

ATTACHMENT D

18 October 2013 pre-ACL letter

Central Valley Regional Water Quality Control Board

16 October 2013

Sarbjit & Satwant K. Athwal
5117 Central Avenue
Ceres, CA 95307

Certified Mail No.
7012 0470 0000 9904 3147

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13260, SARBJIT & SATWANT K. ATHWAL, CERES, STANISLAUS 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 28 January 2013 and 18 April 2013, 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 31 July 2013, 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 within fifteen (15) days for irrigated lands that you may own or operate.

On 30 August 2013, 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 023-050-016, 024-142-017, and 023-050-013 in Madera County that contain irrigated agriculture; (2) received a 13260 Directive and a Notice of Violation by certified mail requiring you to obtain regulatory coverage for such parcels; and (3) have not to date obtained regulatory coverage.

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.”

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 16 October 2013, your obtainment of regulatory coverage is 78 days overdue. The **maximum penalty** for the violation described above is **seventy-eight thousand dollars (\$78,000)** based on a calculation of the total number of per-day violations times the statutory maximum penalty (78 total days of violation multiplied by \$1,000). The Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you in the amount of **three thousand five hundred dollars (\$3,500)** for this violation. This recommended penalty amount is based on information contained in the Central Valley Water Board's files and takes into account the factors set forth in the State Water Resources Control Board's Water Quality Enforcement Policy, including your culpability, cleanup and cooperation, history of violations, ability to pay and continue in business, and other factors as justice may require. The full Enforcement Policy may be found here:

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violations and proposed penalty amount. This meeting affords you the opportunity to potentially reduce the recommended penalty amount if you present new information to the Central Valley Water Board staff regarding the factors listed above, or other information you believe is relevant to determining an appropriate monetary penalty.

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. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing the Complaint. To avoid further liability, you are urged to obtain regulatory coverage.

In order to initiate any discussions to settle this matter, you must contact Brett Stevens at (916) 464-4642 by **1 November 2013** 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 in the proposed penalty amount 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. Failure to respond may also result in a larger fine than that cited in this letter, since each day of non-compliance is a maximum of an additional \$1,000.

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 (\$50). You can enroll under the Waste Discharge Requirements General Order (Order R5-2012-0116 or Coalition Order) for Growers within the Eastern San Joaquin River Watershed 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 2013 regulatory coverage under the Individual General Order:

Farm Size	Annual Regulatory Fee	Annual Estimated Monitoring and Reporting Costs	Estimated Annual Costs
150 acres	\$5,020	\$8,157 ¹	\$13,177

Cost of 2013 regulatory coverage as a member of the East San Joaquin Water Quality Coalition:

Farm Size	Annual cost for first year of coalition membership (includes monitoring and reporting)	Annual cost for following years (including monitoring & reporting)	Estimated Annual Costs
150 acres	\$4,640	\$2,090	\$4,640 to \$2,090

Once you've made your decision, complete the appropriate NOI, enclose the administrative fee of \$50, and return these to the following:

Central Valley Water Board
Attn: Brett Stevens
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Failure to get regulatory coverage may result in a board hearing in which you will be issued coverage under the Individual Order.

If you have any questions, please contact Brett Stevens by phone at (916) 464-4642 or by email at bstevens@waterboards.ca.gov.

[Original signed by]

Joe Karkoski, Chief
Irrigated Lands Regulatory Program

cc: Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Andrew Tauriainen, SWRCB Office of Enforcement

¹ 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.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you. DX
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sarbjit & Satwant K. Athwal
 5117 Central Avenue
 CERES, CA 95307

2. Article Number

(Transfer from service label)

7012 0470 0000 9904 3147

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/15/13

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes