

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2018-0500

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

BALBIR K. NATT  
TULARE COUNTY

This Administrative Civil Liability (ACL) Complaint is issued pursuant to California Water Code<sup>1</sup> section 13323 to Balbir K. Natt (hereafter Discharger) for failing to submit a Report of Waste Discharge (RoWD) 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 California 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. (Wat. Code, § 13050, subd. (e).) The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (Wat. Code, § 13263).
2. Attachment E of 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 General Order) and the Waste Discharge Requirements General Order for Growers Within the Tulare Lake Basin Area that are Members of a Third-Party Group (Order R5-2013-0120) define "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 Tulare County, including the Discharger, 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 (e.g., 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

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<sup>1</sup> All references are to the California Water Code unless otherwise noted.

operators of agricultural lands who may be required to obtain regulatory coverage for these discharges. 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 data indicates that the Discharger owns approximately 192.82 acres of agricultural land in Tulare County, as identified as Assessor's Parcel Numbers (APN's) 240-040-015 and 236-190-006.

**Tulare County APN 240-040-015**

6. On 8 January 2015, Board staff conducted a field inspection of Tulare County APN 240-040-015, and observed commercially irrigated walnuts on the property. A copy of the inspection report is provided as Attachment A.
7. On 16 January 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (Directive) to the Discharger for APN 240-040-015, sent via certified mail. The Directive was sent based on staff's observations of commercially irrigated walnuts during the field inspection and confirmation that the subject parcel did not have regulatory coverage for its activities. A copy of the Directive, including the certified mail receipt, is provided as Attachment B.
8. The Directive required the Discharger to obtain regulatory coverage for all irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, the Discharger could comply by joining the Tule Basin Water Quality Coalition (Coalition or TBWQC), or by submitting a Report of Waste Discharge (RoWD)/ Notice of Intent (NOI) for coverage under the Individual General Order.
9. The Discharger received the Directive for APN 240-040-015 on 22 January 2015, which provided notice to the Discharger of the requirement to obtain coverage for all commercially irrigated land that he owns. The Discharger did not obtain regulatory coverage by 6 February 2015, as required in the 16 January 2015 Directive, and did not contact the Board within 15 calendar days.
10. However, on 10 February 2015, the Discharger did submit a Notice of Intent to obtain regulatory coverage and comply with Order R5-2012-0116, which is the General Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group. Based on the location of parcel 240-040-015 (Tulare County), this was the incorrect form to submit to obtain regulatory coverage as Order R5-2012-0116 does not include lands within Tulare County. Even if this order geographically included the Discharger's parcel, there was no proof of membership in any coalition or third-party group and therefore, this order would be inapplicable to the Discharger's activities. A check for \$200 was submitted with the form, but was not cashed due to the noted deficiencies of the NOI. A copy of the NOI and check is provided as Attachment D.

11. Because the Discharger failed to join the Coalition or submit a RoWD/NOI for coverage under the Individual General Order by the 6 February 2015, a Notice of Violation (NOV) was sent via certified mail to the Discharger on 24 February 2015 and was received by the Discharger on 28 February 2015. A copy of the NOV and certified mail receipt are provided as Attachment C. The Discharger neither obtained regulatory coverage nor contacted the Board in response to the NOV.

**Tulare County APN 236-190-006**

12. On 12 February 2015, Board staff conducted a field inspection of an additional parcel owned by the Discharger, identified as Tulare County APN 236-190-006. Staff similarly observed commercially irrigated walnuts on the property. A copy of this inspection report is provided as Attachment A.
13. On 9 March 2015, based on staff's observations of commercially irrigated walnuts during the field inspection and confirmation that APN 236-190-006 did not have regulatory coverage for its activities, the Assistant Executive Officer of the Central Valley Water Board issued an additional Directive to the Discharger for APN 236-190-006, sent via certified mail. The Discharger was again directed to obtain regulatory coverage for his commercially irrigated lands. A copy of this Directive, including the certified mail receipt, is provided as Attachment B.
14. The Discharger received the Directive for APN 236-190-006 on 12 March 2015, further reminding him that regulatory coverage was required for all parcels on which commercial irrigation was occurring. The Directive required the Discharger to obtain regulatory coverage within 15 calendar days of receipt of the Directive.
15. On 4 June 2015, staff contacted the Discharger by phone to discuss the Dischargers need to enroll in a coalition. The Discharger stated that he would not join the Coalition, and did not have water. He additionally stated that he applied manure and pesticides to his farm, and that it could not impact water quality. The Discharger asked staff to not call again.
16. On 21 December 2017, staff contacted the Discharger regarding receipt of letters received from Central Valley Water Board. The Discharger stated that he was not going to join the Coalition and was not going to pay money to the state because taxes were already too high. The Discharger also requested staff to "get off his back and go ahead and do whatever staff needed to do".
17. Central Valley Water Board records indicate that as of the date of this ACL Complaint, the Discharger has not submitted a RoWD, proof of coalition membership, or a revised NOI to the Central Valley Water Board.

