

ATTACHMENT D

23 June 2016 Pre-ACL Letter



ERNEST G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

23 June 2016

Baldev S. & Kamaljit K. Batth
P.O. Box 61
Caruthers, CA 93609

Certified Mail No.
7015 3430 0000 0225 5346

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13260, BALDEV S. & KAMALJIT K. BATT, CARUTHERS, FRESNO COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint), and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to comply with the California Water Code. **Please read this notice carefully.**

On 20 March 2015, the Central Valley Water Board issued a Directive Order pursuant to California Water Code section 13260 (13260 Directive) by certified mail that required you to obtain regulatory coverage within fifteen (15) days for irrigated lands that you may own or operate.

On 3 September 2015, the Central Valley Water Board issued a Notice of Violation pursuant to California Water Code section 13260 (NOV) by certified mail that requested you obtain regulatory coverage for irrigated lands that you may own or operate.

Central Valley Water Board records indicate that you (1) own at least one parcel that contains irrigated agriculture; (2) received a 13260 Directive and a Notice of Violation by certified mail requiring you to obtain regulatory coverage for all parcels containing irrigated agriculture; and (3) have not obtained regulatory coverage to date.

Legal Authority

Water Code section 13260 states, in relevant part:

“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

- (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.”

Under California Water Code section 13261, failing to submit a Report of Waste Discharge when requested by the Central Valley Water Board may result in an administrative civil liability against you of up to \$1,000 per day for every day the report is late.

As of 23 June 2016, your obtainment of regulatory coverage is 441 days overdue. As of this date, the **maximum penalty** for the violation described above is **four hundred forty one thousand dollars (\$441,000)** based on a calculation of the total number of per-day violations times the statutory maximum penalty (441 total days of violation multiplied by \$1,000). Based on our review and after conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you for **forty thousand nine hundred fifty dollars (\$40,950)**. This proposed penalty amount was calculated considering the methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) and is based on facts known to date. This proposed penalty amount is preliminary and is subject to modification should additional information come to light. In addition, because the violation is continuing, the maximum and proposed penalty amounts will continue to increase until you obtain regulatory coverage. The full Enforcement Policy may be found here:

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf. To avoid further liability, you are urged to obtain regulatory coverage.

By way of this letter, you are being notified of the opportunity to meet to discuss the facts regarding the alleged violation, including the option of settlement. This meeting affords you the opportunity to potentially reduce the proposed penalty amount if you present new information to the Central Valley Water Board staff, or other information you believe is relevant to determining an appropriate monetary penalty. All settlement communications would be kept confidential subject to California Evidence Code sections 1152 and 1154. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing the Complaint.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring supporting documentation with you to the meeting. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing.

In order to initiate any discussions to settle this matter, you must contact David Sholes at (559) 445-6279 by **8 July 2016** to schedule a day and time to meet with Central Valley Water Board staff. If you do not respond by this date, the Assistant Executive Officer will issue you a Complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board; or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency.

Before settlement discussions can occur, you must get the required regulatory coverage by providing a completed Notice of Intent (NOI) and submitting the appropriate fee (\$200). You can enroll under the Waste Discharge Requirements General Order (Order R5-2013-0120

or Coalition Order) for Growers within the Tulare Lake Basin Area that are Members of a Third-Party (or Coalition) Group (NOI enclosed); or you can submit an NOI (also enclosed) for coverage under 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 or Individual Order).

The Individual Order is significantly more expensive than coalition membership, so most growers choose to join a coalition. Here are cost estimates for your irrigated lands under the two regulatory options:

Estimated cost of regulatory coverage under the Individual General Order:

Farm Size	Annual Regulatory Fee	Annual Estimated Monitoring and Reporting Costs	Estimated Annual Costs
267 acres	\$3,602¹	\$14,553²	\$18,155

Cost of 2016 regulatory coverage as a member of the Kings River Water Quality Coalition:

Farm Size	Annual Cost for First Year of Coalition Membership (Includes Monitoring and Reporting)	Annual Cost for Following Years (Including Monitoring and Reporting)	Estimated Annual Costs
267 acres	\$1,177	\$1,151	\$1,177 (First Year) then \$1,151 annually, thereafter

Once you've made your decision, complete the appropriate NOI, enclose the administrative fee of \$200, and return these to the following:

Central Valley Water Board
 Attn: David Sholes
 1685 E Street
 Fresno, CA 93706

Failure to get regulatory coverage may result in a board hearing in which you will be issued coverage under the Individual Order, in addition to administrative civil liability penalties.

¹ See 2015-2016 Fee Schedules at: http://www.waterboards.ca.gov/resources/fees/water_quality/docs/fy1516_ilrp_fees.pdf.

² See pages 33-35 of Attachment A (Information Sheet) to Order R5-2013-0100. Specifically, the per-acre estimate of monitoring, reporting, and tracking costs under this order provided in Table 3 on page 35 (\$54.38) was used to estimate costs for this operation.

If you have any questions, please contact David Sholes by phone at (559) 445-6279 or by email at David.Sholes@waterboards.ca.gov.



DOUGLAS K. PATTESON

Supervising Water Resource Control Engineer

cc: Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Sue McConnell, Manager, Irrigated Lands Regulatory Program
Susie Loscutoff, Counsel, SWRCB Office of Enforcement

Encl: Coalition Order NOI
Individual Order NOI

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Baldev S & Kamaljit K Bathh
PO Box 61
Caruthers, CA 93609-0061



9590 9403 0882 5223 6355 82

2. Article Number (Transfer from service label)

7015 3430 0000 0225 5346

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X BALDEV BATHH

- Agent
- Addressee

B. Received by (Printed Name)

Baldev S Bathh

C. Date of Delivery

06/27/16

D. Is delivery address different from item 1?

- Yes
- No

If YES, enter delivery address below:

JUN 28 2016

RM/3CE-CVR

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt