

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2012-0515

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

DEL MAR FARMS, JON MARING, LEE DEL DON
AND
BERNARD N. & BARBARA C. O'NEILL TRUST
STANISLAUS COUNTY

This Complaint is issued to Del Mar Farms, Jon Maring, Lee Del Don and Bernard N. & Barbara C. O'Neill Trust (hereafter Dischargers) pursuant to California Water Code section 13350, which authorizes the imposition of Administrative Civil Liability (ACL), and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Dischargers violated conditions of the *Coalition Group Conditional Waiver of Waste Discharges Requirements for Discharges from Irrigated Lands* (Conditional Waiver) (Order R5-2006-0053, as renewed by Order R5-2011-0032) by failing to implement management practices to control the discharge of highly turbid water. These violations have resulted in the discharge of highly turbid water from several parcels to an irrigation supply and drainage ditch referred to as the Amaral Line, and ultimately into the San Joaquin River.

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

Background

1. Del Mar Farms and owners Jon Maring and Lee Del Don (collectively Del Mar Farms) lease and operate irrigated lands from multiple property owners, including the following Stanislaus County parcels: 027-018-023, 027-018-024, 027-018-025, 027-018-029, 027-018-055, 049-013-001, 049-013-002, 049-013-007, 049-013-008, and 049-014-001 (collectively Del Mar Farms parcels). These parcels are shown in Attachment A. The total acreage of these parcels is 375 acres. The irrigated fields on these parcels are the source of violations described herein alleged to have occurred on 19 May, 6 July and/or 19 July 2011. At the time of the alleged violations, Del Mar Farms controlled and operated these parcels for furrow irrigated cropland.¹
2. Assessor's parcels 027-018-055 and 049-014-001 are owned by the Bernard N. and Barbara C. O'Neill Trust. The total acreage of these parcels is 49 acres. These parcels are the source of violations described herein alleged to have occurred on 19 May and 19 July 2011. At the time of the alleged violations, Del Mar Farms controlled and operated these parcels for furrow irrigated cropland.

¹ As described below, the precise parcels contributing to the July 6 violation are not known, although it is known that Del Mar Farms controlled all of the parcels that could have contributed to the violation. As a result, the landowners of these parcels are not named in this Complaint.

3. As shown in Attachment B, surface water runoff from the Del Mar Farms parcels drains to an irrigation supply and drainage line known as the Amaral Line. The first half of this line is underground pipeline; the remainder is open ditch. The Amaral Line runs about three miles from the Del Mar Farms parcels to a discharge point on the San Joaquin River.
4. The Dischargers have obtained regulatory coverage for discharges from the Del Mar Farms parcels by enrolling in the Westside San Joaquin River Watershed Coalition (Coalition). As a Coalition member, the Dischargers must comply with the conditions set forth in the Conditional Waiver.

Legal Provisions

5. California Water Code section 13260(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 (RWD) containing such information and data as may be required by the Central Valley Water Board, unless the Central Valley Water Board waives such requirement.
6. Water Code section 13263 requires the Central Valley Water Board to prescribe Waste Discharge Requirements (WDRs), or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
7. Pursuant to Water Code section 13269, subdivision (a)(1), on and after 1 January 2000, the provisions of subdivisions (a) and (c) of Water Code section 13260, subdivision (a) of Water Code section 13263, or subdivision (a) of Water Code section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Government Code section 11125.
8. Resolution R5-2011-0032, Short Term Renewal of Order R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands (the Conditional Waiver) was adopted pursuant to Water Code section 13269. The Conditional Waiver sets forth conditions for which enrollees must follow to remain in compliance.
9. The Conditional Waiver states at Order, ¶ 3:

Dischargers who are participants in a Coalition Group shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards.
10. The Conditional Waiver states at Order, ¶ 6:

Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State.

11. The Conditional Waiver states, at Attachment B, Part C:

1. ...Dischargers must comply with applicable water quality standards... Dischargers shall not cause or contribute to an exceedance of any applicable water quality standard.

2. ...Dischargers shall implement management practices to achieve best practicable treatment or control of the discharge that will reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and prevent nuisance.

12. "Water Quality Standards" include water quality objectives in the Central Valley Water Board's Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies. (Conditional Waiver at Attachment A.)

13. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (Basin Plan) establishes water quality objectives designed to protect the beneficial uses delineated in the Basin Plan. In regard to suspended sediment and turbidity, the Basin Plan states at III-7.00 and III-9.00, respectively:

- *The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.*
- *Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:*
 - *Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.*
 - *Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.*
 - *Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.*
 - *Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.*

14. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Board. The Basin Plan designated beneficial uses for the San Joaquin River from the mouth of the Merced River to Vernalis (the portion of the river including the Amaral Line outfall) include municipal and domestic supply (MUN); agricultural supply, including irrigation and stock watering (AGR); industrial process supply (PROC); water contact recreation (REC-1); other non-contact water recreation (REC-2); warm freshwater habitat (WARM); migration of aquatic organisms, warm and cold (MIGR);

spawning, reproduction, and/or early development, warm (SPWN); and wildlife habitat (WILD).

