

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0564

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

LARRY W. & SHIREEN I. SLATE,
MERCED COUNTY

This Complaint is issued to Larry W. & Shireen I. Slate (hereafter collectively "Slate" or "Dischargers") pursuant to California Water Code section 13261, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on a finding of failure to submit a Report of Waste Discharge to Water Code section 13260. This Complaint replaces Complaint R5-2014-0529, which was issued on 10 May 2014 and rescinded on 17 July 2014.

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 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 (Water Code § 13050(e)). The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state (Water Code § 13263).
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R2) defines "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 Merced County, including Slate, 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 (i.e., 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 operators of agricultural lands who may not have complied with the California Water Code. 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 and FMMP data indicates that Slate owns approximately 108 acres of agricultural land in Merced County, including the following Assessor's Parcel Numbers [APN] and their respective acreages:

Merced County	
APN	Acres
53270038	9.8
67150013	2.9
67150023	20.1
67150024	49.4
67150025	26

6. On 20 February and 18 April 2013, the Central Valley Water Board issued notices to Slate describing new water quality regulations and actions available to comply with the regulations. Slate did not obtain regulatory coverage and did not contact the board.
7. On 4 September 2013, staff conducted inspections of Merced County parcels 53270038, 67150013, 67150023, 67150024, & 67150025 and found evidence of a commercial irrigated agricultural operation based on the crop grown and the size of the operation. A copy of the inspection report is provided as Attachment A. Aerial imagery also indicates that the parcels owned by the Dischargers contain commercial irrigated agriculture (orchards).
8. On 7 October 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (hereafter Directive) to Slate, sent via certified mail. The Directive stated that, *"You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations."* A copy of the Directive is provided as Attachment B.
9. The Directive required Slate to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, Slate could comply by joining the East San Joaquin Water Quality Coalition ("Coalition" or "ESJ Coalition"), or by submitting a Report of Waste Discharge.
10. The certified mail receipt for the Directive issued to Slate was signed as received by Shireen Slate on 9 October 2013. A copy of the certified mail receipt for the Directive is included in Attachment B. Slate did not obtain regulatory coverage by 24 October 2013 and did not contact the Water Board.
11. Because the Dischargers failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Slate on 13 November 2013. A copy of the NOV is provided as Attachment C.
12. The certified mail receipt for the NOV was returned to sender, unsigned on 27 November 2013. The NOV required Slate to obtain regulatory coverage by 28 November 2013.

13. On 21 January 2014, staff sent Slate a notification letter via certified mail that an Administrative Civil Liability Complaint (Complaint) in the amount of \$3,080 would be issued if Slate did not (a) obtain regulatory coverage and (b) initiate settlement discussions regarding the proposed ACL fine by 31 January 2014. This letter is referred to as the "pre-ACL letter." A copy of the pre-ACL letter is provided as Attachment D.
14. The certified mail receipt for the pre-ACL letter issued to Slate shows that the pre-ACL letter was unclaimed by Slate and returned to sender on 18 February 2014.
15. On 10 May 2014, the Assistant Executive Officer of the Central Valley Water Board issued an ACL Complaint to Slate in the amount of three thousand and eighty dollars (\$3,080) via certified mail for failure to obtain regulatory coverage for the discharges from their irrigated lands as required under Water Code Section 13260. The certified mail receipt for the Complaint was signed as received by Shireen Slate on 12 May 2014. A copy of the certified mail receipt for the Complaint is provided as Attachment E.
16. On 13 June 2014, Larry Slate contacted Central Valley Water Board staff Brett Stevens to inquire about the ACL Complaint. After hearing an explanation of the Irrigated Lands Program and its requirements, Mr. Slate stated that he did not intend to join a coalition or obtain coverage under the Individual General Order (Order R5-2013-0100). Board staff advised Mr. Slate to read the Complaint carefully and then respond with one of the options explained in the Complaint.
17. On 17 July 2014, the Assistant Executive Officer rescinded ACL Complaint R5-2014-0529 via certified mail in order to address issues raised in an 11 July 2014 Advisory Team memorandum. This 17 July 2014 letter is referred to as the "rescission letter" and is provided as Attachment F. The 11 July 2014 memorandum was issued regarding proposed settlements for the David L. & Linda M. Davis Trust and for William R. Sinks et al. matters; however, the Prosecution Team believed that the issues raised in that memorandum applied also to the Slate enforcement case. In order to address those issues, ACL Complaint R5-2014-0529 was rescinded.
18. The certified mail receipt for the recession letter sent to Slate was signed as received by Shireen Slate on 19 July 2014. A copy of the rescission letter and certified mail receipt are provided as Attachment F.
19. Central Valley Water Board records indicate that at the time of issuance of this Complaint, board staff had not received a RoWD, proof of coalition membership, or a Notice of Intent from Slate.

ALLEGED VIOLATIONS

20. Slate failed to submit a Report of Waste Discharge as required by Water Code section 13260. The Water Code section 13260 Directive Letter was issued to Larry W. and Shireen I. Slate on 7 October 2013 and required Slate to either submit a RoWD or, in lieu of submitting a RoWD, submit a Notice of Intent (NOI) to enroll in the East San

Joaquin Water Quality Coalition. As of 12 September 2014, Slate's RoWD or NOI is 323 days past due.

REGULATORY CONSIDERATIONS

21. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
22. 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 report of waste discharge (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 Slate lands are located.
23. 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).
24. 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.
25. The required RoWD is 323 days past due. The maximum liability under Water Code section 13261(b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of three hundred and twenty-three thousand dollars (\$323,000).
26. 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.
27. 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.

28. 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.
29. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2012-0116-R2 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
30. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$323,000. 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 so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Dischargers resulting from the failure to enroll the five Merced County parcels under Order R5-2013-0100 is estimated at \$5,136 dollars (see Attachment G for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$5,649.60).
31. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
32. 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).

LARRY W. & SHIREEN I. SLATE ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Slate be assessed **an administrative civil liability in the amount of nine thousand one hundred and fifty-two dollars (\$9,152)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code sections 13261 and 13323, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and

includes consideration of the economic benefit or savings resulting from the violations. The calculation of the penalty amount is explained in Attachment G.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **4/5 December 2014**, unless Slate does any of the following by **29 September 2014**:
 - a) The Dischargers waive the hearing by completing the waiver form provided as Attachment H (checking off the box next to Option 1). If this option is selected, the Dischargers shall send a check for the proposed civil liability of **nine thousand one hundred and fifty-two dollars (\$9,152)** (payable to the State Water Pollution Cleanup and Abatement Account) to State Water Resources Control Board, Division of Administrative Services, Accounting Branch, P.O. Box 1888, Sacramento, CA 95814. The Waiver and copy of the check shall be mailed to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, Attn: Brett Stevens; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking the box next to Option 2 on the attached 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 Dischargers request a delay by checking the box next to Option 3 on the attached waiver form, and returns it to the board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the 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 Assistant 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 legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.

Original signed by

Andrew Altevogt, Assistant Executive Officer

12 September 2014

(Date)

- Attachment A: 4 September 2013 Inspection Report
- Attachment B: 7 October 2013 California Water Code section 13260 Directive
- Attachment C: 13 November 2013 Notice of Violation for Failure to respond to 13260 Directive
- Attachment D: 21 January 2014 pre-ACL letter
- Attachment E: 12 May 2014 certified mail receipt for 10 May 2014 ACL Complaint
- Attachment F: 17 July ACL rescission letter
- Attachment G: Calculation of Penalty per SWRCB Water Quality Enforcement Policy
- Attachment H: Waiver Form
- Attachment I: Hearing Procedure

