

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 Joseph Magdic Jr. (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 Code¹ 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.)

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 Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116) define "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."

2. Central Valley Water Board staff developed a list of landowners in Madera 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.
3. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California

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

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.

4. Evaluation of county assessor and FMMP data indicates that the Dischargers owns 39.4 acres of agricultural land, as identified as Madera County Assessor's Parcel Numbers (APN) 045-122-007.
5. On 13 February 2013 and 18 April 2013, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and actions available to comply with the regulations.
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 Dischargers, sent via certified mail. The Directive stated that, *"You are receiving this letter because based on information available to us, you own the following parcels with irrigated cropland subject to the new regulations."* The Directive was sent based on information that the subject parcel contained commercially irrigated land without regulatory coverage.
7. 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 East San Joaquin Water Quality Coalition (Coalition), or by submitting a Report of Waste Discharge (RoWD) with a Notice of Intent (NOI).
8. The Dischargers received the Directive on 2 February 2015. The Dischargers were required to obtain regulatory coverage by 17 February 2015.
9. 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 13 April 2013. The Dischargers received the NOV on 17 April 2015. Dischargers neither obtained regulatory coverage nor contacted the Board in response to the NOV.
10. On 21 June 2016, Board staff conducted a field inspection from public roadways of the Dischargers' Madera County APN 045-122-007 and found evidence of approximately 40 acres of commercially irrigated vineyard.
11. On 8 August 2016, the Assistant Executive Officer of the Central Valley

Water Board, issued Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0545 to the Dischargers in the amount of thirty-two thousand one hundred seventy-five dollars (\$32,175) for failing to obtain Coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260.

12. Central Valley Water Board records indicate that as of the date of this Hearing Panel Report, the Dischargers have not obtained regulatory coverage.
13. 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.
14. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of thirty-two thousand one hundred seventy-five dollars (\$32,175) 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. R5-2016-0545 pursuant to Water Code section 13261 is \$538,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of \$32,175 on the Dischargers for violations found herein to have been committed by the Dischargers.

[Name]
Hearing Panel Chair

Date