
Central Valley Regional Water Quality Control Board

10 May 2014

David L. & Linda M. Davis Trust
David L. & Linda M. Davis, Trustees
21877 Avenue 5
Madera, CA 93637

CERTIFIED MAIL
7012 0470 0000 9904 3178

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0501, FOR DAVID L. & LINDA M. DAVIS TRUST

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13323. The Complaint alleges that David L. & Linda M. Davis Trust (hereafter collectively “Davis” or “Discharger”) failed to submit a Report of Waste Discharge (“RoWD”) as required under Water Code section 13260, and recommends an administrative civil liability pursuant to Water Code section 13261 in the amount of **eight thousand six hundred dollars (\$8,600)**.

Davis may:

- Pay the proposed administrative civil liability and waive the right to a hearing (Option 1 on the attached waiver form – see Attachment F);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options 2 or 3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **2 June 2014**, a hearing will be scheduled for the **7/8 August 2014** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Alex Mayer, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 20 May 2014**.

If you choose to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day public comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments

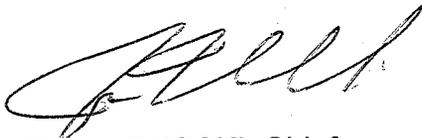
during this comment period, the Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to David L. & Linda M. Davis Trust and David L. & Linda M. Davis, Trustees only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Dana Kulesza at (916) 464-4847, or via e-mail at dana.kulesza@waterboards.ca.gov.



JOE KARKOSKI, Chief
Irrigated Lands Regulatory Program

Enclosure: ACL Complaint R5-2014-0501

cc: Pamela Creedon, Central Valley Water Board, Rancho Cordova
Kenneth Landau, Central Valley Water Board, Rancho Cordova
Rob L'Heureux, Central Valley Water Board, Rancho Cordova
Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Stevie McNeil, Madera County Agricultural Commissioner
Parry Klassen, East San Joaquin Water Quality Coalition

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0501

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

DAVID L. & LINDA M. DAVIS TRUST,
MADERA COUNTY

This Complaint is issued to David L. & Linda M. Davis Trust and David L. and Linda M. Davis, Trustees (hereafter "Davis" or "Discharger") pursuant to California Water Code section 13261, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on a finding of failure to submit a Report of Waste Discharge to 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. 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 (Water 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 (Water 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 Davis, 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 Davis owns approximately 668 acres of agricultural land in Madera County, including the following Assessor's Parcel Numbers [APN] and their respective acreages:

Madera County	
APN	Acres
040-171-008	177.7
040-111-013	76.7
040-171-007	138.6
040-111-012	78.5
044-290-022	157
040-031-003	39.4

6. On 6 February and 18 April 2013, the Central Valley Water Board issued notices to Davis describing new water quality regulations and actions available to comply with the regulations. Davis did not obtain regulatory coverage and did not contact the board.
7. On 21 June 2013, the Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (hereafter Directive) to Davis, 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 A.
8. The Directive required Davis to obtain regulatory coverage for their irrigated agricultural parcels *within 15 calendar days of receipt of the Directive*. As detailed in the Directive, Davis could comply by joining the East San Joaquin Water Quality Coalition ("Coalition" or "ESJ Coalition"), or by submitting a Report of Waste Discharge.
9. The certified mail receipt for the Directive issued to Davis was signed as received by Linda Davis on 24 June 2013. Davis did not obtain regulatory coverage by 9 July 2013 and did not contact the Water Board.
10. Because the Discharger failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Davis on 17 July 2013. A copy of the NOV is provided as Attachment B.
11. The certified mail receipt for the NOV was received and signed for by Linda Davis on 30 July 2013. The NOV required Davis to obtain regulatory coverage by 14 August 2013. Davis did not obtain regulatory coverage and did not contact the Water Board.
12. On 29 August 2013, staff conducted an inspection of parcel 044-290-022 and found evidence of a commercial irrigated agricultural operation based on the crop grown and the size of the operation. A copy of the inspection report is provided as Attachment C. Aerial imagery indicates that the additional five parcels owned by the Discharger also contain commercial irrigated agriculture (orchards and vineyards).

