

HEARING PANEL REPORT

This matter was heard on November 4, 2016 in Fresno, California before a panel consisting of Central Valley Regional Water Quality Control Board members [Name], [Name], and [Name]. [Name] and [Name] were Panel Advisors. [Name] appeared on behalf of Joe Silveira (Discharger). [Name], [Name], [Name], and [Name] appeared for the Prosecution Team.

The Panel makes the following determinations:

FINDINGS OF FACT

1. Pursuant to California Water Code (Water Code) section 13323, subdivision (a), under the Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3 or East San Joaquin Order), Members are required to submit annual Farm Evaluation reports.
2. A person who fails to submit a technical report under Water Code section 13267 when so requested by the Board may be liable civilly under section 13268. The Board may impose such liability administratively in accordance with Water Code section 13323 in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.
3. On 7 December 2012, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or board), approved the Waste Discharge Requirements General Order (Order R5-2012-0116 or General Order) for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group and the General Order's corresponding Monitoring and Reporting Program.
4. The General Order serves as general waste discharge requirements under Water Code section 13263 for both direct and indirect waste discharges that result from runoff, leaching, irrigation water, and storm water, that could affect the ground or surface waters of the state. The Dischargers' agricultural parcel is located within the General Order's coverage area.
5. On 13 May 2013, Joe Silveira enrolled two parcels in the East San Joaquin Water Quality Coalition (Coalition) as a landowner and operator, thus obtaining coverage under the East San Joaquin Order. The parcels that the Discharger enrolled are Merced County Assessor's Parcel Numbers (APNs) 056-141-008 and 056-300-006. These parcels have a total area of 37 acres.

6. On 16 December 2015, the Central Valley Water Board staff requested that the Coalition provide a list of its members who failed to submit Farm Evaluations for 2013 and/or 2014. The Discharger appeared on this list.
7. On 22 February 2016, Board staff sent the Discharger a Notice of Violation (NOV) via certified mail for failure to submit the 2014 Farm Evaluation. The NOV urged the Discharger to submit the evaluation to the Coalition and warned that failure to do so may result in enforcement action by the Central Valley Water Board.
8. On 19 April 2016, the Coalition sent the Board a list of members who had not submitted the 2015 Farm Evaluation or the previous years' Farm Evaluations. The list indicated that the Discharger had not submitted the 2013, 2014 and 2015 Farm Evaluations.
9. On 8 August 2016, pursuant to Water Code section 13268, Andrew Altevogt, Assistant Executive Officer of the Central Valley Water Board and lead prosecutor for the Prosecution Team, issued an Administrative Civil Liability Complaint (ACL) R5-2016-0547 to the Discharger in the proposed amount of seventy thousand, nine hundred eighty dollars (\$70,980) for failing to submit the 2013, 2014 and 2015 Farm Evaluations as required by the Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3).
10. On 23 August 2016, the Discharger submitted the 2013, 2014, and 2015 Farm Evaluations to the Coalition following issuance of the ACL Complaint.
11. On 17 November 2008 the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors used to assess a penalty under Water sections 13327 and 13385 subdivision (e) including the Dischargers' culpability, history of violations, ability to pay and continue in business, economic benefit, and other factors as justice may require.
12. 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.
13. On considering the written record and evidence presented at the hearing, the Panel determined that an administrative civil liability of seventy thousand, nine hundred eighty dollars (\$70,980) should be imposed on the Discharger pursuant to Water Code section 13268 for violation of Water Code section 13267.

CONCLUSIONS OF LAW

1. The failure to submit a Farm Evaluation constitutes a violation of Water Code section 13323.
2. Pursuant to Water Code section 13268, 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. R5-2016-0547 pursuant to Water Code section 13268 is \$1,516,000.

RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

The Panel recommends that the Central Valley Regional Board impose administrative civil liability in the amount of \$70,980 on the Dischargers for violations found herein to have been committed by the Dischargers. A proposed Draft ACL Order is attached.

[Name]
Hearing Panel Chair

Date