

ATTACHMENT E

12 January 2016 Pre-ACL Letter



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

12 January 2016

Gilbert & Enedina Marroquin
5625 W Prospect Drive
Visalia, CA 93291

CERTIFIED MAIL
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FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13260, MARROQUIN, GILBERT & ENEDINA, VISALIA, TULARE COUNTY

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

On 21 May 2014 and 30 June 2014, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) issued notices to you describing new water quality regulations and actions available to comply with the regulations.

On 18 December 2014, the Central Valley Water Board issued a Directive Order pursuant to California Water Code section 13260 (13260 Directive) by certified mail that required you to obtain regulatory coverage for irrigated lands that you may own or operate within fifteen (15) days of receipt of the 13260 Directive.

On 26 December 2014, you received the 13260 Directive via certified mail. You did not obtain regulatory coverage by the 10 January 2015 deadline.

On 28 January 2015, the Central Valley Water Board issued a Notice of Violation pursuant to California Water Code section 13260 (NOV) by certified mail that requested you obtain regulatory coverage for irrigated lands that you may own or operate.

Central Valley Water Board records indicate that you (1) own parcels that contain irrigated agriculture; (2) received a 13260 Directive and a Notice of Violation by certified mail requiring you to obtain regulatory coverage for all parcels containing irrigated agriculture; and (3) have not obtained regulatory coverage to date.

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."

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

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

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

As of 12 January 2016, your obtainment of regulatory coverage is 366 days overdue. As of this date, the **maximum penalty** for the violation described above is **three hundred sixty-six thousand dollars (\$366,000)** based on a calculation of the total number of per-day violations times the statutory maximum penalty (366 total days of violation multiplied by \$1,000). Based on our review and after conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you for **fifty thousand five hundred five dollars (\$50,505)**. This proposed penalty amount was calculated considering the methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) and is based on facts known to date. This proposed penalty amount is preliminary and is subject to modification should additional information come to light. In addition, because the violation is continuing, the maximum and proposed penalty amounts will continue to increase until you obtain regulatory coverage. The full Enforcement Policy may be found here:

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf. To avoid further liability, you are urged to obtain regulatory coverage.

By way of this letter, you are being notified of the opportunity to meet to discuss the facts regarding the alleged violation, including the option of settlement. This meeting affords you the opportunity to potentially reduce the proposed penalty amount if you present new information to the Central Valley Water Board staff, or other information you believe is relevant to determining an appropriate monetary penalty. All settlement communications would be kept confidential subject to California Evidence Code sections 1152 and 1154. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing the Complaint.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring supporting documentation with you to the meeting. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing.

In order to initiate any discussions to settle this matter, you must contact David Sholes at (559) 445-6279 **by 26 January 2016** to schedule a day and time to meet with Central Valley Water Board staff. If you do not respond by this date, the Assistant Executive Officer will issue you a Complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board; or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency.

Before settlement discussions can occur, you must get the required regulatory coverage by providing a completed Notice of Intent (NOI) and submitting the appropriate fee (\$200). You can enroll under the Waste Discharge Requirements General Order (Order R5-2013-0120 or Coalition Order) for Growers within the Tulare Lake Basin Area who are Members of the Third-Party (or Coalition) Group (NOI enclosed); or you can submit an NOI (also enclosed) for coverage under the Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers not Participating in a Third-party Group (Order R5-2013-0100 or Individual Order).

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

Estimated cost of 2015 regulatory coverage under the Individual General Order:

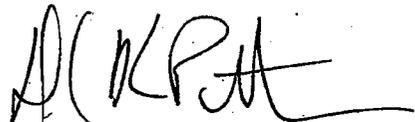
Farm Size	Annual Regulatory Fee	Annual Estimated Monitoring and Reporting Costs	Estimated Annual Costs
118 acres	\$3,093 ¹	\$6,417 ²	\$9,510

Cost of 2015 regulatory coverage as a member of the Kaweah Basin Water Quality Association:

Farm Size	Annual Cost for First Year of Coalition Membership (Includes Monitoring and Reporting)	Annual Cost for Following Years (Including Monitoring and Reporting)	Estimated Annual Costs
118 acres	\$1,516	\$1,162	\$1,516 (First Year) then \$1,162 annually, thereafter

Once you've obtained regulatory coverage, you should contact David Sholes (information provided below) to schedule a settlement meeting with Board staff. You can arrange membership with the Coalition by calling (559) 302-1620.

As discussed above, you need to contact David Sholes by **26 January 2016**. He may be reached by phone at (559) 445-6279 or by email at David.Sholes@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Water Resource Control Engineer

cc: Andrew Altevogt, Assistant Executive Officer, Central Valley Water Board, Rancho Cordova
Sue McConnell, Manager, Irrigated Lands Regulatory Program
Kailyn Ellison, Attorney, SWRCB, Office of Enforcement

¹ See page 12 of 2015-2016 Fee Schedules at:
http://www.waterboards.ca.gov/resources/fees/water_quality/docs/fy1516_ilrp_fees.pdf.

² See pages 33-35 of Attachment A (Information Sheet) to Order R5-2013-0100. Specifically, the per-acre estimate of monitoring, reporting, and tracking costs under this order provided in Table 3 on page 35 (\$54.38) was used to estimate costs for this operation.