

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0528

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

WILLIAM R. SINKS ET AL.
MADERA COUNTY

This Complaint is issued to William R. Sinks et al. (hereafter "Sinks" or "Discharger") pursuant to California Water Code section 13261, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on a finding of failure to submit a Report of Waste Discharge to Water Code section 13260.

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

BACKGROUND

1. Irrigated lands in the Central Valley Region that discharge irrigation return flows or storm water may contribute, or have the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state (Water Code § 13050(e)). The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state (Water Code § 13263).
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R1) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Madera County, including Sinks, that were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.

5. Evaluation of county assessor and FMMP data indicates that Sinks owns approximately 154 acres of agricultural land in Madera County (Madera County Assessor's parcel number 023-110-004).
6. On 20 February and 18 April 2013, the Central Valley Water Board issued notices to Sinks describing new water quality regulations and actions available to comply with the regulations. Sinks did not obtain regulatory coverage and did not contact the board.
7. On 19 July 2013, staff conducted an inspection of parcel 023-110-004 and found evidence of a commercial irrigated agricultural operation based on the crop grown and the size of the operation. A copy of the inspection report is provided as Attachment 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 Sinks, sent via certified mail. The Directive stated that, "*You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations.*" A copy of the Directive is provided as Attachment B.
9. The Directive required Sinks to obtain regulatory coverage for their irrigated agricultural parcel *within 15 calendar days of receipt of the Directive*. As detailed in the Directive, Sinks could comply by joining the East San Joaquin Water Quality Coalition ("Coalition" or "ESJ Coalition"), or by submitting a Report of Waste Discharge.
10. The certified mail receipt for the Directive issued to Sinks was signed as received by Bobby Sinks on 3 August 2013. Sinks did not obtain regulatory coverage by 19 August 2013 and did not contact the Water Board.
11. Because the Discharger failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Sinks on 30 August 2013. A copy of the NOV is provided as Attachment C.
12. The certified mail package for the NOV was returned in the mail with notes from the mail carrier indicating that the letter was "refused" by the recipient on 5 September 2013 (Attachment C).
13. Staff attempted to contact Sinks by phone to inform them of pending enforcement, but no working phone number was found.
14. On 19 February 2014, staff obtained a process server to deliver Sinks with a notification letter that an Administrative Civil Liability (ACL) in the amount of \$3,540 would be issued if Sinks did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 6 March 2014. This letter is referred to as the "pre-ACL letter." A copy of the pre-ACL letter is provided as Attachment D.
15. The proof of service receipt for the pre-ACL letter issued to Sinks shows that the pre-ACL letter was received by Bob Sinks on 23 February 2014. An additional copy of the letter was also mailed to Sinks via first class mail.

16. Central Valley Water Board records indicate that at the time of issuance of this Complaint, board staff had not received a RoWD, proof of coalition membership, or a Notice of Intent from Sinks. The Discharger also had not initiated settlement discussions with board staff.

ALLEGED VIOLATIONS

17. Sinks 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 William R. Sinks et al. on 31 July 2013 and required Sinks to either submit a RoWD or, in lieu of submitting a RoWD, submit a Notice of Intent (NOI) to enroll in the East San Joaquin Water Quality Coalition. As of 10 May 2014, Sinks' RoWD or NOI is 265 days past due.

REGULATORY CONSIDERATIONS

18. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
19. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (RoWD) containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Sinks lands are located.
20. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
21. Water Code section 13261, subdivision (b)(1), states: Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. Civil liability shall not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.
22. The required RoWD is 265 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 sixty-five thousand dollars (\$265,000).

23. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
24. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.
25. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment E. The proposed civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
26. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2012-0116-R1 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
27. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$265,000. Water Code section 13261 does not specify a minimum penalty for violations of reporting requirements; however, the Enforcement Policy requires that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll the Madera County parcel in the East San Joaquin Water Quality Coalition is estimated at \$31 dollars (see Attachment E for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$100).
28. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the conditions of the Dischargers' conditional waiver of waste discharge requirements and/or applicable orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.

29. Issuance of this Administrative Civil Liability Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

WILLIAM R. SINKS ET AL. ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Sinks be assessed **an administrative civil liability in the amount of three thousand five hundred-forty dollars (\$3,540)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code sections 13261 and 13323, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations. The calculation of the penalty amount is explained in Attachment E.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **7/8 August 2014**, unless Sinks does either of the following by **2 June 2014**:
 - a) The Discharger waives the hearing by completing the waiver form provided as Attachment F (checking off the box next to Option 1). If this option is selected, the Discharger shall send a check for the proposed civil liability of **three thousand five hundred-forty dollars (\$3,540)** (payable to the State Water Pollution Cleanup and Abatement Account) to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814. The Waiver and copy of the check shall be mailed to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of

enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.

Andrew Altevogt, Supervising WRCB

Andrew Altevogt, Assistant Executive Officer

9 May 2014

(Date)

- Attachment A: Inspection Report
- Attachment B: 31 July 2013 California Water Code section 13260 Directive
- Attachment C: Notice of Violation for Failure to respond to 13260 Directive
- Attachment D: 19 February 2014 pre-ACL letter
- Attachment E: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
- Attachment F: Waiver Form
- Attachment G: Hearing Procedures