



**Linda S. Adams**  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair

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11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
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<http://www.waterboards.ca.gov/centralvalley>



**Arnold  
Schwarzenegger**  
Governor

31 August 2010

Antonio & Mary Bettencourt  
25771 Marsh Creek Road  
Brentwood, CA 94513

CERTIFIED MAIL NUMBER  
7006 2150 0000 7132 3191

## ORDER FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 AND NOTICE OF VIOLATION

**You are legally obligated to respond to this Order. Please read this Order carefully.**

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) is requiring you to submit a written technical report **within 30 calendar days of this Order** that describes the actions being taken to prevent discharges of sediment from your property. A schedule for taking these actions must be included in the report. The Report is being required pursuant to California Water Code (CWC) Section 13267 (a) and (b)(1) (referenced on page 3 of this Order).

This report must be signed and certified by the property owner as follows:

*"I certify under penalty of law that to the best of my knowledge and belief, this document and any attachments submitted is true, accurate, and complete and was prepared by me or under my direction or supervision. I am aware that there are significant penalties for knowingly submitting false information."*

Submit the report to:

**Attn: Wesley Ouimette**  
**California Regional Water Quality Control Board,**  
**Central Valley Region**  
**11020 Sun Center Dr., Suite 200**  
**Rancho Cordova, CA 95670**

Grounds For Requiring Submission of Technical Report

**California Environmental Protection Agency**

The Central Valley Water Board regulates waste discharges to waters of the state. On 1 July 2010, staff of the Central Valley Water Board investigated a complaint of waste discharge to waters of the state in Contra Costa County. During the investigation, staff observed an excessive amount of sediment (waste) discharging from a tomato field and into a roadside canal. The roadside canal eventually discharges into Kellogg Creek and subsequently into Discovery Bay. According to County records the tomato field is identified as Assessor Parcel No. 011110026 ("parcel") and is owned by you.

The discharge of sediments has created nuisance conditions in violation of applicable water quality objectives for inland surface waters in the Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins by increasing the turbidity and total suspended solids load of the water. The Basin Plan states at III-7.00 and III-9.00, respectively:

*"The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."*

*"Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses."*

The discharge of sediment from your parcel caused a nuisance condition by negatively impacting a downstream landowner's property use.

The San Joaquin County & Delta Water Quality Coalition has identified you as a member of its coalition. Accordingly, you are required to comply with the conditions of the Amended Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands ("Conditional Waiver"). Item 3 of the Conditional Waiver states:

*"Dischargers who are participants in a Coalition Group shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards."*

Item 6 of the Conditional Waiver states:

*"Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State."*

As stated above, sediment discharges from the Parcel have violated applicable water quality objectives and you are accordingly in violation of the Conditional Waiver.

Item 9 of the Conditional Waiver additionally states that:

*"The Executive Officer may terminate applicability of the Conditional Waiver with respect to a Coalition Group or a Discharger who is a participant in a Coalition Group upon notice to the Coalition Group or Discharger."*

You should be aware that any subsequent waste discharge violations may result in termination of your coverage under the Conditional Waiver for Coalition Groups. If termination should

occur, you would be required to apply for individual Waste Discharge Requirements, which are generally more costly and arduous to comply with.

You should also be aware that discharges of waste from your property that violate the Conditional Waiver may subject you to fines of up to \$5,000 for each day the violation occurs, under Water Code §13350. The Regional Water Board urges you to **immediately implement better management practices to reduce or eliminate sediment discharges from your property.**

Authority for Requiring Submission of Technical Report

California Water Code (CWC) Section 13267 (a) and (b)(1) states:

*“(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.*

*(b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*

The Central Valley Water Board is requiring the submittal of this report to ensure that actions are being taken to prevent the unauthorized discharge of waste to surface waters. The Central Valley Water Board expects that the required report will be relatively short (not to exceed three pages). This report will therefore not impose an undue burden on the discharger; and it is a reasonable burden compared to the benefits that will be obtained from the information provided.

Any person affected by Order letter may petition the State Water Resources Control Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento CA, 95812, within 30 days of the date of this letter. Copies of the law and regulations applicable to filing petitions will be provided upon request and are available at <http://www.waterboards.ca.gov/wqpetitions/>.

Failure to submit the required report on time subjects you to potential administrative civil liability (monetary penalty) of up to \$1,000 per day under CWC Section 13268. If you have any

questions regarding this Order please contact Wesley Ouimette at (916) 464-4667 or [wouimette@waterboards.ca.gov](mailto:wouimette@waterboards.ca.gov).

Original signed by

PAMELA C. CREEDON, Executive Officer

cc: Mike Wackman, San Joaquin County and Delta Water Quality Coalition

**Evidence of Excessive Sediment Discharge**

**Photo Log: 1 July 2010**

**APN: 011110026**

**Contra Costa County**



**Photo 1:** Photo taken facing east off of Byron Highway (Lat. N 37.9004, Long. W 121.64141). Photo shows tomato field that is actively irrigating and discharging.



**Photo2:** View of tailwater discharging from the tomato field in photo 1. Parcel was identified as APN: 011110026.



**Photo 3:** Photo shows location where part of the tailwater enters an underground pipe.



**Photo 4:** Photo shows another section where tailwater enters an underground pipe.



**Photo 5:** Photo taken of Marsh Creek roadside ditch where the underground pipe in photos 3-4 surfaces. (Lat N 37.89629, Long. W 121.63924).



**Photo 6:** Photo was taken downstream of photo 5 and shows an additional input of clear water being added to the canal.

**Evidence of Excessive Sediment Discharge**

**Photo Log: 1 July 2010**

**APN: 011110026**

**Contra Costa County**



**Photo 7:** Photo taken down stream of photos 5-6. Photo shows continuation of discharged water in roadside ditch as it travels towards Kellogg Creek.



**Photo 8:** Photo shows the downstream continuation of the canal in photos 6-8. This canal connects with Kellogg Creek.