

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF OCTOBER 19, 2023**

Prepared on September 28, 2023

**ITEM NUMBER:** 7

**SUBJECT:** **Consideration of Adoption of an Administrative Civil Liability Order for JSM Organics, Inc., Monterey County, Administrative Civil Liability Complaint R3-2023-0050**

**STAFF CONTACTS:** Harvey Packard, (805) 542-4639,  
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**KEY INFORMATION**

**Location:** El Rancho Triple M, 420 Hall Road, Royal Oaks, Monterey County

**Type of Discharge:** Agricultural Irrigation

**Existing Orders:** Order R3-2021-0040, *General Waste Discharge Requirements for Discharges from Irrigated Lands* (Agricultural Order)

**ACTION:** **Consider Adopting Administrative Civil Liability (ACL) Order**

**SUMMARY**

The Central Coast Water Board's enforcement staff alleges that JSM Organics, Inc. has violated Board requirements that apply to commercial irrigated agricultural operations set forth in the Agricultural Order, including not submitting required reports. Enforcement staff proposes that the Central Coast Water Board impose civil liability on JSM Organics, Inc. in the amount of \$49,415.

The Central Coast Water Board will hold a hearing to consider written evidence and arguments, hear oral evidence and arguments, and deliberate.

**DISCUSSION**

**Background**

JSM Organics enrolled El Rancho Triple M in the Central Coast Water Board's General Waste Discharge Requirements for Irrigated Lands, Order R3-2021-0400 (referred to

herein as the Agricultural Order) in 2020. El Rancho Triple M comprises 65 acres of commercial irrigated land at 420 Hall Road, Royal Oaks, Monterey County.

The Agricultural Order requires that owners and operators of commercial irrigated lands submit information regarding fertilizers applied to land, known as total nitrogen applied (TNA) reports, annually by March 1.

### **Regulatory Framework**

The regulatory framework for this proceeding is set out in detail in hearing procedures established by the Central Coast Water Board. See Attachment 1.

#### **Separation of Functions**

Central Coast Water Board staff and attorneys who have prepared the ACL complaint (Prosecution Team) have been separated from Central Coast Water Board staff and attorneys who will advise the Central Coast Water Board on the ACL complaint (Advisory Team). The Prosecution Team will present evidence for consideration by the Central Coast Water Board. The Advisory Team provides legal and technical advice to the Central Coast Water Board.

The Prosecution Team is led by Assistant Executive Officer Thea Tryon, and includes Julie Macedo (Office of Enforcement, Attorney V), Tamara Anderson, Mary Hamilton, Stephanie Young, Todd Stanley, Paula Richter, and Jesse Woodard. The Advisory Team includes Executive Officer Ryan Lodge, Harvey Packard, and Staff Counsel Sophie Froelich.

#### **Parties**

Parties are the primary participants in the hearing. Parties may present written evidence, offer witness testimony, cross-examine witnesses, and provide closing statements. Parties may be asked to respond to questions from the Central Coast Water Board and Advisory Team.

The parties to this proceeding are the Prosecution Team and JSM Organics, Inc.

#### **Alleged Violations**

The Prosecution Team alleges that JSM Organics violated the Agricultural Order by not submitting the required year 2021 TNA report for El Rancho Triple M.

The Prosecution Team's ACL complaint, Attachment 2 of this staff report, details the efforts made by Central Coast Water Board staff to inform JSM Organics of Agricultural Order requirements (including TNA report requirements) and its failure to comply. Certified mail receipts verify that JSM Organics received the ACL Complaint documents.

#### **Administrative Civil liability Complaint**

The Enforcement Team issued the ACL complaint on July 21, 2023, by certified mail.

The complaint proposes administrative civil liability in the amount of \$49,415. The amount of the proposed civil liability is based on the Prosecution Team's analysis of the factors in Water Code section 13327 and in the [Enforcement Policy](#)<sup>1</sup> and includes consideration of the economic benefit or savings resulting from the violations. The complaint is included as Attachment 2.

### Hearing Procedures

On August 4, 2023, the Advisory Team issued draft Hearing Procedures for this matter. Pursuant to the deadlines therein, the Prosecution Team submitted proposed revisions to the draft Hearing Procedures on August 21, 2023. JSM Organics did not submit any proposed revisions. The final Hearing Procedures in this matter, which incorporated many of the Prosecution Team's proposed revisions and which are included in the Central Coast Water Board's materials for its October 19, 2023 meeting, were issued on August 29, 2023.

### Evidence Submittals

In accordance with the hearing procedures, the Prosecution Team submitted its evidence and arguments to the Central Coast Water Board on September 5, 2023. See Attachment 3.

JSM Organics did not submit any written evidence or arguments by the date due in the Hearing Procedures. Thereafter, on September 21, 2023, the Advisory Team sent an email to all parties in which it asked JSM Organics whether it intended to submit any evidence or other documents to the Central Coast Water Board. In that same email, the Advisory Team requested Ms. Macedo, the Prosecution Team's attorney, let the Advisory Team know if she had heard anything from JSM Organics on this issue.

