

## Central Valley Regional Water Quality Control Board

8 August 2016

Brooks & Arlene Rushing,  
Trustee of the Brooks J & Arlene J Rushing Trust  
2030 N Washington Rd  
Turlock, CA 95380

Certified Mail No.  
7013 2250 0000 3465 0592

***ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0546, BROOKS AND ARLENE RUSHING, AS INDIVIDUALS AND IN THEIR REPRESENTATIVE CAPACITY AS TRUSTEES FOR THE BROOKS J AND ARLENE J RUSHING TRUST***

Enclosed is an Administrative Civil Liability (ACL) Complaint, issued pursuant to California Water Code section 13323. This ACL Complaint alleges that Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust (Dischargers) failed to submit a Report of Waste Discharge as required under Water Code section 13260, and recommends an administrative civil liability pursuant to Water Code section 13261 in the amount of **thirty four thousand three hundred twenty dollars, (\$34,320)**.

You 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—see Attachment F); or
- Contest the ACL 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 **5:00 p.m. on 24 August 2016**, a hearing will be scheduled for **3/4 November 2016** before a panel of the Central Valley Water Board. This hearing will be governed by the attached Hearing Procedure and held at 1685 E Street, Fresno, California. Any objections to the Hearing Procedure must be received by Andrew Deeringer, whose contact information is listed in the Hearing Procedure, by **5:00 p.m. on 18 August 2016**.

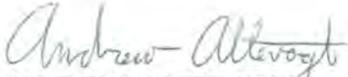
If the Dischargers would like to engage in settlement negotiations and assert an inability to pay the proposed liability, they should submit detailed financial information to the Central Valley Water Board along with a waiver requesting settlement discussions by **24 August 2016**. Appropriate documentation includes the last three years of signed federal income tax returns and schedules, 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.

In order to conserve resources, this letter transmits paper copies of the documents to the Dischargers 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/](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 Rancho Cordova 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 Lisa Wilson at (916) 464-4844, or via e-mail at [Lisa.Wilson@waterboards.ca.gov](mailto:Lisa.Wilson@waterboards.ca.gov).

  
ANDREW ALTEVOGT  
Assistant Executive Officer

Enclosure: ACL Complaint R5-2016-0546

cc via email: Pamela Creedon, Central Valley Water Board, Rancho Cordova  
Adam Laputz, Central Valley Water Board, Rancho Cordova  
Rob L'Heureux, Central Valley Water Board, Rancho Cordova  
Kailyn Ellison, Office of Enforcement, SWRCB, Sacramento  
Andrew Deeringer, Office of Chief Counsel, SWRCB, Sacramento  
Parry Klassen, East San Joaquin Water Quality Coalition  
Don H. Gaekle, Stanislaus County Agricultural Commissioner

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0546

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

BROOKS AND ARLENE RUSHING,  
AS INDIVIDUALS AND IN THEIR REPRESENTATIVE CAPACITY AS TRUSTEES FOR  
THE BROOKS J & ARLENE J RUSHING TRUST  
STANISLAUS COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code<sup>1</sup> section 13323 to Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust (Dischargers) for failing to submit a Report of Waste Discharge required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

**BACKGROUND**

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050(e).) The Central Valley Water Board is required to regulate discharges to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of the Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-Party Group (Order R5-2013-0100) 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-R3) 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 Stanislaus 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.
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

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<sup>1</sup> All references to the Water Code refer to the California Water Code unless otherwise noted.

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.

5. Evaluation of county assessor and FMMP data indicates that the Dischargers own approximately 38 acres of land, identified as Stanislaus County Assessor's Parcel Numbers (APNs) 088-009-014, 088-009-024, and 088-009-029. Based on field and aerial inspections, staff estimates the parcels to total about 30 acres of land irrigated for a commercial purpose that require regulatory coverage.
6. On 20 February 2013 and 18 April 2013, the Central Valley Water Board issued notices to the Dischargers describing new water quality regulations and options available to comply with the regulations. Copies of the notices are provided as Attachment A.
7. On 16 September 2013 Board staff conducted field inspections on two of the Dischargers' Stanislaus County parcels from public roadways and found evidence of commercial irrigated agricultural operations based on the type of crop, almonds, and the size of the operation, over 30 acres. Copies of the inspection reports are provided as Attachment B.
8. On 9 May 2014, 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 was sent based on information that the subject parcels contained commercially irrigated land without regulatory coverage. The Directive required the Dischargers to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. A copy of the Directive is provided as Attachment C.
9. The Dischargers received the Directive on 14 May 2014. The Dischargers were required to obtain regulatory coverage by 29 May 2014. The Dischargers neither obtained regulatory coverage by 29 May 2014 nor contacted the Board. A copy of the mail receipt is included with the Directive in Attachment C.
10. Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent to the Dischargers via certified mail on 30 June 2014. The Dischargers received the NOV on 2 July 2014. A copy of the NOV and the certified mail receipt are provided as Attachment D.
11. Based on Board staff inspection of the parcels, the property does not appear to have a potential to discharge to surface waters.
12. Central Valley Water Board records indicate that as of the date of issuance of this ACL Complaint, the Dischargers have yet to obtain regulatory coverage.

### **ALLEGED VIOLATIONS**

13. The Dischargers failed to obtain coalition membership or submit a Report of Waste Discharge as required by Water Code section 13260. The Directive issued to the Dischargers required either submittal of a RoWD or, in lieu of submitting a RoWD, submittal of a Notice of Intent (NOI) to enroll in and join a coalition. As of 8 August 2016, the Dischargers are 802 days past due in obtaining regulatory coverage.

### **REGULATORY CONSIDERATIONS**

14. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).
15. 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 containing such information and data as may be required by the regional board. The Central Valley Regional Board implements Water Code section 13260 in the area where the Dischargers' lands are located.
16. 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)."
17. 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.
18. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
19. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became

effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing an administrative civil liability as outlined in Water Code section 13327.

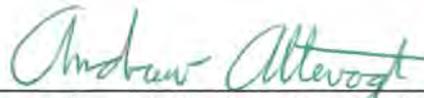
20. This proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment E. The proposed administrative civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
21. **Maximum and Minimum Penalties.** As described above, the statutory maximum penalty under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. As of the date of this ACL Complaint, the Dischargers were out of compliance for 802 days, thus resulting in a maximum penalty of \$802,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Dischargers resulting from the failure to enroll under Order R5-2013-0100 is estimated at \$7,395 (see Attachment E for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$8,135).
22. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
23. Issuance of this ACL Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

#### **DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Dischargers be assessed **an administrative civil liability in the amount of thirty four thousand three hundred twenty dollars (\$34,320)**. The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the proposed penalty amount is explained in Attachment E.
2. A hearing on this matter will be conducted before a hearing panel of the Central Valley Water Board on **3/4 November 2016**, unless the Dischargers do any of the following by **24 August 2016**.
  - a) The Dischargers waive the right to a hearing by completing the waiver form provided as Attachment F (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability of **thirty four thousand three hundred twenty dollars (\$34,320)**. The check must

be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814 with a copy of the check mailed to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; OR

- b) The hearing panel agrees to postpone any necessary hearing after the Dischargers request 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 hearing panel agrees to postpone any necessary hearing after the Dischargers request a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.
3. The hearing will be governed by the Hearing Procedure, which is provided as Attachment G. During the hearing, the hearing panel may choose to recommend that the Central Valley Water Board affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
  4. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal, and expert witness costs) incurred after the date of the issuance of this ACL Complaint, and through completion of the hearing.



Andrew Altevoigt, Assistant Executive Officer



(Date)

- Attachment A: February 2013 and April 2013 Outreach Notices
- Attachment B: September 2013 Inspection Report
- Attachment C: May 2014 Water Code section 13260 Directive
- Attachment D: June 2014 Notice of Violation
- Attachment E: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
- Attachment F: Hearing Waiver Form
- Attachment G: Hearing Procedure
- Attachment H: ACL Fact Sheet



ATTACHMENT A

February 2013 and April 2013 Outreach Notices





EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

20 February 2013

Rushing, Brooks J TRS & Rushing Arlene J  
2030 N Washington Rd  
Turlock CA 95380

**New Water Quality Regulations Require You to Act Now**

**Nuevas Regulaciones de Calidad de Agua Requieren que usted Responde Inmediatamente**

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

**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.**

<b>County:</b> Stanislaus			
088-009-014			
088-009-029			
088-009-024			
088-009-025			

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.

Based on information available to us, you own one or more parcels with irrigated cropland within the Eastern San Joaquin River Watershed. The parcel number(s) for your property that prompted this letter are included above as a reference. Pursuant to California Water Code section 13260, you must obtain regulatory coverage for that irrigated cropland. Failure to obtain the regulatory coverage outlined above may result in penalties of up to \$1,000 per day pursuant to Water Code section 13261.

**What Do Landowners or their Tenant Farmers Need to Do?**

If you are the owner of commercial irrigated lands and you are **NOT** currently a member of the East San Joaquin Water Quality Coalition (Coalition), you have three options.

1. **Join the Coalition by 13 May 2013.** The Central Valley Water Board worked closely with agricultural and other interests to develop a cost effective program for complying with the State's water quality law. Under the General Order, the landowner, or your tenant, may enroll your irrigated agricultural parcel(s) directly with the Coalition (see next page). To take advantage of this option, you must enroll your parcel(s) with the Coalition by **13 May 2013**. After that date, landowners must apply to the Central Valley Water Board to join a Coalition. Additional fees will apply to applications after 15 May 2013 and the board has the discretion to reject the application and regulate the landowner directly.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers.** The Central Valley Water Board is currently considering the adoption of general Waste Discharge Requirements for landowners who chose not to join a Coalition group (anticipated adoption is in May 2013). Board staff anticipates that costs and requirements will be similar to Option 3. However, the process for getting regulatory coverage will be simplified with the submission of a Notice of Intent, rather than a report of waste discharge.
3. **Obtain an Individual Permit<sup>658</sup>.** You can apply to have your own individual Waste Discharge Requirements (a permit). Depending on the specific site conditions, growers with their own individual WDRs 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 fees for farm sizes from 10-100 acres are currently \$750 + \$5/acre); cost to prepare a report of waste discharge; and monitoring and reporting costs.

**You do NOT need regulatory coverage under this Order if:**

- Your commercial irrigated lands are covered by the General Order for Existing Milk Cow Dairies (R5-2007-0035) or NPDES Dairy General Permit CAG015001 (Dairy General Orders). Please notify board staff of your parcels that have Dairy General Order coverage so you do not receive further inquiries from the board regarding regulatory coverage of those parcels (see next page).
- **If your agricultural-zoned property is not used for commercial irrigated agriculture**, please notify board staff so you do not receive further inquiries from the board regarding regulatory coverage under this Order.

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<sup>658</sup> The form for completing the Application (referred to as a Form 200 - Report of Waste Discharge) can be found online at: [http://www.waterboards.ca.gov/publications\\_forms/forms/docs/form200.pdf](http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf). You may be requested by the Executive Officer to submit additional information to supplement the data provided in Form 200.

**Who Do I Contact to Join the Coalition or Get More Information?**

**Contact the Coalition** - To join the East San Joaquin Water Quality Coalition, or to get more information about this new requirement, call (209) 522-7278 and ask to speak with Wayne Zipser or Candy Hill or go to [www.esjcoalition.org](http://www.esjcoalition.org). Also, check the website for dates on informational meetings for new Members and those thinking of joining the Coalition scheduled for March 2013.

**Contact the Central Valley Water Board** - To learn more about the Irrigated Lands Regulatory Program, you can visit our website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/). If you have questions regarding the Irrigated Lands Regulatory Program, you can call our phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).



PAMELA C. CREEDON  
Executive Officer



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## Central Valley Regional Water Quality Control Board

18 April 2013

Rushing, Brooks J TRS & Rushing Arlene J  
2030 N Washington Rd  
Turlock CA 95380

### Final Notice New Water Quality Regulations Require You to Act Now

### Nuevas Regulaciones de Calidad de Agua Requieren que usted Responde Inmediatamente

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

If you are the owner of commercial irrigated lands and you are **NOT** currently a member of the East San Joaquin Water Quality Coalition (Coalition), you have three options.

- 1. Join the Coalition by 13 May 2013.** The Central Valley Water Board worked closely with agricultural and other interests to develop a cost effective program for complying with the State's water quality law. Under the General Order, the landowner, or your tenant, may enroll your irrigated agricultural parcel(s) directly with the Coalition (see next page). To take advantage of this option, you must enroll your parcel(s) with the Coalition by **13 May 2013**. After that date, landowners must apply to the Central Valley Water Board to join a Coalition. Additional fees will apply to applications after 15 May 2013 and the board has the discretion to reject the application and regulate the landowner directly.
- 2. Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers.** The Central Valley Water Board is currently considering the adoption of general Waste Discharge Requirements for landowners who chose not to join a Coalition group. Board staff anticipates that costs and requirements will be similar to Option 3. However, the process for getting regulatory coverage will be simplified with the submission of a Notice of Intent, rather than a report of waste discharge.
- 3. Obtain an Individual Permit<sup>1</sup>.** You can apply to have your own individual Waste Discharge Requirements (a permit). Depending on the specific site conditions, growers with their own individual WDRs would likely be 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 fees for farm sizes from 10-100 acres are currently \$750 + \$5/acre); cost to prepare a report of waste discharge; and monitoring and reporting costs.

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**You do NOT need regulatory coverage under this Order if:**

- Your commercial irrigated lands are covered by the General Order for Existing Milk Cow Dairies (R5-2007-0035) or NPDES Dairy General Permit CAG015001 (Dairy General Orders). Please notify board staff of your parcels that have Dairy General Order coverage so you do not receive further inquiries from the board regarding regulatory coverage of those parcels.
- **If your agricultural-zoned property is not used for commercial irrigated agriculture**, please notify board staff so you do not receive further inquiries from the board regarding regulatory coverage under this Order.

**Who Do I Contact to Join the Coalition or Get More Information?**

**Attend an East San Joaquin Water Quality Coalition New Member Signup Clinic** – There will be three of these clinics held on the following dates, and at these locations:

- **Tuesday, April 23<sup>rd</sup>, 2013:** Madera County Farm Bureau, 1102 Pine Street, Madera; 1-hour presentations at 10 AM and 1:30 PM; Coalition staff available 9 AM to 4 PM
- **Wednesday, April 24<sup>th</sup>, 2013:** Merced County Farm Bureau, 646 So. Hwy 59, Merced; 1-hour presentations at 10 AM and 1:30 PM; Coalition staff available 9 AM to 4 PM
- **Thursday, April 25<sup>th</sup>, 2013:** Stanislaus County Farm Bureau, 1201 L Street, Modesto; 1-hour presentations at 10 AM and 1:30 PM; Coalition staff available 9 AM to 4 PM

**Contact the Coalition** - To join the East San Joaquin Water Quality Coalition, or to get more information about this new requirement, call (209) 846-6112 and ask to speak with Wayne Zipser or Candy Hill or go to [www.esjcoalition.org](http://www.esjcoalition.org). **These contacts are with the Coalition, not the Central Valley Water Board.**

**Contact the Central Valley Water Board** - To learn more about the Irrigated Lands Regulatory Program, you can visit our website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/). If you have questions regarding the Irrigated Lands Regulatory Program, you can call our phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).