13. On 16 October 2013, staff sent Davis a notification letter via certified mail that an Administrative Civil Liability (ACL) in the amount of \$8,600 would be issued if Davis did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 1 November 2013. This letter is referred to as the "pre-ACL letter." A copy of the pre-ACL letter is provided as Attachment D.
14. The certified mail receipt for the pre-ACL letter issued to Davis shows that the pre-ACL letter was received by Davis on 23 October 2013.
15. Central Valley Water Board records indicate that at the time of issuance of this Complaint, board staff had not received a RoWD, proof of coalition membership, or a Notice of Intent from Davis. Davis also did not initiate settlement discussions with board staff per the pre-ACL letter.
16. On 28 January 2014, board staff reached Linda M. Davis by phone and advised her to resolve the pre-ACL letter within the next week. Staff explained that an ACL Complaint would soon be issued, to which Ms. Davis responded that she would have a family member contact board staff to resolve the matter. Board staff has not been subsequently contacted by Ms. Davis or her representative.

ALLEGED VIOLATIONS

17. Davis failed to submit a Report of Waste Discharge as required by Water Code section 13260. The Water Code section 13260 Directive Letter was issued to David L. & Linda M. Davis Trust on 21 June 2013 and required Davis to either submit a RoWD or, in lieu of submitting a RoWD, submit a Notice of Intent (NOI) to enroll in the East San Joaquin Water Quality Coalition. As of 10 May 2014, Davis' RoWD or NOI is 306 days past due.

REGULATORY CONSIDERATIONS

18. 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 (California Water Code Division 7).
19. Water Code section 13260, subdivision (a), requires that any 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 (RoWD) containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Davis lands are located.
20. 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).

21. 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.
22. The required RoWD is 306 days past due. The maximum liability under Water Code section 13261(b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of three hundred and six thousand dollars (\$306,000).
23. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional 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.
24. On 17 November 2010, 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.
25. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment E. The proposed civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
26. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2012-0116-R1 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
27. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$306,000. Water Code section 13261 does not specify a minimum penalty for violations of reporting requirements; however, the Enforcement Policy requires 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 that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll the six Madera County parcels in the East San Joaquin Water Quality Coalition is estimated at 170 dollars (see Attachment E for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$453).

28. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the conditions of the Dischargers' conditional waiver of waste discharge requirements and/or applicable orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.
29. Issuance of this Administrative Civil Liability 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(a)(2).

DAVID L. & LINDA M. DAVIS TRUST ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Davis be assessed **an administrative civil liability in the amount of eight thousand six hundred dollars (\$8,600)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code sections 13261 and 13323, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations. The calculation of the penalty amount is explained in Attachment E.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **7/8 August 2014**, unless Davis does either of the following by **2 June 2014**:
 - a) The Discharger waives the hearing by completing the waiver form provided as Attachment F (checking off the box next to Option 1). If this option is selected, the Discharger shall send a check for the proposed civil liability of **eight thousand six hundred dollars (\$8,600)** (payable to the State Water Pollution Cleanup and Abatement Account) to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814. The Waiver and copy of the check shall be 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. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, 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 legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.


for Andrew Altevogt, Assistant Executive Officer *Supervising WRCE*

9 May 2014

(Date)

- Attachment A: 21 June 2013 California Water Code section 13260 Order
- Attachment B: 17 July 2013 Notice of Violation for Failure to respond to 13260 Order
- Attachment C: Inspection Report
- Attachment D: 16 October 2013 pre-ACL letter
- Attachment E: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
- Attachment F: Waiver Form
- Attachment G: Hearing Procedures

ATTACHMENT A

21 June 2013
California Water Code 13260 Directive Letter

Note: the original 21 June 2013 Directive Order incorrectly numbered the two regulatory options as 47 and 48. The options should have been labelled as options 1 and 2.

Received by Discharger on 24 June 2013:



Central Valley Regional Water Quality Control Board

June 21, 2013

Davis, David L & Linda M TR
21877 Avenue 5
Madera, CA 93637

Certified Mail Number
7013 1090 0001 3130 3790

DIRECTIVE TO OBTAIN IRRIGATED LANDS REGULATORY COVERAGE
THIS LETTER CONTAINS LEGAL DIRECTIVES THAT MUST BE FOLLOWED
PLEASE READ THIS LETTER CAREFULLY
FAILURE TO RESPOND MAY RESULT IN FINES OF UP TO \$1,000 PER DAY

You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or board), you own the following parcels with irrigated cropland, which are subject to new regulations:

Table with 2 columns: County: Madera, and parcel numbers (040-171-008, 040-171-007, 044-290-022, 040-031-003, 040-111-013, 040-111-012)

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. All commercial irrigated lands within the Eastern San Joaquin River Watershed are now required to get regulatory coverage through one of the options described below. The General Order addresses the discharge of waste from irrigated lands to groundwater and surface water. Wastes discharged from irrigated lands include pesticides, fertilizers, pathogens, and sediment.