15. Water Code section 13050, subdivision (m) defines nuisance as anything that meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

16. Water Code section 13350 states, in part:

(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

...

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

17. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

18. 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).

Violation Chronology

19. On 19 May 2011, Water Board staff responded to a citizen complaint of a sediment plume in the San Joaquin River near the Orestimba Creek outfall. Upon arrival at this location, staff observed a sediment plume coming from upstream at the Amaral Line outfall (see Attachment B). Staff then investigated the source of the sediment plume and found significant discharges of sediment-laden water from Stanislaus County parcels 027-018-055 and 049-014-001 (leased and farmed by Del Mar Farms, and owned by Bernard N. & Barbara C. O'Neill) and into the Amaral Line. The irrigation supply water applied to these parcels had a measured turbidity of 43 NTU's. The irrigation runoff from the parcels into the Amaral Line had a turbidity of 544 NTU's. The turbidity of the discharge from the Amaral Line into the San Joaquin River was measured at 671 NTU's. The turbidity of the San Joaquin River about 100 feet up-stream from the Amaral Line outfall was measured at 26 NTU's, while the river water about 100 feet down-stream was measured at 52 NTU's (a 100 percent increase).
20. Photographic evidence of staff's observations is provided in Attachment C to this Order; and the 19 May staff inspection report is provided as Attachment D. The turbidity and photographic evidence indicates the 19 May discharge caused or contributed to a violation of Basin Plan Water Quality Objectives for turbidity and suspended sediment load, harmed beneficial uses in the San Joaquin River, including but not limited to MUN, AGR, PROC, REC-1, REC-2, WARM, and WILD, and created nuisance conditions in the San Joaquin River as defined by Water Code 13050, subdivision (m).
21. On 1 June 2011, the Westside San Joaquin River Watershed Coalition sponsored a grower outreach meeting in Westley. Various presenters discussed the local watershed monitoring results, management plans, and the water board's Irrigated Lands Regulatory Program requirements. Representatives from Del Mar Farms (Jon Maring and Zach Maring) were in attendance. After the meeting, staff met with them and discussed the 19 May 2011 discharge and the need for erosion and sediment control improvements at Del Mar Farms-leased croplands.
22. On 6 July 2011, board staff responded to a complaint of sediment-laden water being discharged into the Amaral Line, and subsequently into the San Joaquin River. Staff contacted the California Department of Fish and Game (DFG) and conducted a joint agency investigation of the complaint. Board staff and DFG staff observed sediment-laden water coming from one or more of the irrigated fields on the north side of JT Crow Road operated by Del Mar Farms (parcels 027-018-023, 027-018-024, 027-018-025, 027-018-029, 049-013-001, 049-013-002, 049-013-007, and 049-013-008; see Attachment A) into a drain inlet feeding into the Amaral Line. Staff was not able to access the property identify the specific source parcel(s) that was being irrigated; however, staff was able to determine that the discharge originated from one or more of the parcel(s) operated by Del Mar Farms. The irrigation supply water had a measured turbidity of 111 NTU's. The turbidity of the irrigation water discharging from the fields into the Amaral Line was 668 NTU's at 13:00 hours and 584 NTU's at 14:25 hours. The increase in turbidity was approximately 500 percent and 426 percent, respectively. The discharge rate from the parcel(s) was measured at 572 gallons per minute. This rate remained consistent during staff's investigation, which lasted for 3.5 hours.

23. Photographic evidence of staff's observations is provided in Attachment C to this Order; and the 6 July staff inspection report is provided as Attachment E. The turbidity and photographic evidence indicates the 6 July discharge caused or contributed to a violation of Basin Plan Water Quality Objectives for suspended sediment load, harmed beneficial uses in the San Joaquin River, including but not limited to MUN, AGR, PROC, REC-1, REC-2, WARM, and WILD, and created nuisance conditions in the San Joaquin River as defined by Water Code Section 13050, subdivision (m).
24. On 19 July 2011, board staff conducted a follow-up inspection of the Amaral Line, and observed sediment-laden water discharging from the irrigated parcels 027-019-055 and 049-014-001 (the same parcels as during the 19 May 2011 event) into a drain inlet feeding into the Amaral Line. The turbidity of irrigation supply water was measured at 45 NTU's. The turbidity of irrigation water discharged from these parcels to the Amaral Line was measured at 332 NTU's (a 630 percent increase). The discharge rate from the parcels was measured at 373 gallons per minute. This rate remained consistent during staff's investigation, which lasted for about 2.2 hours. The sediment-laden water discharged to the Amaral Line ultimately drained to the San Joaquin River.
25. Photographic evidence of staff's observations is provided in Attachment C to this Order; and the 19 July staff inspection report is provided as Attachment F. The photographic evidence and staff's observations indicate the 19 July discharge caused or contributed to a violation of Basin Plan Water Quality Objectives for suspended sediment load, harmed beneficial uses in the San Joaquin River, including but not limited to MUN, AGR, PROC, REC-1, REC-2, WARM, and WILD, and created nuisance conditions in the San Joaquin River as defined by Water Code section 13050, subdivision (m).