PAMELA C. CREEDON  
Executive Officer

<sup>1</sup>The form for completing the Application (referred to as a Form 200 - Report of Waste Discharge) can be found online at: [http://www.waterboards.ca.gov/publications\\_forms/forms/docs/form200.pdf](http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf). You may be requested by the Executive Officer to submit additional information to supplement the data provided in Form 200.

ATTACHMENT B

September 2013 Inspection Report



# CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

## Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

### Ownership Information:

Owner(s):	<b>Rushing, Brooks J TRS &amp; Rushing Arlene J</b>	Coalition:	<b>ESJWQC</b>	County:	<b>Stanislaus</b>
Parcel Number:	<b>088-009-014</b>	Acres:	<b>21.27</b>	All Info I.D. #	<b>6224</b>

### Inspection Findings:

Date Inspected:	<b>9/16/13</b>
Inspected By:	<b>WO &amp; LW</b>
Results:	<b>Commercially Irrigated Agriculture</b>
Crop type:	<b>Almonds</b>
Irrigation Method:	<b>Flood</b>
Other/Notes:	

Inspection Photo: 088-009-014.JPG



Approved:  \_\_\_\_\_

# CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

## Irrigated Lands Regulatory Program Enrollment Confirmation Inspection Report

### Ownership Information:

Owner(s):	<b>Rushing, Brooks J TRS &amp; Rushing Arlene J</b>	Coalition:	<b>ESJWQC</b>	County:	<b>Stanislaus</b>
Parcel Number:	<b>088-009-024</b>	Acres:	<b>10.17</b>	All Info I.D. #	<b>6226</b>

### Inspection Findings:

Date Inspected:	<b>9/16/13</b>
Inspected By:	<b>WO &amp; LW</b>
Results:	<b>Commercially Irrigated Agriculture</b>
Crop type:	<b>Almonds</b>
Irrigation Method:	<b>Flood</b>
Other/Notes:	

Inspection Photo: **088-009-024.JPG**



Approved:

ATTACHMENT C

May 2014 Water Code section 13260 Directive





EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

9 May 2014

Rushing, Brooks J TRS & Rushing Arlene J  
2030 N Washington Rd  
Turlock CA 95380,

Certified Mail Number  
7013 1090 0001 3130 1543

**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**

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:

<b>County:</b> Stanislaus			
088-009-014			
088-009-029			
088-009-024			
088-009-025			

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**. To obtain regulatory coverage either:

1. Join the East San Joaquin Water Quality Coalition (Coalition) by Submitting (a) a completed Notice of Intent (NOI) 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 Coalition.

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](http://www.waterboards.ca.gov/centralvalley)

The NOI is available online at <https://geotracker.waterboards.ca.gov/region5enoi/>

Upon submittal of a complete NOI, and after receiving confirmation from the Coalition that you are now a member, the Central Valley Water Board Executive Officer will then issue a Notice of Applicability (NOA), after which you will be considered covered under the General Order.

If you require a hard copy NOI or have questions, please contact Lisa Wilson with the Central Valley Water Board at (916) 464-4844.

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

**Or**

2. Enroll as an Individual Discharger under the Waste Discharge Requirements for Dischargers from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-party Group (Order R5-2013-0100 or Individual Order). If choosing this option you must submit a completed Notice of Intent<sup>78</sup> (NOI) with the first year's annual fee to the Central Valley Water Board. The fee schedule for the Individual Order can be found at:  
[http://www.waterboards.ca.gov/resources/fees/docs/fy13\\_14\\_fee\\_schedule\\_ilrp.pdf](http://www.waterboards.ca.gov/resources/fees/docs/fy13_14_fee_schedule_ilrp.pdf)

When regulated individually, you also must conduct your own monitoring and report directly to the Central Valley Water Board. Depending on the specific site conditions, you may be required to monitor runoff from your property, install monitoring wells, and submit technical reports regarding your actions to comply with the Individual Order. If you intend to select this option please contact please contact Lisa Wilson with the Central Valley Water Board at (916) 464-4844.

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

**Central Valley Water Board  
Attn: Lisa Wilson  
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.

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<sup>78</sup> The required information for submitting a Notice Intent to enroll under the Individual Order can be found in Attachment B section IV.B of the Individual Order (Order R5-2013-0100).

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.

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](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 Lisa Wilson at (916) 464-4844 or via email at [Lisa.Wilson@waterboards.ca.gov](mailto:Lisa.Wilson@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](mailto:lrrlands@waterboards.ca.gov).**



ANDREW ALTEVOGT  
Assistant Executive Officer

Enclosure(s): Inspection Report(s)

**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:

Rushing, Brooks J TRS & Rushing Arlene J  
2030 N Washington Rd  
Turlock CA 95380

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X   Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- Certified Mail®  Priority Mail Express™
- Registered  Return Receipt for Merchandise
- Insured Mail  Collect on Delivery

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service)

7013 1090 0001 3130 1543

UNITED STATES POSTAL SERVICE

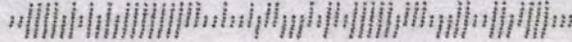


First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box®

California Regional Water  
Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA. 95670-6114

*delivered  
5/14/14  
checked wps  
س. م. م.*





ATTACHMENT D

June 2014 Notice of Violation





EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

30 June 2014

Rushing, Brooks J TRS & Rushing Arlene J  
2030 N Washington Rd  
Turlock CA 95380,

Certified Mail Number  
7013 1710 0002 3644 9604

**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 parcel with irrigated cropland, which are subject to new regulations:

<b>County:</b> Stanislaus				
088-009-014	088-009-024			
0	088-009-025			

On 9 May 2014 the California Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board) Assistant 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 enroll as an individual discharger under waste discharge requirements 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.