The Central Valley Water Board is requiring you to obtain regulatory coverage for your irrigated lands within 15 calendar days of receiving this letter. You may obtain regulatory coverage by either:

- 47. Submitting (a) a completed Notice of Intent (NOI; provided herein as an attachment) to the Central Valley Water Board to comply with the conditions of the General Order, (b) a State Water Board administrative processing fee of \$200 for the NOI, and (c) a membership application to the East San Joaquin Water Quality Coalition (Coalition). Upon submittal of a complete NOI, and after receiving confirmation from

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

the Coalition that the grower is now a member, the Central Valley Water Board Executive Officer will then issue a Notice of Applicability (NOA), after which the member will be considered covered under the General Order. The coalition conducts monitoring and submits reports to the Central Valley Water Board on its member's behalf.

You can obtain a Coalition membership application by contacting the Coalition at (209) 846-6112, or at www.esjcoalition.org. You should ask to speak with Katy Khatami; or

48. Submitting a Report of Waste Discharge²⁴(RoWD) to the Central Valley Water Board, along with the appropriate filing fee. When regulated individually, a grower must conduct their own monitoring and report directly to the Central Valley Water Board. Depending on the specific site conditions, growers are often required to monitor runoff from their property, install monitoring wells, and submit technical reports regarding their actions to comply with their Waste Discharge Requirements. Costs would include State administrative fees (for example, annual state fees for farm sizes from 11-100 acres are currently \$750 + \$5/acre); cost to prepare a report of waste discharge; and monitoring and reporting costs.

Please determine which form of regulatory coverage is best for you and submit the appropriate documents to:

Central Valley Water Board
Attn: Terry Bechtel
Irrigated Lands Regulatory Program
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Grounds for Issuing the Directive Order

Discharge from irrigated lands may be considered a "waste" under the California Water Code. Irrigating agricultural lands such as yours may result in discharges of waste to land/groundwater or to surface water that could affect the quality of waters of the state.

Board staff recently inspected the parcel or parcels listed in the table above and found commercial irrigated cropland. Accordingly, regulatory coverage is required for this land use. You must choose between the regulatory options presented above.

Exemptions to the Program

If you no longer own or operate the parcel(s), you still need to respond to this Directive Letter. Please provide a written response explaining your exemption (with any supporting documents) to the aforementioned address. Please be aware that board staff may contact you to verify your exemption claim.

²⁴ The form for completing the RoWD can be found online at: http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf. Submitting a RoWD may lead to issuance of Individual Waste Discharge Requirements (WDRs) for your irrigated lands. WDRs carry substantial permit fees and would likely require the development of a site-specific monitoring and reporting program. Board staff recommends that you discuss this option further with us before submitting a RoWD.

If you are a current coalition member and have received this notice, contact the coalition to add the above parcels to your membership. You must also notify the Water Board of the parcels you have enrolled, or you may be subject to fines. As stated above, if you no longer own or operate the parcel(s), you still need to respond to this Directive Letter.

Legal Authority

Water Code section 13260 states, in relevant part:

(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any 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.

You must respond to this Directive Letter within **15 calendar days of receiving it**. Under California Water Code section 13261, failing to submit a RoWD when requested by the Board may result in the Central Valley Water Board assessing an administrative civil liability against you. Administrative civil liability can run as high as \$1,000 per day for every day the report is late.

For general information about the Central Valley Water Board's Irrigated Lands Regulatory Program, please visit:

http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/index.shtml

If you have any further questions about what is required of you, please contact Terry Bechtel at (916) 464-4720 or via email at tbechtel@waterboards.ca.gov.

