

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 William R. Sinks et al. (Dischargers). [Name], [Name], [Name], and [Name] appeared for the Prosecution Team.

The Panel makes the following determinations:

FINDINGS OF FACT

1. Irrigated lands in the Central Valley Region that discharge irrigation return flows or storm water 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 regulate the amount of waste that may be discharged to waters of the state. (Wat. Code, § 13263.)
2. 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-R1) 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 Sinks, that 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 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 Sinks owns approximately 154 acres of agricultural land in Madera County (Madera County Assessor's parcel number 023-110-004).
6. On 20 February and 18 April 2013, the Central Valley Water Board issued notices to the Discharger describing new water quality regulations and actions available to comply with the regulations. The Discharger did not obtain regulatory coverage and did not contact the Board.
7. On 19 July 2013, staff conducted an inspection of parcel 023-110-004 and found evidence of a commercial irrigated agricultural operation based on the crop grown and the size of the operation.
8. On 31 July 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Directive Letter (hereafter Directive) to the Discharger, 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.*" A copy of the Directive is provided as Attachment B.
9. The Directive required the Discharger to obtain regulatory coverage for their irrigated agricultural parcel *within 15 calendar days of receipt of the Directive*. As detailed in the Directive, Sinks could comply by joining the East San Joaquin Water Quality Coalition ("Coalition" or "ESJ Coalition"), or by submitting a Report of Waste Discharge.
10. The certified mail receipt for the Directive issued to the Discharger was signed as received by Bobby Sinks on 3 August 2013. Sinks did not obtain regulatory coverage by 19 August 2013 and did not contact the Water Board.
11. Because the Discharger failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Sinks on 30 August 2013.
12. The certified mail package for the NOV was returned in the mail with notes from the mail carrier indicating that the letter was "refused" by the recipient on 5 September 2013.
13. Staff attempted to contact the Discharger by phone to inform them of pending enforcement, but no working phone number was found.

14. On 19 February 2014, Board staff obtained a process server to deliver the Discharger with a notification letter that an Administrative Civil Liability (ACL) in the amount of \$3,540 would be issued if the Discharger did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 6 March 2014.
15. The proof of service receipt for the pre-ACL letter issued to the Discharger shows that the pre-ACL letter was received by Bob Sinks on 23 February 2014.
16. On 10 May 2014, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACL Complaint) R5-2014-0528 to the Discharger in the amount of three thousand five hundred forty dollars (\$3,540) for failing to obtain coalition membership or submit a RoWD as required by Water Code section 13260.
17. On 17 July 2014, the Discharger enrolled in the Coalition and paid the Coalition dues and back dues.

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. R5-2014-0528 pursuant to Water Code section 13261 is \$265,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of \$3,540 on the Dischargers for violations found herein to have been committed by the Dischargers.

[Name]
Hearing Panel Chair

Date