Central Valley Water Board records indicate that (1) you received the Directive Letter by certified mail on 14 May 2014 and (2) you have not arranged regulatory coverage 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: Lisa Wilson  
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**:

91. Submit (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 you are now a member, the Central Valley Water Board Executive Officer will then issue a Notice of Applicability (NOA), after which you will be considered covered under the General Order.

If you have questions, please contact Lisa Wilson with the Central Valley Water Board at (916) 464-4844.

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

92. Enroll as an Individual Discharger under the Waste Discharge Requirements for Dischargers from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-party Group (Order R5-2013-0100 or Individual Order). If choosing this option you must submit a completed Notice of Intent<sup>46</sup> (NOI) with the first year's annual fee to the Central Valley Water Board. The fee schedule for the Individual Order can be found at:

[http://www.waterboards.ca.gov/resources/fees/docs/fy13\\_14\\_fee\\_schedule\\_ilrp.pdf](http://www.waterboards.ca.gov/resources/fees/docs/fy13_14_fee_schedule_ilrp.pdf)

When regulated individually, you also must conduct your own monitoring and report directly to the Central Valley Water Board. Depending on the specific site conditions, you may be required to monitor runoff from your property, install monitoring wells,

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<sup>46</sup> The required information for submitting a Notice Intent to enroll under the Individual Order can be found in Attachment B section IV.B of the Individual Order (Order R5-2013-0100).

and submit technical reports regarding your actions to comply with the Individual Order. If you intend to select this option please contact please contact Lisa Wilson with the Central Valley Water Board at (916) 464-4844.

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

If you have any further questions, please contact Lisa Wilson at (916) 464-4844 or via email at [Lisa.Wilson@waterboards.ca.gov](mailto:Lisa.Wilson@waterboards.ca.gov).

**Para obtener más información en español por favor contáctenos al teléfono Lisa Wilson o vía email a: [Lisa.Wilson@waterboards.ca.gov](mailto:Lisa.Wilson@waterboards.ca.gov).**



JOE KARKOSKI, Chief, Irrigated Lands Regulatory Program

Attachments: 9 May 2014 Directive Order

**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:

Rushing, Brooks J TRS & Rushing Arlene  
J  
2030 N Washington Rd  
Turlock CA 95380,



**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*[Handwritten Signature]*  Agent  Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- Certified Mail®  Priority Mail Express™
- Registered  Return Receipt for Merchandise
- Insured Mail  Collect on Delivery

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

7013 1710 0002 3644 9604

## ATTACHMENT E

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 (Enforcement Policy). The proposed administrative 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.

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

**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 "per day" factor is calculated for each non-discharge violation considering the potential for harm and the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violations resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Staff determined that the potential for harm is moderate because the characteristics of the violation present a substantial threat to beneficial uses, and the circumstances of the violation indicate a substantial potential for harm.

The Dischargers failed to submit a Report of Waste Discharge (RoWD) 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.

By failing to file a RoWD or to enroll under an applicable General Order, the Dischargers undermined the regulatory program. Dischargers regulated under an applicable General Order either conduct monitoring or contribute to monitoring efforts to identify water quality problems associated with their operations. In addition, dischargers report on the practices in which they engage to protect water quality. By failing to provide that information, the Dischargers impaired the Central Valley Water Board's efforts to assess potential impacts and risks to water quality, and circumvented the Central Valley Water Board's ability to take enforcement actions to address problems.

Additionally, the regulatory program is compromised when staff resources are directed to bringing dischargers into compliance rather than being available for outreach and assistance with regulatory compliance. Since the violation thwarts the Central Valley Water Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This, in turn, presents a threat to beneficial uses and indicates a substantial potential for harm.

#### Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements.

The deviation from the requirement is major. The Dischargers have disregarded the regulatory requirements and rendered those requirements ineffective. The Dischargers undermined the efforts of the Central Valley Waters Board's Irrigated Lands Regulatory Program by disregarding the requirement to obtain the appropriate regulatory coverage for their waste discharges. A discharger's regulatory coverage is foundational to the Board's efforts to protect water quality. The Orders adopted by the Board specify the expectations and requirements for water quality protection, which do not apply until a discharger is covered by an appropriate Order. The requirements in the applicable Orders are rendered ineffective when a discharger has not gone through the process of becoming subject to the Order.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for those violations in which the potential for harm is moderate and the deviation from the requirement is major. Based on the above factors, a per day factor of 0.55 is appropriate (see Table 3 on p. 16 of the Enforcement Policy).