Para obtener más información en español (formularios u otra información), por favor contáctenos al telefono (916) 464-4611 o vía email a: lrrlands@waterboards.ca.gov.



for PAMELA C. CREEDON
Executive Officer

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Davis, David L & Linda M TR
21877 Avenue 5
Madera, CA 93637

2. Article Number
(Transfer from service label)

7013 1090 0001 3130 3790

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Linda Davis* Agent
 Addressee

B. Received by (Printed Name) *Linda Davis* C. Date of Delivery *6-13*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

6/24/13

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

ATTACHMENT B

17 July 2013

Notice of Violation for Failure to respond to a CWC 13260 Directive Letter

Received by Discharger 30 July 2013



Central Valley Regional Water Quality Control Board

17 July 2013

Davis, David L & Linda M TR
21877 Avenue 5
Madera, CA 93637

Certified Mail Number
7012 0470 0000 9903 9485

NOTICE OF VIOLATION

FAILURE TO OBTAIN IRRIGATED LANDS REGULATORY COVERAGE UNDER CALIFORNIA WATER CODE SECTION 13260

FAILURE TO RESPOND MAY RESULT IN FINES OF UP TO \$1,000 PER DAY

You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or board), you own the following parcels with irrigated cropland, which are subject to new regulations:

Table with 4 columns: County: Madera, 040-171-008, 040-171-007, 044-290-022, 040-031-003, 040-111-013, 040-111-012

On 21 June 2013, the California Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board) Executive Officer issued you a directive to obtain irrigated lands regulatory coverage pursuant to California Water Code section 13260 (Directive Letter). The Directive Letter required you to either join a coalition group or submit a report of waste discharge for irrigated agricultural lands that you may own or operate which discharge waste to waters of the State. As stated in the Directive Letter, discharge from irrigated lands may be considered a "waste" under the California Water Code. Irrigating agricultural lands such as yours may result in discharges of waste to land/groundwater or to surface water that could affect the quality of waters of the state. Board staff recently inspected the parcel or parcels listed in the table above and found commercial irrigated cropland. Accordingly, regulatory coverage is required for this land use. You must choose between the regulatory options presented above.

Central Valley Water Board records indicate that (1) you received the Directive Letter by certified mail, and (2) you have not enrolled your irrigated lands in one of the aforementioned options within the 15 calendar days as required. This letter serves as notice that you are in violation of the Directive Letter. For your information a copy of the original Directive Order has been attached to this Notice of Violation.

Pursuant to the Directive Letter, you were required to determine which option was appropriate for your situation and submit the appropriate documents to:

**Central Valley Water Board
Attn: Terry Bechtel
Irrigated Lands Regulatory Program
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670**

Water Code section 13260 states, in relevant part:

(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any 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.

You must take one of the following actions within 15 calendar days:

1. Submitting (a) a completed Notice of Intent (NOI; provided herein as an attachment) to the Central Valley Water Board to comply with the conditions of the General Order, (b) a State Water Board administrative processing fee of \$200 for the NOI, and (c) a membership application to the East San Joaquin Water Quality Coalition (Coalition). Upon submittal of a complete NOI, and after receiving confirmation from the Coalition that the grower is now a member, the Central Valley Water Board Executive Officer will then issue a Notice of Applicability (NOA), after which the member will be considered covered under the General Order. The coalition conducts monitoring and submits reports to the Central Valley Water Board on its member's behalf.

You can obtain a Coalition membership application by contacting the Coalition at (209) 846-6112, or at www.esicoalition.org. You should ask to speak with Katy Khatami; or

2. Submitting a Report of Waste Discharge¹⁰(RoWD) to the Central Valley Water Board, along with the appropriate filing fee. When regulated individually, a grower must conduct their own monitoring and report directly to the Central Valley Water Board. Depending on the specific site conditions, growers are often required to monitor runoff from their property, install monitoring wells, and submit technical reports regarding their actions to comply with their Waste Discharge Requirements. Costs would include State administrative fees (for example, annual state fees for farm sizes from 11-100 acres are currently \$750 + \$5/acre); cost to prepare a report of waste discharge; and monitoring and reporting costs.

¹⁰ The form for completing the RoWD can be found online at: http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf. Submitting a RoWD may lead to issuance of Individual Waste Discharge Requirements (WDRs) for your irrigated lands. WDRs carry substantial permit fees and would likely require the development of a site-specific monitoring and reporting program. Board staff recommends that you discuss this option further with us before submitting a RoWD.

If you fail to take one of the actions described above, the Central Valley Water Board may impose penalties of up to \$1,000 per day pursuant to Water Code section 13261.

Water Code section 13261 states, in relevant part:

(a) Any person failing 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).