### ALLEGED VIOLATION

18. The Discharger failed to submit a RoWD for enrollment in the Individual General Order or obtain coalition membership as required by Water Code section 13260. The 6 January 2015 Directive issued to the Discharger required either submittal of a RoWD or, in lieu of submitting a RoWD, submittal of a NOI to enroll in a coalition within 15 days of receipt of that Directive. Compliance with the 6 January 2015 Directive would have required the Discharger to enroll *all* lands that he was commercially irrigating. For purposes of this Complaint, the Prosecution Team in its enforcement discretion is alleging one violation for the two parcels and basing the days of violation on the 6 February 2015 deadline to obtain regulatory coverage for all parcels. As of 23 January 2018, the Discharger's RoWD or NOI is 1,083 days past due.

### REGULATORY CONSIDERATIONS

19. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (Water Code Division 7).
20. 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 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 land is located.
21. 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).
22. 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.
23. 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.

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. The proposed administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy,<sup>2</sup> as explained in detail in Attachment E. The proposed administrative 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.

#### **Maximum and Minimum Penalties**

26. The statutory maximum penalty under Water Code section 13261, subdivision (b)(1) is \$1,000 per day of violation. As of the date of this ACL Complaint, the Discharger was out of compliance for 1,083 days (6 February 2015 through 23 January 2018), resulting in a maximum penalty of \$1,083,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit of non-compliance 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 under Order R5-2013-0100 is estimated at \$11,658 (see Attachment E for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$12,824).
27. Notwithstanding the issuance of this ACL Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may occur after issuance of this ACL Complaint.
28. Issuance of this ACL 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, subdivision (a)(2).

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<sup>2</sup> On October 5, 2017, the Office of Administrative Law approved the 2017 Water Quality Enforcement Policy that was adopted by the State Water Resources Control Board on April 4, 2017 (2017 Enforcement Policy). However, based on the dates of the alleged violation, which began prior to October 5, 2017, the 2010 Enforcement Policy was applied when calculating the penalty.

**BALBIR K. NATT IS HEREBY GIVEN NOTICE THAT:**

29. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **eighty-five thousand four hundred seventy dollars (\$85,470)**. The amount of the proposed liability is based upon a review of the factors cited in the Enforcement Policy. The calculation of the proposed penalty amount is explained in Attachment E.
30. A hearing on this matter will be conducted at the Central Valley Water Board Meeting scheduled on **5/6 April 2018**, unless the Discharger does any of the following by 6 February 2018:
  - a) The Discharger waives the right to a hearing by completing the waiver form provided as Attachment F (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with full payment of the proposed civil liability amount of **eighty-five thousand four hundred seventy dollars (\$85,470)**. The check must be payable to the State Water Pollution Cleanup and Abatement Account and sent to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814 with a copy of the check mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA 93706, Attn: David Sholes; 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 waiver 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 waiver form, and returns it to the Board along with a letter describing the issues to be discussed.
31. The hearing will be governed by the Hearing Procedure, which is provided as Attachment G. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed ACL, which may include raising the monetary value of the ACL, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
32. The Assistant Executive Officer reserves the right to amend the proposed amount of the administrative 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 ACL Complaint, and through completion of the hearing.

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Clay L. Rodgers, Assistant Executive Officer

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(Date)

Attachment A: 8 January 2015 and 12 February 2015 Inspection Report

Attachment B: 16 January 2015 and 9 March 2015 California Water Code 13260 Directives

Attachment C: 24 February 2015 Notice of Violation and mail receipt

Attachment D: NOI and Check

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

Attachment F: Waiver Form

Attachment G: Hearing Procedure

Attachment H: ACL Fact Sheet