**Multiple Day Violations:** On 14 May 2014, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Dischargers, which required them to obtain regulatory coverage within 15 calendar days or face a potential administrative civil liability. The Directive was received by the Dischargers on 14 May 2014. Thus, regulatory coverage was required by 29 May 2014. The Dischargers have yet to obtain regulatory coverage and are 802 days late in meeting the regulatory requirements as of the date of this ACL Complaint.

Violations under Water Code section 13261 are assessed on a per day basis. However, the violations at issue qualify for the alternative approach to penalty calculation under the Enforcement Policy (Page 18). Under that approach, for violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used.

Here, the Central Valley Water Board finds that the Dischargers' failure to submit a RoWD or NOI (and join the Coalition) is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Dischargers' failure to submit a RoWD or NOI has detrimentally impacted the environment on a daily basis, since obtaining regulatory coverage does not result in an immediate evaluation of, or changes in, practices that could be impacting water quality. There is no daily detrimental impact to the regulatory program because information that would have been provided by the Dischargers pursuant to the regulatory requirements would have been provided on an intermittent, rather than daily basis.

Moreover, the Dischargers' failure to submit a RoWD or NOI results in no economic benefit that can be measured on a daily basis. Rather, the economic benefit here is the one-time delayed expenditure of joining the Coalition and various costs associated with Coalition membership, which are outlined below.

Either of the above findings justifies use of the alternate approach to penalty calculation for multiple day violations. The minimum number of days to be assessed under the alternate approach in this case is 32. Due to the nature of the case, using the minimum days generated from the Multiple Day approach is appropriate.

#### **Initial Liability Amount**

The initial liability amount for the violation calculated on a per-day basis is as follows:

$$\$1,000/\text{day} \times 32 \text{ days} \times 0.55 = \$17,600$$

#### **Step 4. Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's history of violations. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

##### *a) Culpability: 1.3*

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were given the score of 1.3, which increases the fine. Central Valley Water Board staff mailed a 13260 Directive on 14 May 2014 after the Dischargers failed to respond to the initial notices and failed to obtain regulatory coverage. The Dischargers did not respond to the Directive or the subsequent Notice of Violation that was mailed on 30 June 2014.

Despite knowledge of the regulatory requirements, which is exemplified by the notices described above, the Dischargers are 802 days out of compliance as of the date of this ACL Complaint. The multiple notices indicate that the Dischargers had knowledge of the regulatory requirements and acted intentionally, or at least negligently, in ignoring the requirement to obtain regulatory coverage. Therefore, a culpability factor of 1.3 is warranted.

b) *Cleanup and Cooperation*: 1.5

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Dischargers were given the score of 1.5, which increases the fine.

The Central Valley Water Board issued the Dischargers a Notice of Violation in an effort to allow the Dischargers to address the violation prior to the issuance of a complaint. The Dischargers did not respond despite being awarded ample time in which to do so. Despite opportunities to come into compliance, the Discharger did not make any attempt to cooperate with the Central Valley Water Board

Cleanup is not applicable here.

c) *History of Violations*: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Dischargers were given the score of 1.0 because the Dischargers have no record of a history of violations prior to those described herein.

### **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*: **\$34,320**. (Initial Liability (\$17,600) x Adjustments (1.3)(1.5)(1.0)).

### **Step 6. Ability to Pay and Continue in Business**

As per the Enforcement Policy, “[t]he ability of a discharger to pay an ACL is determined by its revenues and assets.” The Dischargers have the ability to pay the Base Liability Amount based on the value of the Dischargers property and estimated revenues for their crop. According to the Stanislaus County Assessor’s Office, the three parcel owned by the Dischargers have an assessed value of \$428,897. Revenue generated from the Dischargers’ approximately 30 irrigated acres of almonds in Stanislaus County, was approximately \$245,700 in 2014<sup>1</sup>. Thus, the Dischargers have the ability to pay the proposed administrative civil liability based on their revenue and assets and there are no factors under this category that warrant an adjustment.

### **Step 7. Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made.

The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board Prosecution Team has incurred a significant amount of staff costs associated with the investigation and enforcement of the violations alleged herein. While staff costs could be added to the penalty, the Prosecution Team, in its discretion, is electing not to pursue staff costs in this matter.

There are no factors under this category that warrant an adjustment.

### **Step 8. Economic Benefit<sup>2</sup>**

*Economic Benefit: \$7,395*

The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. Economic benefit was calculated using the United States Environmental Protection Agency’s (US EPA) Economic Benefit Model (BEN)<sup>3</sup> penalty and financial modeling program, version 5.6.0. BEN calculates a discharger’s monetary interest earned from delaying or avoiding compliance with environmental statutes.

<sup>1</sup> Information provided by calculating 30 acres of almonds from the 2014 Stanislaus County Agricultural Crop Report, available at <http://www.stanag.org/pdf/cropreport/cropreport2014.pdf>.

<sup>2</sup> Order R5-2013-0100 includes an estimate of average annual costs per acre related to that Order. The average annual costs are not used in this economic benefit analysis, since the costs represent an average cost, if the Order were applied Central Valley-wide. The cost estimates made in this analysis are based on the circumstances and facts related to this Discharger, rather than a broad class of Dischargers.

