

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

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
STANISLAUS COUNTY**

**PROSECUTION TEAM'S LEGAL AND TECHNICAL ANALAYIS SUPPORTING
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0546**

I. Introduction

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) Prosecution Team requests that the Hearing Panel recommend that Central Valley Water Board adopt Administrative Civil Liability Complaint R5-2016-0546 as proposed. This Legal and Technical Analysis discusses the legal basis for liability of the Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees for the Brooks J and Arlene J Rushing Trust (Dischargers).

II. The Dischargers are Required to Obtain Coverage Under the Irrigated Lands Regulatory Program

On 16 September 2013, Board staff conducted field inspections of the Dischargers' Stanislaus County Assessor Parcel Numbers (APNs) 088-009-014 and 088-009-024 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. (See Attachment B of Administrative Civil Liability Complaint R5-2015-0546.)

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. (See Attachment C of Administrative Civil Liability Complaint R5-2015-0546.)

The Dischargers received the Directive on 14 May 2014. (See Attachment C of Administrative Civil Liability Complaint R5-2015-0546.) Thus, 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.

On 21 July 2016, Board staff conducted an inspection of the Dischargers Stanislaus County APNs 088-009-014, 088-009-024, and 088-009-029 from public roadways to confirm the presence of commercial irrigated agriculture on the properties and any potential to drain to surface waters of the state. Board staff again found evidence of commercial irrigated agriculture on APNs 008-009-014 and 088-009-024 in the form of almond orchards. Board staff also found evidence that although APN 008-009-029 was not currently being irrigated, there was potential for irrigation to occur on the parcel for a commercial purpose. (Prosecution Team Exhibit 4.)

If an APN is irrigated anytime in the past five years, it must maintain regulatory coverage under the Irrigated Lands Regulatory Program, even during fallow years. This rule is consistent with the general intent of the Irrigated Lands Regulatory Program and the annual fee schedule for

waste discharge requirements and waivers of waste discharge requirements for discharges from agricultural lands, including irrigated lands.¹

Review of aerial imagery confirms that on 23 March 2014, two months prior to issuance of the Directive, APN 008-009-029 was being irrigated for a commercial purpose, and thus, regulatory coverage was required. (Prosecution Team Exhibit 12.)

As of the date the Administrative Civil Liability Complaint R5-2015-0546 was issued, the Dischargers had failed to obtain regulatory coverage.

III. Brook and Arlene Rushing are Liable as Individuals and in their Representative Capacity as Trustees of the Brooks J and Arlene J Rushing Trust

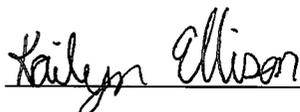
“A trust itself cannot sue or be sued.” (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914.) As a general rule, “...the trustee is the real party in interest with standing to sue and defend on the trust's behalf.” (*Estate of Bowles* (2008) 169 Cal.App.4th 684, 691.) Thus, Administrative Civil Liability Complaint R5-2015-0546 was issued against Brook and Arlene Rushing in their representative capacity as trustees of the Brooks J and Arlene J Rushing Trust.

“A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.” (Prob. Code, § 18001.) “[A] trustee is 'personally at fault' when the trustee, either intentionally or negligently, acts or fails to act.” (*Haskett v. Villas at Desert Falls* (2001) 90 Cal. App. 4th 864, 875.) As stated in Attachment E to Administrative Civil Liability Complaint R5-2015-0546, the Prosecution Team alleges that the Dischargers acted intentionally or at least negligently in failing to obtain regulatory coverage as evidenced by the multiple notices sent to the Dischargers and the Dischargers continual failure to obtain regulatory coverage despite knowledge of the requirements. Therefore, the Dischargers are liable as individuals.

IV. Conclusion

For the reasons stated above, the Prosecution Team requests that the Hearing Panel recommends that the Central Valley Water Board adopt Administrative Civil Liability Complaint R5-2015-0546 as proposed.

For the Prosecution Team:



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¹ “As used in this section, the acreage on which the fee is based refers to the area that has been irrigated by the farmer or discharger at any time in the previous five years.” (Cal. Code Regs., tit. 23, § 2200.6, subd. (a), fn. 1.)