

## 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 [Name] and [Name]. [Name] and [Name] were Panel Advisors. [Name] appeared on behalf of [owner/operator] (Dischargers). [Name], [Name], [Name], and [Name] 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<sup>1</sup> 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 Growers within the Tulare Lake Basin Area that are Members of the Third-Party Group (Order R5-2013-0120) defines "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 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 identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands

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<sup>1</sup> All references to the Water Code refer to the California Water Code unless otherwise noted.

who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.

5. Evaluation of county assessor and FMMP data indicates that Dischargers own approximately 88 acres of agricultural land in Fresno County, as identified as Assessor's Parcel Numbers 020-100-32S, 020-100-33S, 020-150-11S and 020-150-12S.
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 020-100-33S. Board staff observed evidence of approximately 30 acres of irrigated grapevines. An additional three agricultural parcels (APNs 020-100-32S, 020-150-11S, and 020-150-12S) totaling approximately 60 acres were identified by staff using aerial imagery, for a cumulative total of 88 acres.
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 evidence of commercial irrigated lands.
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 "KRWQC"), or by submitting a Report of Waste Discharge (RoWD)/Notice of Intent (NOI).
10. The Dischargers received the Directive on 28 March 2015. Dischargers did not obtain regulatory coverage by 12 April 2015 and did not contact the Board.
11. Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Dischargers on 9 July 2015.
12. Dischargers received the NOV on 10 July 2015. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.

13. On 28 September 2015, Board staff conducted a second field inspection of Fresno County parcels 020-100-32S and 020-100-33S. Staff again found a commercial irrigated land use; however, staff observed no direct evidence of surface water discharges from the parcel (e.g., discharge pipes at borders or erosion rills leading offsite).
14. On 5 October 2015, the Prosecution Team sent the Dischargers a notification letter via certified mail than an Administrative Civil Liability Complaint in the amount of \$27,885 would be issued if the Dischargers did not obtain regulatory coverage and initiate settlement discussions by 19 October 2015.
15. Dischargers received the notification letter on 19 October 2015 and contacted the Prosecution Team via email on 21 October 2015.
16. A settlement meeting was held on 13 November 2015; however, the Prosecution Team and the Dischargers were unable to reach an agreement.
17. A second settlement meeting was held on 4 April 2016. The Prosecution Team and the Dischargers were unable to reach an agreement.
18. A third settlement meeting was held on 1 September 2016. The Prosecution Team and the Dischargers were unable to reach an agreement.
19. On 25 January 2016, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0513 to the Dischargers in the proposed amount of twenty-seven thousand, eight hundred eighty-five dollars (\$27,885) for failing to submit a Report of Waste Discharge as required by Water Code section 13260.
20. On 22 June 2016, the Dischargers joined the Kings River Water Quality Coalition and submitted a Notice of Intent (NOI) to obtain coverage under the General Order.
21. 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.
22. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of twenty-seven thousand, eight hundred eighty-five dollars (\$27,885) 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. R5-2016-0513 pursuant to Water Code section 13261 is \$287,000.

## RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of \$27,885 on the Dischargers for violations found herein to have been committed by the Dischargers.

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[Name]  
Hearing Panel Chair

\_\_\_\_\_  
Date