<sup>3</sup> 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>.

The BEN model is the appropriate tool for estimating the economic benefit in this case. The benefit is calculated by identifying the regulation at issue, the appropriate compliance action, the date of noncompliance, the compliance date, and the penalty payment date.

Under the Irrigated Lands Regulatory Program, an individual may choose to comply with the program by either filing an NOI to get regulatory coverage as an “individual grower,” or filing a NOI for regulatory coverage under a third-party group Order and joining the Coalition. For the purposes of determining the economic benefit, the Prosecution Team assumes that the General Order R5-2013-0100 (Individual General Order) will apply to the Dischargers’ operations, as the Central Valley Water Board cannot compel the Dischargers to join a coalition.

The economic benefit was calculated based on delayed and avoided costs. Delayed costs are those costs that should have been born earlier, but that a discharger can and is still is required to pay. Avoided costs are the costs of those compliance activities, which a discharger can no longer perform, and that a discharger would have conducted had they come into compliance earlier.

The date of noncompliance for the filing of the NOI and payment of initial fees was 30 May 2104 – the deadline provided in the Directive. Annual fees are assumed to be payable on the anniversary of enrollment. As a result, the Dischargers have failed to pay \$3,633 in permit fees for enrollment years 2014, 2015, and 2016.

Once enrolled under the General Order, the Prosecution Team estimates that a NOA would have been issued within one month of receiving the NOI (i.e. 1 July 2014). Under the Individual General Order, the Dischargers would have been required to prepare and implement a Farm Water Quality Plan (FWQP) within one year of the NOA issuance (i.e. 1 July 2015). The estimated cost to prepare each this plan is a minimum of \$2,500. Also included under the Individual General Order, the Dischargers would have been required to conduct groundwater monitoring of domestic and agriculture supply wells. The Prosecution Team assumes that such monitoring would commence within six months of the NOA issuance (i.e. 1 January 2015). Monitoring is required for the first and second year of enrollment under the General Order. Based on estimated sampling labor and laboratory costs associated with two supply wells, the Dischargers avoided monitoring costs of approximately \$4,488.

An Annual Monitoring Report (AMR) would have also been required, with the first report due 1 May 2015, with the second occurring a year later in 2016. The Prosecution Team estimates the cost of preparing the AMRs at approximately \$4,800.

Lastly since these parcels are in a Groundwater Protection Area, a Groundwater Management Practice Evaluation Program (MPEP) would have been due on 1 July 2016. The cost associated with developing the MPEP were estimated to be similar to the FWQP at \$2,500.

In summary, the Dischargers should have spent approximately \$17,921 to comply with the Individual General Order. Using BEN, the Dischargers gained an economic benefit of \$7,395 after consideration of delayed and avoided costs.

### **Step 9. Minimum and Maximum Liability Amounts**

a) *Minimum Liability Amount: \$8,135*

The Enforcement Policy recommends 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 Dischargers' economic benefit obtained from the violation is \$7,395. Therefore, the minimum liability is \$8,135.

b) *Maximum Liability Amount: \$802,000*

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. The Dischargers were in violation for 802 days, which results in a maximum liability of \$802,000.

### **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 as required under Water Code section 13260 is **thirty four thousand three hundred and twenty dollars \$34,320.**



ATTACHMENT F

Hearing Waiver Form



**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent **Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees for the Brooks J & Arlene J Rushing Trust** (Discharger), in connection with Administrative Civil Liability Complaint R5-2016-0546 (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 **thirty four thousand three hundred twenty dollars (\$34,320)** by check that references "ACL Complaint R5-2016-0546" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by **24 August 2016**.
- 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 Procedure



CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2016-0546

ISSUED TO  
AS INDIVIDUALS AND IN THEIR REPRESENTATIVE CAPACITY AS TRUSTEES FOR  
THE BROOKS J & ARLENE J RUSHING TRUST  
STANISLAUS COUNTY

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

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust (Dischargers) for the violations charged in the ACL Complaint. A hearing is scheduled to consider the matter on the following date:

3/4 November 2016  
Central Valley Water Board Offices  
1685 E Street  
Fresno, California

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the Central Valley Water Board will convene a hearing to consider evidence and testimony regarding the ACL Complaint. At the hearing, the Hearing Panel will hear evidence, determine facts, make conclusions of law and propose a recommendation to the Central Valley Water Board about resolution of the ACL Complaint. The Hearing Panel may recommend that the Central Valley Water Board issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Hearing Panel may also recommend that the Central Valley Water Board decline to assess any liability, or may continue the hearing to a later date. After the hearing, the Hearing Panel will report its recommendation and proposed ACL Order to the full Central Valley Water Board at a future meeting. The Meeting Agenda will be posted at least ten days before the meeting on the Board's website, at the following address:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Hearing Panel (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

This Hearing Procedure has been proposed by the Prosecution Team and is subject to further revision by the Hearing Panel's Advisory Team. Objections to this Hearing Procedure must be sent to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Hearing Panel Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

## **I. Hearing Participants**

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Hearing Panel, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Hearing Panel, staff, or others, at the discretion of the Hearing Panel.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person's interest. The Board's Advisory Team will promptly respond to all timely requests for Designated Party status.