(b) (1) Civil liability may be administratively imposed by a regional board ... in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

For general information about the Central Valley Water Board's Irrigated Lands Regulatory Program, please visit:

http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/index.shtml

If you have any further questions, please contact Terry Bechtel at (916) 464-4720 or via email at tbechtel@waterboards.ca.gov.

Para obtener más información en español por favor contáctenos al teléfono (916) 464-4720 o vía email a: tbechtel@waterboards.ca.gov.



JOE KARKOSKI, Chief, Irrigated Lands Regulatory Program

Attachments: 21 June 2013 Directive Order,
Notice of Intent

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. **TB**
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Davis, David L & Linda M TR
 21877 Avenue 5
 Madera, CA 93637

2. Article Number

(Transfer from service label)

7012 0470 0000 9903 9485

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Linda Davis Agent AddresseeB. Received by (*Printed Name*)

LINDA DAVIS

C. Date of Delivery

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.4. Restricted Delivery? (*Extra Fee*) Yes

ATTACHMENT C

August 2013

Inspection Report

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

Ownership Information:

Owner(s):	Davis, David L & Linda M TR	Coalition:	ESJWQC	County:	Madera
Parcel Number:	044-290-022	Acres:	148.1	All Info I.D. #	1912

Inspection Findings:

Date Inspected:	8/29/2013
Inspected By:	WO & DK
Results:	Commercially Irrigated Agriculture
Crop type:	Vineyards
Irrigation Method:	Drip
Other/Notes:	

Inspection Photo: 044-290-022.JPG



Approved: 

ATTACHMENT D

16 October 2013

Pre-Administrative Civil Liability (ACL) letter

Delivery confirmation provided by USPS website, as the signed certified mail receipt was not received by the Water Board:



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

16 October 2013

David L. & Linda M. Davis Trust
21877 Avenue 5
Madera, CA 93637

Certified Mail No.
7012 0470 0000 9904 3130

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13260, DAVID L. & LINDA M. DAVIS TRUST, MADERA, MADERA COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint), and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to comply with the California Water Code. **Please read this notice carefully.**

On 6 February 2013 and 18 April 2013, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) issued notices to you describing new water quality regulations and actions available to comply with the regulations.

On 21 June 2013, the Central Valley Water Board issued a Directive Order pursuant to California Water Code section 13260 (13260 Directive) by certified mail that required you to obtain regulatory coverage within fifteen (15) days for irrigated lands that you may own or operate.

On 17 July 2013, the Central Valley Water Board issued a Notice of Violation pursuant to California Water Code section 13260 (NOV) by certified mail that requested you obtain regulatory coverage for irrigated lands that you may own or operate.

Central Valley Water Board records indicate that you (1) own parcels 040-031-003, 040-111-012, 040-111-013, 040-171-007, 040-171-008, and 044-290-022 in Madera County that contain irrigated agriculture; (2) received a 13260 Directive and a Notice of Violation by certified mail requiring you to obtain regulatory coverage for such parcels; and (3) have not to date obtained regulatory coverage.

Legal Authority

Water Code section 13260 states, in relevant part:

“(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

- (1) Any 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.”

Under California Water Code section 13261, failing to submit a Report of Waste Discharge when requested by the Central Valley Water Board may result in an administrative civil liability against you of up to \$1,000 per day for every day the report is late.

As of 16 October 2013, your obtainment of regulatory coverage is 118 days overdue. The **maximum penalty** for the violation described above is **one hundred eighteen thousand dollars (\$118,000)** based on a calculation of the total number of per-day violations times the statutory maximum penalty (118 total days of violation multiplied by \$1,000). The Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you in the amount of **eight thousand six hundred dollars (\$8,600)** for this violation. This recommended penalty amount is based on information contained in the Central Valley Water Board's files and takes into account the factors set forth in the State Water Resources Control Board's Water Quality Enforcement Policy, including your culpability, cleanup and cooperation, history of violations, ability to pay and continue in business, and other factors as justice may require. The full Enforcement Policy may be found here: http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violations and proposed penalty amount. This meeting affords you the opportunity to potentially reduce the recommended penalty amount if you present new information to the Central Valley Water Board staff regarding the factors listed above, or other information you believe is relevant to determining an appropriate monetary penalty.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring supporting documentation with you to the meeting. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing the Complaint. To avoid further liability, you are urged to obtain regulatory coverage.

In order to initiate any discussions to settle this matter, you must contact Brett Stevens at (916) 464-4642 by **1 November 2013** to schedule a day and time to meet with Central Valley Water Board staff. If you do not respond by this date, the Assistant Executive Officer will issue you a Complaint in the proposed penalty amount and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board; or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency. Failure to respond may also result in a larger fine than that cited in this letter, since each day of non-compliance is a maximum of an additional \$1,000.

Before settlement discussions can occur, you must get the required regulatory coverage by providing a completed Notice of Intent (NOI) and submitting the appropriate fee (\$50). You can enroll under the Waste Discharge Requirements General Order (Order R5-2012-0116 or Coalition Order) for Growers within the Eastern San Joaquin River Watershed who are Members of the Third-Party (or Coalition) Group (NOI enclosed); or you can submit an NOI (also enclosed) for coverage under 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 or Individual Order).

The Individual Order is significantly more expensive than coalition membership, so most growers choose to join a coalition. Here are cost estimates for your irrigated lands under the two regulatory options:

Estimated cost of 2013 regulatory coverage under the Individual General Order:

Farm Size	Annual Regulatory Fee	Annual Estimated Monitoring and Reporting Costs	Estimated Annual Costs
660 acres	\$5,320	\$35,890 ¹	\$41,211

Cost of 2013 regulatory coverage as a member of the East San Joaquin Water Quality Coalition:

Farm Size	Annual cost for first year of coalition membership (includes monitoring and reporting)	Annual cost for following years (including monitoring & reporting)	Estimated Annual Costs
660 acres	\$5,990	\$2,690	\$5,990 to \$2,690

Once you've made your decision, complete the appropriate NOI, enclose the administrative fee of \$50, and return these to the following:

Central Valley Water Board
Attn: Brett Stevens
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Failure to get regulatory coverage may result in a board hearing in which you will be issued coverage under the Individual Order.

If you have any questions, please contact Brett Stevens by phone at (916) 464-4642 or by email at bstevens@waterboards.ca.gov.

Original signed by

Joe Karkoski, Chief
Irrigated Lands Regulatory Program

cc: Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Andrew Tauriainen, SWRCB Office of Enforcement

¹ See pages 33-35 of Attachment A (Information Sheet) to Order R5-2013-0100. Specifically, the per-acre estimate of monitoring, reporting, and tracking costs under this order provided in Table 3 on page 35 (\$54.38) was used to estimate costs for this operation.

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7012 0470 0000 9904 3130

Sent To David L. & Linda M. Davis Trust
 Street, Apt. No., or PO Box No. 218 77 Avenue S
 City, State, ZIP+4 Madera, CA 93637

PS Form 3800, August 2006 See Reverse for Instructions

Product & Tracking Information

Postal Product: Certified Mail™ Features: Certified Mail™

October 23, 2013, 1:18 pm	Delivered	MADERA, CA 93637
October 19, 2013, 2:54 pm	Notice Left	MADERA, CA 93637
October 18, 2013, 10:11 pm	Processed at USPS Origin Sort Facility	FRESNO, CA 93706
October 18, 2013	Depart USPS Sort Facility	FRESNO, CA 93706
October 17, 2013	Depart USPS Sort Facility	WEST SACRAMENTO, CA 95799
October 17, 2013, 7:59 pm	Processed at USPS Origin Sort Facility	WEST SACRAMENTO, CA 95799
October 17, 2013, 6:40 pm	Dispatched to Sort Facility	RANCHO CORDOVA, CA 95670
October 17, 2013, 1:23 pm	Acceptance	RANCHO CORDOVA, CA 95670

Available Options

ATTACHMENT E

Calculation of Penalty per SWRCB
Water Quality Enforcement Policy

Calculation of Penalty per SWRCB Water Quality Enforcement Policy

The proposed administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (the "Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version date 2/4/2014" (the "Penalty Calculation Worksheet"). 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.

Each factor of the Enforcement Policy and its corresponding score for the violation is presented below:

Calculation of Penalty for Violation

Step 1. Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The Discharger here has failed to submit a Report of Waste Discharge or enroll under an applicable General Order for discharges from irrigated cropland despite evidence indicating that they irrigate cropland. Irrigated cropland can be a source of sediment, pesticide residue, nitrate, and other waste discharged to the waters of the state. Unregulated discharges of such wastes can present a substantial threat to beneficial uses and/or indicate a substantial potential for harm to beneficial uses.

