

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0554

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

ALEX V. AND VERA A. KOBETS,
FRESNO COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code¹ section 13323 to Alex V. and Vera A. Kobets (Dischargers) for failing to submit a Report of Waste Discharge required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

BACKGROUND

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 Water Code 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.
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

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

- 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 79 acres of agricultural land, identified as Fresno County Assessor's Parcel Numbers (APN) 015-080-34S and 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. A copy of the inspection report is provided as Attachment A.
 8. 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." A copy of the Directive is provided as Attachment B.
 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 Kings River Water Quality Coalition (Coalition), or by submitting a Report of Waste Discharge (RoWD) with a Notice of Intent (NOI).
 10. Dischargers received the Directive on 7 April 2015. The Dischargers were required to obtain regulatory coverage by 22 April 2015. A copy of the certified mail receipt for the Directive is included with the Directive in Attachment B.
 11. Using aerial imagery, on 11 June 2015, Board staff confirmed that another parcel owned by the Dischargers, Fresno County APN 015-080-34S, had an additional 40 acres of commercially irrigated grapes, for a combined total of approximately 79 acres of commercially irrigated grapes. A copy of the aerial inspection report is provided as Attachment C.

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 9 July 2015. A copy of the NOV is provided as Attachment D.
13. The Dischargers received the NOV on 10 July 2015. A copy of the certified mail receipt for the NOV is included with the NOV in Attachment D. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.
14. 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.
15. On 7 January 2016, the Coalition confirmed that the parcels subject to this ACL Complaint were not enrolled in the Coalition.
16. 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 copy of the pre-ACL letter is included as Attachment E.
17. The Dischargers received the pre-ACL letter on 15 January 2016. A copy of the certified mail receipt for the pre-ACL letter is included with the pre-ACL letter in Attachment E. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the pre-ACL letter.
18. On 5 August 2016, Board staff met with Mr. Alex V. Kobets at his vineyard 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 joining the Coalition and completing the NOI.
19. Central Valley Water Board records indicate that as of the date of this ACL Complaint, the Dischargers have not obtained regulatory coverage.

ALLEGED VIOLATIONS

20. The Dischargers failed to obtain coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260. The Directive issued to the Dischargers required either submittal of a RoWD or, in lieu of submitting a RoWD, submittal of a NOI to enroll in a coalition. As of 12 August 2016, Dischargers' are 477 days past due in obtaining regulatory coverage.

REGULATORY CONSIDERATIONS

21. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
22. Water Code section 13260, subdivision (a), requires that any "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," shall file with the appropriate regional board a RoWD containing such information and data as may be required by the regional board. The Central Valley Regional Board implements Water Code section 13260 in the area where the Dischargers' lands are located.
23. Pursuant to Water Code section 13261, subdivision (a), "[a] person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
24. Water Code section 13261, subdivision (b)(1), states:

Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.
25. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
26. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13327.

27. The proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment F. The proposed administrative civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
28. **Maximum and Minimum Penalties.** As described above, the statutory maximum penalty under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. As of the date of this ACL Complaint, the Dischargers were out of compliance for 477 days, thus resulting in a maximum penalty of \$477,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit of non-compliance so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Dischargers resulting from the failure to enroll under Order R5-2013-0100 is estimated at \$5,022 (see Attachment F for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$5,524).
29. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
30. Issuance of this ACL Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Dischargers be assessed an administrative civil liability in the amount of **twenty six thousand eight hundred thirteen dollars (\$26,813)**. The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the proposed penalty amount is explained in Attachment F.
2. A hearing on this matter will be conducted before a hearing panel of the Central Valley Water Board on **3/4 November 2016**, unless the Dischargers do any of the following by 24 August 2016:
 - a) The Dischargers waive the right to a hearing by completing the waiver form provided as Attachment G (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability of **twenty six thousand eight hundred thirteen dollars (\$26,813)**. The check must be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division

of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814 with a copy of the check mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA 93706, Attn: David Sholes; OR

- b) The hearing panel agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; OR
 - c) The hearing panel agrees to postpone any necessary hearing after the Dischargers request a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.
3. The hearing will be governed by the Hearing Procedure, which is provided as Attachment H. During the hearing, the hearing panel may choose to recommend that the Central Valley Water Board affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Additional information on complaint resolution options is described in the ACL Fact Sheet, provided as Attachment I.
4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this ACL Complaint, and through completion of the hearing.

Original Signed By

Clay L. Rodgers, Assistant Executive Officer

12 August 2016

(Date)

- Attachment A: 18 March 2015 Inspection Report
- Attachment B: 26 March 2015 California Water Code 13260 Directive
- Attachment C: 11 June 2015 Aerial Inspection Report
- Attachment D: 9 July 2015 NOV for Failure to Respond to 13260 Directive
- Attachment E: 12 January 2016 Pre-ACL Letter
- Attachment F: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
- Attachment G: Hearing Waiver Form
- Attachment H: Hearing Procedure
- Attachment I: ACL Fact Sheet