## **II. Hearing Time Limits**

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **30 minutes**
2. Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust: **25 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Hearing Panel Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during the Hearing Panel's questions and the responses to such questions, or during discussions of procedural issues.

## **III. Documents in Evidence and Availability of Board Files**

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Hearing Panel rules to exclude them. The file is available to the public and may be

inspected or copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

#### **IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements**

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

1. All evidence that the Designated Party would like the Hearing Panel to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

**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 Hearing Panel Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Hearing Panel.

**Prosecution Team's Evidence:** The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

**Designated Parties' (including the Dischargers') Evidence:** All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

**Rebuttal Evidence:** "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

**Printing and Page Limitations:** For each Designated Party, including the Board's Prosecution Team, the Hearing Panel has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Hearing Panel will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Hearing Panel. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The

Draft ACL Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

Parties without access to computer equipment are encouraged to have their materials scanned at a copy or mailing center. The Hearing Panel will not reject materials solely for failure to provide electronic copies.

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Hearing Panel, which must be received by the Advisory Team at Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Hearing Panel's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

#### **V. Miscellaneous Matters**

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Hearing Panel in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-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 should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Hearing Panel and Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Hearing Panel may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: <http://www.waterboards.ca.gov>. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

**VI. Questions**

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

**CONTACT INFORMATION: PRIMARY CONTACTS**

<b>BOARD ADVISORY TEAM*</b>	
Adam Laputz, Assistant Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726 Adam.Laputz@waterboards.ca.gov	Andrew Deeringer, Attorney State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 322-3575 Andrew.Deeringer@waterboards.ca.gov
<b>BOARD PROSECUTION TEAM**</b>	
Lisa Wilson, Environmental Scientist 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4844 Lisa.Wilson@waterboards.ca.gov	Kailyn Ellison, Attorney State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 445-9557 Kailyn.Ellison@waterboards.ca.gov
<b>DISCHARGERS</b>	
Brooks and Arlene Rushing, Trustees of the Brooks J & Arlene J Rushing Trust 2030 N Washington Rd Turlock, CA 95380	

\*The Board's Advisory Team also includes: Pamela Creedon, Executive Officer

\*\*The Board's Prosecution Team also includes: Andrew Altevogt, Assistant Executive Officer; Sue McConnell, Supervising Water Resources Control Engineer; Brett Stevens, Senior Environmental Scientist; Keri Yee, Associate Governmental Program Analyst

### IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the "Primary Contacts" table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

8 August 2016	<ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint and Hearing Procedure.</li> </ul>
18 August 2016	<ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedure.</li> <li>▪ Deadline to request "Designated Party" status.</li> </ul> <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
24 August 2016	<ul style="list-style-type: none"> <li>▪ Dischargers' deadline to submit 90-Day Hearing Waiver Form.</li> </ul> <p>If the Prosecution Team accepts the waiver, all the following deadlines may be revised.</p>
2 September 2016	<ul style="list-style-type: none"> <li>▪ Prosecution Team's deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements."</li> </ul>
22 September 2016	<ul style="list-style-type: none"> <li>▪ Remaining Designated Parties' (including the Dischargers') deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements."</li> <li>▪ Interested Persons' written statements are due.</li> </ul> <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
7 October 2016	<ul style="list-style-type: none"> <li>▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections.</li> </ul> <p>Hard copies of rebuttal documents must be submitted to the Prosecution Team.</p> <ul style="list-style-type: none"> <li>▪ If a Designated Party's submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Hearing Panel by this date.</li> <li>▪ Deadline to submit requests for additional time.</li> </ul>
13 October 2016	<ul style="list-style-type: none"> <li>▪ All Designated Parties may submit responses to written statements submitted by Interested Persons.</li> <li>▪ Prosecution Team submits Summary Sheet.</li> <li>▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Hearing Panel so that they are <u>received by</u> the Advisory Team by this date.</li> </ul>
3/4 November 2016	Hearing Panel



ATTACHMENT H

ACL Fact Sheet



# Administrative Civil Liability

## Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

## Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

## Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

**Withdrawal:** may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

**Withdrawal and reissuance:** may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

**Payment and waiver:** may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

**Settlement:** results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at:

[http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/). Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

**Hearing:** if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

## Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including 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 violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
  - IRS Form 1120 for C Corporations
  - IRS Form 1120 S for S Corporations
  - IRS Form 1065 for partnerships

2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
  - Audited Financial Statements for last three years;
  - A list of major accounts receivable with names and amounts;
  - A list of major accounts payable with names and amounts;
  - A list of equipment acquisition cost and year purchased;
  - Ownership in other companies and percent of ownership for the last three years;
  - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
  - City/Town/Village;
  - County;
  - Municipality with enterprise fund;
  - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
  - Population;
  - Number of persons age 18 and above;
  - Number of persons age 65 and above;
  - Number of Individual below 125% of poverty level;
  - Median home value;
  - Median household income.
3. Current or most recent estimates of:
  - Population;
  - Median home value;
  - Median household income;
  - Market value of taxable property;
  - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in

the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

## **Petitions**

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml)

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

