



San Diego Regional Water Quality Control Board

January 31, 2020

Peltzer Family Cellars, LLC
c/o Mr. Charles T. Peltzer Jr.
and Mrs. Carrie Ann Peltzer
Managers
40275 Calle Contento
Temecula, CA 92591

Golden State Overnight
Tracking Number: 546590773

In reply refer to / attn:
PIN No. 803119:carias

Mr. Peltzer and Mrs. Peltzer:

Subject: Settlement Offer No. R9-2020-0026 to Resolve Administrative Civil Liability for an Alleged Violation of California Water Code Section 13260

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team alleges that Peltzer Family Cellars, LLC (Discharger) is in violation of California Water Code (Water Code) section 13260 for its failure to obtain regulatory coverage for discharges from a commercial agricultural operation in the San Diego Region, as detailed below. This letter contains a Settlement Offer from the Prosecution Team to resolve potential claims for administrative civil liability arising out of the alleged violation.

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violation through payment of three thousand, three hundred and thirty-three dollars (\$3,333). Please read this letter carefully and respond no later than March 2, 2020.

Description of Alleged Violation

Water Code section 13260 requires a report of waste discharge be submitted to the San Diego Water Board when any person discharges waste, or proposes to discharge waste, that could affect the quality of waters of the State in the San Diego Region. Such discharges include irrigation return flows or storm water from irrigated lands that may contribute waste to groundwater or surface waters. A person that owns or operates a commercial agricultural operation in the San Diego Region can meet the report of waste discharge requirement by applying for coverage under one of two General Agricultural Orders issued by the San Diego Water Board: 1) Order No. R9-2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego*

HENRY ABARBANEL, PH.D., CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

Region (Third-Party General Order); or 2) Order No. R9-2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Individual General Order). The General Agricultural Orders are available on the San Diego Water Board's website at:

https://www.waterboards.ca.gov/sandiego/water_issues/programs/commercial_agriculture/.

To obtain coverage under one of the General Agricultural Orders, a person must either submit a complete Notice of Intent (NOI)¹ under membership with an approved Third-Party Group grower coalition or obtain regulatory coverage by submitting an NOI without the assistance of a Third-Party Group.

On July 31, 2018, the San Diego Water Board issued the Discharger a directive to obtain regulatory coverage for its commercial agricultural operations pursuant to Water Code section 13260 (Directive; Exhibit 1). The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the two General Agricultural Orders through submission of a complete NOI on or before August 31, 2018. The Directive cited publicly available information regarding parcels owned or operated by the Discharger. A satellite image of the agricultural operation is shown in Exhibit 2.

The Prosecution Team alleges that the Discharger is in violation of Water Code section 13260 by failing to timely submit an NOI by the due date specified in the Directive. To date, the Discharger has not submitted an NOI despite multiple attempts by San Diego Water Board staff to explain the enrollment requirements and offer its assistance (Exhibit 3).

Statutory Liability

Pursuant to Water Code section 13261, the Discharger is liable for administrative civil liability of up to \$1,000 per day of violation. The State Water Resources Control Board's Water Quality Enforcement Policy

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) states that the minimum liability should be the economic benefit plus ten percent. For the alleged violation described in the attachments, the maximum liability is \$510,000 and the minimum liability is \$3,333.

Proposed Settlement Offer

The Prosecution Team proposes to resolve the alleged violation for the minimum liability amount, \$3,333. This Settlement Offer is based on an application of the Enforcement Policy's Penalty Calculation Methodology, which addresses factors that are required to be considered by Water Code section 13327. The attached "Penalty Calculation Methodology" describes in detail how the settlement amount was calculated for the alleged violation (Exhibit 4). The Prosecution Team believes that the proposed

¹ In the Commercial Agriculture Regulatory Program, the NOI is the "report of the discharge" described in Water Code section 13260.

resolution of the alleged violation is fair and reasonable, fulfills the San Diego Water Board's enforcement objectives, and is in the public's best interest.

If the Discharger chooses **not** to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint (ACL Complaint) or by referring the matter to the Attorney General's Office. If an ACL Complaint is issued, the Prosecution Team will include, at a minimum, an additional \$4,841 in civil liability for staff investigation and enforcement costs (Staff Costs; Exhibit 5) associated with the violations. Staff costs would continue to accrue until an ACL Complaint is issued.

The Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine if additional violations occurred. Any additional violations subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation by enrolling in one of the two General Agricultural Orders and accepting this Settlement Offer. The Prosecution Team reserves the right to take further enforcement actions against the Discharger for all past violations not identified in this Settlement Offer and future violations of the Water Code, the Third-Party General Order, or Individual General Order.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver*; Exhibit 6) shall be completed and submitted, via email, no later than March 2, 2020, to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: Christina Arias, PE, Commercial Agriculture Regulatory Program
Email: SanDiego@waterboards.ca.gov

Important! Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period. If no substantive comments are received within the 30 days, and the Discharger has obtained regulatory coverage under one of the two General Agricultural Orders, the Prosecution Team will ask the San Diego Water Board's Executive Officer to sign the *Acceptance and Waiver* as an Order of the San Diego Water Board. An invoice will then be mailed to the Discharger requiring payment of the **\$3,333** administrative civil liability within 30 days of the Order's effective date.

Please note, this Settlement Offer may be withdrawn if either of the following occur: a) substantive comments are received in opposition to the settlement and/or the Executive Officer declines to accept the settlement; or b) the Discharger fails to obtain coverage under one of the two General Agricultural Orders for its commercial agricultural operation(s) before the close of the 30-day comment period. Should either occur, the Discharger will be notified and the *Acceptance and Waiver* will be treated as withdrawn. The unresolved violation may then be addressed in a formal enforcement action. An

ACL Complaint seeking a higher liability amount may be issued and the matter may be set for a hearing before the San Diego Water Board.

Option B: Contest the Alleged Violation

If the Discharger chooses to contest the alleged violation or the methodology used to calculate the proposed liability, then it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the San Diego Water Board no later than March 2, 2020. The Prosecution Team will evaluate the Discharger's response and may seek clarifying information or schedule an in-person meeting before determining whether adjustments are warranted. The Prosecution Team will inform the Discharger of its decision regarding the settlement amount and will provide the Discharger a final opportunity to accept the revised or original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the Discharger chooses to reject this Settlement Offer or does not timely complete and return the *Acceptance and Waiver*, it should expect the Prosecution Team to conduct further investigation of the alleged violation, issue an ACL Complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed will likely exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this Settlement Offer, please contact Ms. Christina Arias at (619) 521-3361 or at christina.arias@waterboards.ca.gov.

Sincerely,



KELLY DORSEY
Acting Assistant Executive Officer

cc:

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Agent for Service of Process
5100 Campus Drive, Ste. 200
Newport Beach, CA 92660

Fred Wilson, Director of Operations, Peltzer Family Cellars, fred@peltzers.com

Chiara Clemente, Enforcement Coordinator, San Diego Water Board,
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Roger Mitchell, Acting Chief, Site Restoration and Groundwater Protection Branch,
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Thomas Leung, Frog Environmental, Inc., thomas@frogenv.com

Matt Yeager, Santa Margarita Permit Manager, County of Riverside,
myeager@rivco.org

ECM PIN# 803119

DOCUMENTS RELIED ON (ATTACHED)

Exhibit 1 (Directive Letter dated 31 July 2018)

Exhibit 2 (Satellite Photo of Agricultural Operation)

Exhibit 3 (Record of Contacts)

Exhibit 4 (Penalty Calculation Methodology)

Exhibit 5 (Staff Costs)

Exhibit 6 (*Acceptance and Waiver*)

DOCUMENTS RELIED ON AVAILABLE UPON REQUEST

Email dated 31 July 2018 from M. Valerocasas to F. Wilson (ECM DH 3675450)

Letter from Peltzer Family Cellars to C. Arias dated 20 August 2018 (ECM DH 3727787)

Email dated 27 August 2018 from C. Arias to F. Wilson (ECM DH 3711909)

Email dated 30 August 2018 from F. Wilson to C. Arias (ECM DH 3717397)

Email dated 5 September 2018 from C. Arias to F. Wilson (ECM DH 3723833)

Email dated 26 April 2019 from C. Arias to S. Corona (ECM DH 4319590)

Email dated 29 April 2019 from F. Wilson to C. Arias (ECM DH 4335579)

Email dated 3 May 2019 from C. Arias to F. Wilson (ECM DH 4333413)

Email dated 8 May 2019 from S. Corona to C. Arias (ECM DH 4333405)

Notice of Violation No. R9-2019-0131 (ECM DH 4427285)

Email dated 16 May 2019 from F. Wilson to C. Arias (ECM DH 4470985)

Email dated 4 June 2019 from C. Arias to F. Wilson (ECM DH 4455873)

Economic Benefit Analysis (ECM DH 4722975)

Peltzer Family Cellars Property Reports (ECM DH 4722964)

Peltzer Family Cellars website (ECM DH 4723020)

2017 County of Riverside Crop Statistics & Annual Report (ECM DH 4722971)

Irrigated Lands Fee Schedule FY 2017-2018 (ECM DH 4699640)

Irrigated Lands Fee Schedule FY 2018-2019 (ECM DH 4699643)