Calculation of Penalties Under Water Code section 13350

26. Water Code section 13350 states at section (e): The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.
27. Water Code section 13350 states at section (e)(1): The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.
28. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
29. The Dischargers violated the Conditional Waiver by failing to implement effective management practices for sediment control, which resulted in the discharge of sediment-laden runoff from irrigated croplands. The waste discharges were observed by Water Board staff on 19 May 2011, and by Water Board and DFG staff on 6 July 2011 and 19 July 2011. Discharges of sediment-laden runoff led to the Dischargers causing or contributing to an exceedance of the Basin Plan's numeric Water Quality Objective for turbidity on 19 May

2011, and the narrative Water Quality Objective for nuisance conditions on 19 May, 6 July, and 19 July 2011.

30. **Maximum Civil Liability for Failure to Implement Effective Erosion and Sediment Management Practices:** Pursuant to Water Code section 13350, the maximum civil liability for violations of the Irrigated Lands Conditional Waiver is either \$5,000 per violation per day or \$10 per gallon of waste discharged, but not both. The evidence documented above indicates that the Dischargers, at a minimum, failed to have adequate management practices for sediment control in place for 19 May 2011 (1 day), 6 July 2011 (1 day), and 19 July 2011 (1 day). The 19 May discharge was the Dischargers' first violation. In addition, staff was not familiar with the complexity of the system on this date, therefore the maximum liability of \$5,000 per day is applied to this event. Discharge volume estimates are available for 6 and 19 July; these estimates are 120,187 gallons and 49,269 gallons, respectively. Based on the maximum per day liability for 19 May, and the maximum per gallon liabilities for 6 and 19 July, the Dischargers accrued a maximum civil liability of **one million six hundred ninety nine thousand five hundred and fifty dollars (\$1,699,550)**.

Proposed Administrative Civil Liability

31. 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.
32. 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.
33. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment G. 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.
34. As described above, the maximum penalty for the violations is \$1,699,550. Water Code section 13350 does not specify a minimum penalty for violations of waiver conditions; 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. In this case the economic benefit amount plus ten percent is \$50,600.

35. Based on consideration of the above facts, and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of **\$123,191**. The specific factors considered in this penalty are detailed in Attachment G.
36. 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.

DEL MAR FARMS AND BERNARD N. & BARBARA C. O'NEILL TRUST ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board charges the Dischargers with an administrative civil liability in the amount of **one hundred twenty three thousand one hundred and ninety one dollars (\$123,191)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13327, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **2/3 August 2012**, unless one of the following occurs by **27 June 2012**:
 - (a) The Dischargers waive the hearing by completing the waiver form provided as Attachment H (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **\$123,191**; or
 - (b) The Central Valley Water Board agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and return it to the 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 Dischargers request a delay by checking off the box next to Option #3 on the attached form, and return it to the Board along with a letter describing the issues to be discussed.
3. If a hearing in this matter is held, the Central Valley Water Board will consider whether to affirm, reject or modify the proposed Administrative 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 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 staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

Rick Moss, Assistant Executive Officer

14 May 2012

Date

Attachment A: Parcel Map

Attachment B: Area Map

Attachment C: ACL Photo Pages

Attachment D: 19 May 2011 Staff Inspection Report

Attachment E: 6 July 2011 Staff Inspection Report

Attachment F: 19 July 2011 Staff Inspection Report

Attachment G: ACL Calculation Methodology

Attachment H: Waiver Form

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0515
ATTACHMENT H
WAIVER FORM**

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

I am duly authorized to represent Del Mar Farms, Jon Maring, Lee Del Don and/or Bernard N. and Barbara C. O'Neill Trust, (hereafter Dischargers) in connection with Administrative Civil Liability Complaint R5-2012-0515 (hereafter 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 Dischargers waive the hearing requirement and will pay in full.)**
- a. I hereby waive any right the Dischargers may have to a hearing before the Central Valley Water Board.
 - b. I certify that the Dischargers will remit payment for the proposed civil liability in the full amount of **one hundred twenty three thousand one hundred and ninety one dollars (\$123,191)** by check that references "ACL Complaint R5-2012-0515" made payable to the State Water Pollution Cleanup and Abatement Account. Payment must be received by the Central Valley Water Board by **27 June 2012**.
 - c. 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 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 Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. 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 Dischargers to further enforcement, including additional civil liability.
- (OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Dischargers 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 Dischargers 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 Dischargers request that the Central Valley Water Board delay the hearing so that the Dischargers 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 Dischargers waive 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 Dischargers may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint. By checking this box, the Dischargers request that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Dischargers 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, Title and Party Represented)

(Signature)

(Date)