CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABLITY COMPLAINT R5-2016-0543

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

GURMAIL KAUR,
MADERA COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code[1] section 13323 to Gurmail Kaur, (Discharger) for failing to submit a Report of Waste Discharge (RoWD) required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter 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(e).) The Central Valley Water Board is required to 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)(Individual Order) and 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)(East San Joaquin Order) 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 Madera County, including the Discharger, 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 who may not have complied with the California Water

[1] All references are to the California Water Code unless otherwise noted.

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 the Discharger owns approximately 74 acres of agricultural land in Madera County, as identified by Assessor's Parcel Number (APN) 040-072-004. Board staff inspections indicate that the parcel is developed as vineyard.

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. The Directive required the Discharger to obtain regulatory coverage for its irrigated lands within 15 calendar days of receipt of the Directive. A copy of the Directive is provided as Attachment A.

7. The January 2015 Directive issued to the Discharger was returned to the Board as "Unclaimed" on 3 March 2015. A copy of the unclaimed Directive envelope is included with the Directive in Attachment A.

8. 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. The Directive required the Discharger to obtain regulatory coverage for its irrigated lands within 15 calendar days of receipt of the Directive. A copy of the Directive is provided as Attachment B.

9. The Discharger received the Directive on 20 June 2016. A copy of the Federal Express proof-of-delivery receipt is included in Attachment B. The Discharger neither obtained regulatory coverage by the deadline of 5 July 2016 nor contacted the Board.

10. 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). The inspection found no direct evidence of surface water discharges from the parcel. A copy of the inspection report is provided as Attachment C.

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

ALLEGED VIOLATIONS

12. The Discharger failed to obtain coalition membership or submit a Report of Waste Discharge (RoWD) as required by Water Code section 13260. The Water Code section

13260 Directive Letter issued to the Discharger required either submittal of a Notice of Intent (NOI) to enroll in a coalition and joining a coalition, or submittal of a RoWD. As of 8 August 2016, the required RoWD is 34 days past due.

REGULATORY CONSIDERATIONS

13. 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 (Water Code Division 7).

14. Water Code section 13260, subdivision (a), requires that "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," shall file with the appropriate regional board a report of waste discharge 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 Discharger's lands are located.

15. 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)."

16. 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.

17. 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.

18. On 17 November 2009, 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 a civil liability as outlined in Water Code section 13327.

19. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment D. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

20. **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 Discharger was out of compliance for 34 days, thus resulting in a maximum penalty of $34,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit 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 Discharger resulting from the failure to enroll under Order R5-2013-0100 is $14 (see Attachment D for how this was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent ($15.40).

21. 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.

22. 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).

GURMAIL KAUR IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed **an administrative civil liability in the amount of thirty two thousand one hundred seventy five dollars ($32,175)**. The amount of the proposed liability is based upon a review of the factors cited in State Water Resources Control Board's Water Quality Enforcement Policy. The calculation of the penalty amount is explained in Attachment D.

2. A panel of the Central Valley Water Board will hold a hearing on this matter on **3/4 November 2016,** unless the Discharger does any of the following by **24 August 2016**.

   a) The Discharger waives the right to a hearing by completing the waiver form provided as Attachment E (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 **thirty two**

thousand one hundred seventy five dollars ($32,175). This 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 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; OR

b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests 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 Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests 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 F. During the hearing, the Central Valley Water Board would consider whether to affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to recommend referral of the matter to the Attorney General for recovery of judicial civil liability.

4. The Assistant Executive Officer reserves the right to amend the proposed amount of 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.

Andrew Altevogt

Andrew Altevogt, Assistant Executive Officer

8/4/16

(Date)

Attachment A: 30 January 2015 California Water Code section 13260 Directive
Attachment B: 15 June 2016 California Water Code section 13260 Directive
Attachment C: 21 June 2016 Inspection Report
Attachment D: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
Attachment E: Hearing Waiver
Attachment F: Hearing Procedure
Attachment G: ACL Fact Sheet