On September 29, 2023, the date on which the parties' deadline to submit prehearing rebuttal evidence was due,<sup>2</sup> the Advisory Team received an email from the Prosecution Team in which it stated (among other things) that:

1. After receiving the Advisory Team's September 21, 2023 email, a member of the Prosecution Team reached on to Javier Zamora of JSM Organics. Mr. Zamora confirmed that he would attend the October 19, 2023 hearing.

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<sup>1</sup> State Water Resources Control Board *Water Quality Enforcement Policy*: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

<sup>2</sup> September 29, 2023, was also the date for the parties to submit responses to Interested Persons' non-evidentiary policy statements, and the deadline (a) to submit objections to prehearing evidence submittals (excluding rebuttal evidence) and (b) to submit request for additional hearing time. The Prosecution Team's September 29, 2023 email informed the Advisory Team that there were no "Interested Persons" (and therefore no policy statements to rebut) and that the Prosecution Team did not need additional time to present its case.

2. Mr. Zamora also told the Prosecution Team that he would bring financial information to the hearing.
3. Mr. Zamora also indicated that there may be tenant leases that could be relevant to the case against him.

The Prosecution Team noted that while it was unclear whether Mr. Zamora would have any additional evidence to present to the Central Coast Water Board at the hearing, it would object to that evidence if it were introduced. This objection has yet to be made officially, and as of the writing of this report, no additional evidence has been received. Attachment 4 is a copy of email correspondence among the parties and the Advisory Team.

### **Central Coast Water Board Hearing**

At the hearing, the Central Coast Water Board will hear testimony from the Prosecution Team and JSM Organics. JSM Organics will have the opportunity to present evidence at the hearing.

The Central Coast Water Board may choose to impose administrative civil liability in the amount proposed or in a different amount, decline to impose civil liability, or refer the matter to the Attorney General to have a superior court consider enforcement.

### **Human Right to Water**

California Water Code section 106.3, subdivision (a) states that it is the policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.” On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities.

Compliance with the Agricultural Order is critical to protect water quality for all residents, including underrepresented communities. Enforcement of Agricultural Order requirements is a necessary tool to ensure widespread compliance.

### **Environmental Justice**

Environmental Justice principles call for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies that affect every community's natural resources and the places people live, work, play, and learn. The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of all people, including underrepresented communities. Underrepresented communities include but are not limited to disadvantaged communities (DACs), severely disadvantaged communities (SDACs), economically distressed areas (EDAs), tribes, environmentally

disadvantaged communities (EnvDACs), and members of fringe communities.<sup>3</sup> Furthermore, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities.

The Prosecution Team reports that El Rancho Triple M is in a disadvantaged community block, as determined by the online census mapping tool provided by the State Water Resources Control Board at <https://gis.water.ca.gov/app/dacs/>. El Rancho Triple M is in an area where domestic wells (serving fewer than five connections) and state small water systems (serving between 5 and 15 connections) may be at a relatively higher risk of accessing groundwater that does not meet primary drinking water standards. El Rancho Triple M is located adjacent to Carneros Creek, which is on the 2020-2022 303(d) list with impairments for ammonia, chlorophyll-a, chlorpyrifos, copper, DDE, *E. coli*, nitrate, organophosphate pesticides, dissolved oxygen, pH, and turbidity.

Compliance with the Agricultural Order is essential to protect water quality for residents of the area.

### **Climate Change**

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions that improve water supply resiliency through water conservation and wastewater reuse and recycling; mitigate for and adapt to sea level rise and increased flooding; improve energy efficiency; and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution No. 2017-0012.

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<sup>3</sup> Disadvantaged community: a community with an annual median household income that is less than 80% of the statewide annual median household income (Public Resources Code section 80002(e)); severely disadvantaged community: a community with a median household income of less than 60% of the statewide average. (Public Resources Code section 80002(n)); economically distressed area: a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less with an annual median household income that is less than 85% of the statewide median household income and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) unemployment rate at least 2% higher than the statewide average, or (3) low population density. (Water Code section 79702(k)); tribes: federally recognized Indian tribes and California state Indian tribes listed on the Native American Heritage Commission's California Tribal Consultation List; EnvDACs: CalEPA designates the top 25 percent scoring census tracts as DACs. Census tracts that score the highest 5% of pollution burden scores but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data are also designated as DACs (refer to the CalEnviroScreen 3.0 Mapping Tool or Results Excel Sheet); fringe community: communities that do not meet the established DAC, SDAC, and EDA definitions but can show that they score in the top 25% of either the Pollution Burden or Population Characteristics score using the CalEnviroScreen 3.0.

Compliance with the Agricultural Order is an important tool for climate change mitigation. Clean, adequate supply of groundwater into the future depends on proper management of all land uses, including commercial irrigated agriculture. Climate change will continue to apply pressure to both water quality and quantity.

## **CONCLUSION**

The Prosecution Team provided evidence and arguments supporting its proposed liability against JSM Organics, Inc. At the hearing, the Central Coast Water Board will hear oral arguments from the parties and will have the opportunity to review all parties' arguments as it considers its options.

The Advisory Team will be available to assist the Board in its deliberations.

## **RECOMMENDATION**

To be provided at the hearing.

## **ATTACHMENTS**

1. Hearing Procedures
2. ACL Complaint
3. Prosecution Team's Evidentiary Submittal
4. Communication between the Advisory Team, Prosecution Team, and JSM Organics

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