

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0501

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

SARBJIT & SATWANT K. ATHWAL,  
MADERA COUNTY

This Complaint is issued pursuant to California Water Code section 13323 to Sarbjit & Satwant K. Athwal (hereafter collectively "Athwal" or "Discharger") 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 (hereafter 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 (Water Code § 13050(e)). The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state (Water Code § 13263).
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R2) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Madera County, including Athwal, 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 potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.
5. Evaluation of 2012 county assessor and 2010 FMMP data indicated that Athwal owned approximately 600 acres of agricultural land within the East San Joaquin Water Quality

Coalition (Coalition) area<sup>1</sup> in Stanislaus, Merced, and Madera Counties, including the following Assessor’s Parcel Numbers [APN] and their respective acreages:

Stanislaus County		Merced County		Madera County	
APN	Acres	APN	Acres	APN	Acres
017-058-046	52.6	68110022	22.9	023-050-016	56.5
017-058-047	102.8	68110023	49.4	024-142-017	37
017-062-032	10.3			023-050-013	56.6
017-062-045	39.1				
041-015-001	38.2				
041-038-013	59.8				
041-038-014	10.5				
041-038-015	7.4				
041-038-028	54.4				
041-054-019	19.2				

6. On 28 January and 18 April 2013, the Central Valley Water Board issued notices to Athwal describing new water quality regulations and actions available to comply with the regulations. Athwal did not obtain regulatory coverage and did not contact the board.
7. On 19 July 2013, staff conducted inspections of three Madera County parcels and found evidence of commercial irrigated agriculture based on the crop grown and the size of the operations. Copies of the inspection reports are provided as Attachment A.
8. On 31 July 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (hereafter Directive) to Athwal, sent via certified mail. The Directive stated that, *“You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations.”* Although the Directive was issued specific to the three parcels in Madera County that had been inspected, APNs 023-050-016, 023-050-013, and 024-142-017<sup>2</sup>, all irrigated agricultural lands owned and/or operated by Athwal are required to be enrolled under regulatory coverage. A copy of the Directive and proof of delivery are provided in Attachment B.
9. The Directive required Athwal to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. The Directive was received on 2 August 2013, so the last day to comply with the Directive was 17 August 2013. As detailed in the Directive, Athwal could comply by joining the East San Joaquin Water Quality Coalition (“Coalition” or “ESJ Coalition”), or by submitting a Report of Waste Discharge. Athwal did not obtain regulatory coverage by 17 August 2013.

<sup>1</sup> Athwal also owns commercial irrigated agricultural parcels within the Westside Coalition area.

<sup>2</sup> The Directive only includes the Madera County parcels because the parcels in Merced and Stanislaus Counties had not been inspected.

10. Because the Discharger failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Athwal on 30 August 2013. A copy of the NOV and proof of delivery are provided in Attachment C. The certified mail receipt for the NOV to Athwal was signed by "Roman" as received on 4 September 2013.
11. Board staff exchanged three emails with Mr. Roman Katuszonek, Athwal's representative, in September and October 2013. Although Mr. Katuszonek communicated to staff that he would respond appropriately, Athwal did not obtain regulatory coverage for any parcels.
12. On 16 October 2013, staff sent Athwal a notification letter via certified mail that an Administrative Civil Liability Complaint (Complaint) in the amount of \$3,500 would be issued if Athwal did not obtain regulatory coverage, and then initiate settlement discussions regarding the proposed ACL fine by 1 November 2013. A copy of this "pre-ACL letter" is provided as Attachment D.
13. The certified mail receipt for the pre-ACL letter issued to Athwal was signed, but illegible, on 18 October 2013. A copy of the certified mail receipt for the pre-ACL is included in Attachment D.
14. Athwal did not obtain regulatory coverage or initiate settlement discussions by 1 November 2013.
15. On 23 December 2013, Board staff was contacted by Mr. Katsuzonek, who indicated that he had time to work on the issue. Staff continued to provide information on how to comply via emails sent between 23 December and 7 January 2014.
16. On 7 January 2014, Athwal submitted an NOI and the NOI processing fee to the Central Valley Water Board. The NOI listed 30 parcels in Madera, Merced and Stanislaus Counties, with a total size of 983 acres.
17. On 10 January 2014, Sarbjit Athwal contacted Board staff to initiate settlement discussions. Staff advised him to enroll in the Coalition and provide a written response to the pre-ACL letter. Athwal indicated that he would do both.
18. On 10 March 2014, Athwal joined the Coalition. Board records indicate that Athwal enrolled 30 parcels and 983 acres in the Coalition.
19. On 30 April 2014, Board staff had a phone conference with Sarbjit Athwal and Roman Katuszonek to discuss settlement of Athwal's enforcement case. Board staff entered into a verbal agreement with Athwal and mailed settlement documents that were left unclaimed by Athwal.

20. On 11 July 2014, the Central Valley Water Board staff who advise the Board on enforcement matters (known as the “Advisory Team”) issued a memorandum regarding proposed settlements of ACL Complaints issued to the David L. & Linda M. Davis Trust and for William R. Sinks et al. The Prosecution Team had determined that the issues raised in that memorandum applied also to the Athwal enforcement case. These issues were considered by the Prosecution Team when preparing this ACL, which accounts for the difference in the proposed penalty amounts between the pre-ACL letter and this Complaint.
21. On 11 August 2014, the Central Valley Water Board sent Athwal a Notice of Applicability stating that they are enrolled under General Order R5-2012-0116-R2.
22. On 7 January 2015, Board staff conducted a second field inspection of Madera County parcels 023-050-013, 023-050-016, and 024-142-017 for the purpose of determining if the parcels have the potential to discharge irrigation return flows or storm water to waters of the state. The inspections found no direct evidence of surface water discharges from the parcels (e.g., discharge pipes at borders or erosion rills leading offsite). A copy of the inspection report is provided as Attachment E.

### **ALLEGED VIOLATIONS**

23. Athwal failed to submit a Report of Waste Discharge as required by Water Code section 13260. The Water Code section 13260 Directive Letter was issued to Sarbjit & Satwant K. Athwal on 31 July 2013 and required Athwal to either submit a RoWD or, in lieu of submitting a RoWD, submit a Notice of Intent (NOI) to enroll in the East San Joaquin Water Quality Coalition. Athwal submitted an NOI on 7 January 2014, 142 days late and joined the Coalition on 10 March 2014, 204 days late.

### **REGULATORY CONSIDERATIONS**

24. The Central Valley Water Board’s authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
25. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (RoWD) containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Discharger’s lands are located.

26. 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).
27. 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.
28. Full compliance with the 13260 Directive was 204 days past due. The maximum liability under Water Code section 13261(b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of two hundred and five thousand dollars (\$204,000).
29. 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.
30. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.
31. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment F. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
32. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2012-0116-R2

identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.

33. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$204,000. The Enforcement Policy requires that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll the three Madera County parcels is estimated at \$396 dollars (see Attachment F for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$435).
34. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
35. Issuance of this Administrative Civil Liability Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**SARBJIT & SATWANT K. ATHWAL ARE HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Water Board proposes that Athwal be assessed **an administrative civil liability in the amount of thirty-one thousand four hundred and sixty dollars (\$31,460)**. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **16/17 April 2015**. This 13260 Directive-related ACL Complaint is among the first ILRP enforcement items of this kind to be considered by the Board. Because of the precedential nature of this case, the Prosecution Team (see hearing procedures for list of team members) will not attempt to negotiate a settlement with the Discharger, and will defer the case directly to the Board.
2. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
3. The Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.

*Original signed by:*

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Andrew Altevogt, Assistant Executive Officer

1/20/2015

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(Date)

Attachment A: 19 July 2013 Inspection Reports

Attachment B: 31 July 2013 California Water Code section 13260 Directive

Attachment C: 30 August 2013 Notice of Violation for Failure to respond to 13260 Directive

Attachment D: 18 October 2013 pre-ACL letter

Attachment E: 7 January 2015 Inspection Report

Attachment F: Calculation of Penalty per SWRCB Water Quality Enforcement Policy

Attachment G: Hearing Procedures