars ($10,000) 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. R5-2016-0554 pursuant to Water Code section 13261 is $477,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of $10,000 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

12-13-16
Date