Using table 3 in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) staff has determined that the "Potential for Harm" is moderate, because the characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. The Discharger's failure to file a RoWD or to enroll under an applicable General Order for irrigated cropland undermines the collection of monitoring data, which is necessary to identify geographical areas in which growers need to improve management practices to reduce pollution discharges. The violation, thus, has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern.

The "Deviation from the Requirement" is major. Davis has undermined the efforts of the Central Valley Waters Boards Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for their waste discharges. The requirement has been rendered ineffective. Based on the above factors, a 'per day' factor of 0.55 is appropriate (see table 3 in the Enforcement Policy).

On 21 June 2013, the Discharger was served a Directive Letter pursuant to California Water Code section 13260 (Directive), which required them to obtain regulatory coverage within 15 calendar days or face a potential civil liability. The 13260 Directive

was received by the Discharger on 24 June 2013, so regulatory coverage was required by 9 July 2013.

As of 10 May 2014, the Discharger is 306 days late in meeting that requirement. The maximum liability under Water Code section 13261(b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of three hundred and eight thousand dollars (\$306,000).

Step 4. Adjustment Factors

a) *Culpability*: 1.5

Discussion: The Discharger was given the score of 1.5, which increases the fine. Davis has willfully disregarded its obligation to obtain the required regulatory coverage, after receiving five letters from the Water Board, at least three of which were definitely received by the discharger as exemplified by the certified mail receipts.

b) *Cleanup and Cooperation*: 1.2

Discussion: The Discharger was given the score of 1.2, which increases the fine because the Discharger has not been cooperative. Cleanup is not applicable here. Davis has, however, been unresponsive to Central Valley Water Board staff's attempts to contact the Discharger and resolve the violation.

c) *History of Violations*: 1.0

Discussion: The Discharger was given the score of 1.0, as there is no evidence that Davis has a history of violations

Multiple Day Violations: Violations under Water Code section 13260 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy (page 30). The failure to submit a RoWD does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of one day for each thirty days of violation thereafter. Applying this assessment method on the total 306 violation days reduces the assessed penalty days to 16.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

a) *Total Base Liability Amount*: **\$15,840**. (Initial Liability (\$1,000/day x 16 days x 0.55) x Adjustments (1.5)(1.2)(1.0)).

BASE LIABILITY AND FACTORS APPLIED TO THE VIOLATION

The Base Liability Amount for the Violation is \$15,840. The following factors apply to the Base Liability Amount for the violation.

Step 6. Ability to Pay and Continue in Business

a) Adjusted Base Liability Amount: \$15,840

Discussion: As per the Enforcement Policy, “[t]he ability of a discharger to pay an ACL is determined by its revenues and assets.” The Discharger has the ability to pay based on 1) Value of property owned by the Discharger, a significant asset with a 2013-2014 assessed value of the six Madera County parcels listed in the 13260 Order at \$4,296,413 according to the Madera County Assessor’s office; 2) Discharger owns approximately 233 acres of almonds and/or stone fruit and 434 acres of grapes in Madera County, which generated approximately \$15,480,000 in 2012¹; and 3) Davis has received an estimated \$84,320 in farm subsidies from the United States Department of Agriculture from 1995 through 2012².

Step 7. Other Factors as Justice May Require

Base Liability Amount: \$15,840

Discussion: As described in the previous sections, application of the Enforcement Policy Penalty Calculation Methodology here results in a proposed penalty of \$15,840. However, the Enforcement Policy Penalty Calculation Methodology does not address the differences in size between various operations subject to the RoWD requirements. In other words, an operation ten times the size of Davis’s, or one-tenth the size, would be subject to the same penalty for the same number of violation days. The Prosecution Team believes that this result would be inappropriate. The Prosecution Team, therefore, proposes to adjust the penalty here to account for the size of the operation. Given the size of the Discharger’s operation, and in consideration of the factors applied above, the Assistant Executive Officer has elected to impose a reduced penalty of **eight thousand six hundred dollars \$8,600** (\$10 per acre plus \$2,000).

Step 8. Economic Benefit

Economic Benefit: \$412

Discussion: Economic Benefit was calculated using the United States Environmental Protection Agency’s (US EPA) Economic Benefit Model (BEN)³

¹ Information provided by the 2012 Madera County Agricultural Crop Report, available at <http://www.madera-county.com/index.php/publications/crop-reports>

² Information provided from farm.ewg.org.

³ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>

penalty and financial modeling program, version 5.4.0. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes. Economic benefit was calculated based on the assumption that the Discharger will choose to join the Coalition. If the Discharger joins the Coalition, there is no avoided cost, because the Discharger will be required to pay the Coalition its unpaid membership dues for prior years.

a) 2013 Unpaid Dues and 2014 Dues

The economic benefit associated with the failure to submit a RoWD or NOI to enroll in the Coalition is the delayed cost of failing to obtain regulatory coverage by 9 July 2013. The ESJ Coalition is currently charging new members \$50 plus \$9 per acre for prior years' unpaid dues, plus \$3.75 for 2014 dues. Consequently, when the Discharger pays membership dues in 2014, the fee will include \$9 per acre for the prior unpaid years (2013) plus \$3.75 per acre for 2014. The economic benefit for these delayed costs is \$412.

Step 9. Maximum and Minimum Liability Amounts

a) Minimum Liability Amount: \$453

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this memo is \$412. Therefore, the minimum liability is \$453.

b) Maximum Liability Amount: \$306,000

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13261, which is \$1,000 for each day in which the violation occurs.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for failure to submit a RoWD under California Water Code section 13260 is **\$8,600**.

ATTACHMENT F

Waiver Form
For ACL Complaint

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent David L. & Linda M. Davis Trust, David L. & Linda M. Davis, Trustees (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0501 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.

a. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **eight thousand six hundred dollars (\$8,600)** by check that references "ACL Complaint R5-2014-0501" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by **2 June 2014**.

b. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

- (OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT G

Hearing Procedures

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2014-0501

ISSUED TO
DAVID L. & LINDA M. DAVIS TRUST
DAVID L. & LINDA M. DAVIS, TRUSTEES
MADERA COUNTY

SCHEDULED FOR 7/8 AUGUST 2014

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to David L. & Linda M. Davis Trust, David L. & Linda M. Davis, Trustees (Dischargers), alleging violations of Water Code section 13260 by failing to submit a Report of Waste Discharge after being requested by the Regional Water Board under Water Code section 13260. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$8,600. A hearing is currently scheduled to be conducted before the Board during its 7/8 August 2014 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein,

Chapter 5 of the Administrative Procedures Act (Gov't Code, § 11500 et seq.) does not apply to this hearing.

The procedures and deadlines herein may be amended by the Advisory Team in its discretion. Objections to the hearing procedures must be received by the Central Valley Water Board's Advisory Team **no later than 5:00 p.m. 20 May 2014**, or they will be waived. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony. The Dischargers shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. David L & Linda M. Davis Trust, David L. & Linda M. Davis, Trustees

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

Alex Mayer, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5051; fax: (916) 341-5199
alex.mayer@waterboards.ca.gov

Prosecution Team:

Andrew Altevoigt, Assistant Executive Officer
Joe Karkoski, Supervisory Water Resource Control Engineer
Brett Stevens, Senior Environmental Scientist
Dana Kulesza, Engineering Geologist
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4642; fax: (916) 464-4780
bstevens@waterboards.ca.gov

Naomi Kaplowitz, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5677; fax: (916) 341-5896
naomi.kaplowitz@waterboards.ca.gov

Discharger

David L. & Linda M. Davis Trust
David L. & Linda M. Davis, Trustees
21877 Avenue 5
Madera, CA 93637

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Pamela Creedon, Executive Officer, Kenneth Landau, Assistant Executive Officer, and Alex Mayer, Staff Counsel. Members of the Prosecution Team are: Andrew Altevoigt, Assistant Executive Officer, Joe Karkoski, Supervising WRCE, Brett Stevens, Senior ES, Dana Kulesza, EG, and Naomi Kaplowitz, Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Andrew Altevoigt regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team. However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all designated parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a **combined 30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair will likely exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Brett Stevens (contact information above) for assistance obtaining copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

10 May 2014	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
20 May 2014	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request “Designated Party” status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
26 May 2014	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
2 June 2014	<ul style="list-style-type: none"> ▪ Discharger’s deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
9 June 2014*	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
16 June 2014*	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence and Policy Statements,” above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
7 July 2014*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence and Policy Statements” above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons’ comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
14 July 2014*	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
17 July 2014*. [†]	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
7/8 August 2014*	<ul style="list-style-type: none"> ▪ Hearing

** Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “*” will be revised if a settlement cannot be reached.*

† This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages