July 26, 2012

Mine Brothers
Gary Mine
Malatesta Ranch
P.O. Box 2156
Watsonville, CA 95007

CERTIFIED MAIL
7011 0110 0001 2471 5089

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2012-0035, MINE BROTHERS GARY MINE MALATESTA RANCH

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code sections 13323 and 13350. The Complaint alleges that Mine Brothers, Malatesta Mine and Gary Mine (hereafter collectively referred to as "Enrollee") violated the *Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands in the Central Coast* (Conditional Waiver), Order No. R3-2004-0117, as extended by Order No. R3-2011-0017 and others, by failing to submit Cooperative Monitoring Fees and individual monitoring reports. The Complaint recommends an administrative civil liability in the amount of **five thousand five hundred fourteen dollars ($5,514)**.

The Enrollee may:

- Pay the proposed administrative civil liability and waive their right to a hearing (on the waiver form attached to the Complaint); or

- Contest the Complaint without signing the enclosed waiver. If you have new information that will need consideration by board staff before the hearing panel, please contact Jill North at 805-542-4762 as soon as possible. All hearing panel deadlines still apply.

If the Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board or board) does not receive a signed waiver by **5 p.m. 31 August 2012**, a hearing will be scheduled before a panel of the Board at a meeting tentatively scheduled for **12 October 2012**, in San Luis Obispo. The hearing will be governed by Hearing Procedures approved by the Advisory Team. A set of draft Hearing Procedures is attached. Please provide comments or objections regarding the draft Hearing Procedures to Jessica Jahr and Frances McChesney, whose contact information is listed in the Hearing Procedures, by **5 p.m. 10 August 2012**. The Advisory Team will issue final Hearing Procedures by **17 August 2012**.

If the Enrollee chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day public comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the board staff person listed below. Should the board receive new information or comments during this comment period, the Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. If the Central Coast Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Dischargers only. Interested persons may download the documents from the Central Coast Water Board's Internet website at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/index.shtml

Copies of these documents can also be obtained by contacting or visiting the Central Coast Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Jill North at (805) 542-4762 or via e-mail at jnorth@waterboards.ca.gov.

Sincerely,

Harvey Packard

cn=Harvey C. Packard, o=Central Coast Regional Water Quality Control Board, ou, email=hpackard@waterboards.ca.gov, c=US
2012.07.26 14:37:54 -07'00'

for Michael J. Thomas
Assistant Executive Officer

Enclosures: ACL Complaint R3-2012-0035 (and attachments)
Waiver Form
Draft Hearing Procedures

cc w/ encl.: Harvey Packard, Central Coast Water Board, San Luis Obispo
Jill North, Central Coast Water Board, San Luis Obispo
Andrew Tauriainen, Office of Enforcement, SWRCB, Sacramento
Roger Briggs, Central Coast Water Board, San Luis Obispo
John Robertson, Central Coast Water Board, San Luis Obispo
Frances McChesney, Office of Chief Counsel, SWRCB, Sacramento
Jessica Jahr, Office of Chief Counsel, SWRCB, Sacramento
Todd Stanley, Central Coast Water Board, San Luis Obispo

k:\acls\ag waiver acls\non-payment monitoring fees\finals\mine bros\mine bros malatesta cover letter072512.doc
ECM#

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2012-0035

IN THE MATTER OF:

MINE BROTHERS MALATESTA RANCH

SANTA CRUZ COUNTY

MINE BROTHERS MALATESTA RANCH AND GARY MINE ARE HEREBY GIVEN NOTICE THAT:

1. Mine Brothers Malatesta Ranch and Gary Mine (hereafter collectively "Enrollee") are alleged to have violated provisions of law for which the Regional Water Quality Control Board, Central Coast Region (hereafter "Central Coast Water Board"), may impose civil liability pursuant to California Water Code sections 13268 and/or 13350. California Water Code section 13323 authorizes the Executive Officer to issue this Complaint; that authority has been delegated to the Assistant Executive Officer.

2. This Complaint is based on findings that the Enrollee failed to pay cooperative monitoring fees or conduct individual monitoring and submit annual individual monitoring reports in violation of the *Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands in the Central Coast* (Conditional Waiver), Order No. R3-2004-0117 as extended by Order No. R3-2011-0017 and others.[1]

3. A panel of the Central Coast Water Board will hold a public hearing on this matter on **12 October 2012**, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California, unless the Enrollee agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has be set for consideration of this item.

4. If the Enrollee chooses not to waive its right to a public hearing, an agenda will be mailed to the Enrollee separately, not less than ten days before the public hearing date. The Enrollee and its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board.

---

[1] The Central Coast Water Board or its Executive Officer previously renewed and extended Order No. R3-2004-0117 by issuing Orders No. R3-2009-0050, No. R3-2010-0040, and No. R3-2011-0208.

5. At the public hearing, a panel of the Central Coast Water Board will receive evidence and hear arguments and consider whether to recommend that the full Central Coast Water Board affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability. At that later meeting, the full Central Coast Water Board may impose a higher or lower amount of administrative civil liability, or refer the matter to the State Attorney General.

LEGAL PROVISIONS

6. California 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 Central Coast Water Board, unless the Central Coast Water Board waives such requirement.

7. Water Code section 13263 requires the Central Coast Water Board to prescribe Waste Discharge Requirements (WDRs), or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.

8. Water Code section 13267, subdivision (b), authorizes the Central Coast Water Board to require any person who has discharged, discharges, or who proposes to discharge waste within its region to furnish technical or monitoring program reports.

9. Water Code section 13269, subdivision (a)(1), provides that on and after 1 January 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the Central Coast Water Board determines, after any necessary meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.

10. The Central Coast Water Board adopted Conditional Waiver (Order No. R3-2004-0117 as extended by Order No. R3-2011-0017 and earlier orders) pursuant to Water Code sections 13263, 13267 and 13269. The Conditional Waiver sets forth conditions for which the Enrollee must follow to remain in compliance.

11. The Conditional Waiver states, at Part I.1:

    The Regional Board waives the submittal of a ROWD and WDRs for discharges from irrigated land if the Discharger complies with the conditional waiver described in this Order and Monitoring and Reporting Program R3-2004-0117.

12. The Conditional Waiver states, at Part IV.1:

The Discharger shall comply with an individual or cooperative Monitoring and Reporting Program approved by the Regional Board Executive Officer.

13. Part IV.7 of the Conditional Waiver sets forth, pursuant to Water Code section 13267, a time schedule by which information and reports must be submitted to the Central Coast Water Board in order to ensure compliance with the terms of the Conditional Waiver. Enrollees must have submitted their Notice of Intent to conduct individual monitoring or participate in the cooperative monitoring program under the Conditional Waiver by 1 January 2005. Individual dischargers who opted to conduct individual monitoring were required to start such monitoring by 1 October 2005. Monitoring data must be submitted beginning three months after the start of monitoring and quarterly thereafter.

14. The Executive Officer approved Monitoring and Reporting Program R3-2004-0117[2] (Monitoring and Reporting Program) in conjunction with the Conditional Waiver pursuant to Water Code sections 13267 and 13269. Monitoring and Reporting Program R3-2004-0117 was in effect during the period of the violations described here, although it was superseded by R3-2011-0018 on 30 September 2011. Page 2 of Monitoring and Reporting Program R3-2004-0117 provides, in relevant part:

    Dischargers that elect the "Cooperative Monitoring" option on their Notice of Intent to enroll are subject to the following requirements:

    Dischargers participating in the cooperative monitoring option shall contribute to a cooperative monitoring program designed to determine whether water quality and associated beneficial uses are protected and/or improved as a result of the Conditional Waiver. Regional Board staff is directed to work with the agricultural industry to identify an organization or other entity suitable to conduct the Cooperative Monitoring Program according to the timeline adopted in the Waiver Order. The Cooperative Monitoring Program will submit names of participating dischargers to the Regional Board; this submittal and the dischargers' continued full participation in the Cooperative Monitoring Program will satisfy water quality monitoring requirements for those participants. The entity will develop a dues schedule or other mechanism for addressing costs of implementing the cooperative monitoring program described below. The entity may apply for grant funds and investigate other sources of funding to reduce costs to dischargers. The Cooperative Monitoring Program will notify the Regional Board of any enrolled dischargers who cease to comply with dues schedules or other enrollment requirements; such dischargers will be considered out of compliance with the conditions of the waiver unless they begin individual monitoring immediately. … [Emphasis added]

---

[2] Executive Officer Order No. R3-2011-0017, which extended the effective date of the Conditional Waiver to 30 September 2012, also required all enrollees to comply with new Monitoring and Reporting Program No. R3-2011-0018 beginning 30 September 2011. MRP Order No. R3-2011-0018 also provides that dischargers who fail to pay cooperative monitoring dues "must begin individual monitoring immediately." (MRP Order No. R3-2011-0018, at p. 2.)

15. Water Code section 13350, subdivision (a), provides that a person who, in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

16. Water Code section 13350, subdivision (e), provides that a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

17. Water Code section 13350, subdivision (e)(1), provides that the civil liability on a daily basis shall not exceed five thousand dollars ($5,000) for each day the violation occurs.

18. Water Code section 13350, subdivisions (e)(1)(B) and (f), provide that when there is no discharge, but an order issued by the regional board is violated, the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs, unless the board makes express findings based on the specific factors set forth in section 13327.

19. Water Code section 13268, subdivision (a), provides that any person failing or refusing to furnish a technical or monitoring program reports as required under section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

20. Water Code section 13268, subdivision (b), provides that civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

ALLEGATIONS

21. Enrollee is a farming operation on approximately 223 acres in Santa Cruz County. Enrollee enrolled in the Conditional Waiver and selected the cooperative monitoring option in its Notice of Intent.

22. Central Coast Water Quality Preservation, Inc. (hereafter “Preservation Inc.”) is a third-party organization that implements the Cooperative Monitoring Program described in the Monitoring and Reporting Program. Preservation Inc. conducts region-wide water quality monitoring related to irrigated agriculture throughout the Central Coast Region, and bills enrollees accordingly. This program provides the opportunity for enrollees to collectively contribute funds towards monitoring activities representative of irrigated agriculture operations, without incurring the

comparatively higher costs of separately implementing individual monitoring programs.

23. Enrollee failed to pay the cooperative monitoring fee invoices from Preservation Inc. for the dates and amounts listed in Table 1. Enrollee also failed to submit individual monitoring reports during the same period.

Table 1: Cooperative Monitoring Fee Invoices

Invoice date	Amount	Payment due date
11/20/2007	$647.45	12/20/2007
12/3/2008	$647.45	1/3/2009
12/16/2009	$647.45	1/16/2010
12/2010	$647.45	1/2/2011

24. In April or May of each year, Preservation, Inc. mails statements of payment status to all enrollees. In September or October, a second statement is mailed to those enrollees that fail to pay the outstanding fee indicated in the first notice. In December, delinquency statements are mailed where needed. Preservation Inc. thus mailed statements to Enrollee three times during each year of delinquency, providing Enrollee with multiple notices of its failure to pay the required fees.

25. Central Coast Water Board staff sent three Notices of Violation (NOVs) regarding Enrollee's failure to pay monitoring fees or conduct individual monitoring and submit annual reports, dated **27 July 2007, 1 October 2007,** and **9 October 2008**. Enrollee failed to return to compliance.

26. Central Coast Water Board's Enforcement Unit provided further opportunity for enrollee to return to compliance by paying monitoring fees and a minimum penalty through a settlement offered to the Enrollee in an Expedited Payment Program contained in an NOV dated **6 April 2011**.

27. Because Enrollee failed to pay cooperative monitoring fees, it is responsible for individual monitoring and reporting as specified in the Monitoring and Reporting Program. By failing to pay the cooperative monitoring fees due 16 January 2006, Enrollee was required to submit annual individual monitoring reports by 1 January 2007, and each year thereafter. Enrollee failed to submit any annual individual monitoring reports.

28. Enrollee's failure to pay Cooperative Monitoring Fees during each year listed in Table 1 is considered to be a separate violation of the Conditional Waiver and Monitoring and Reporting Program. In addition, Enrollee's failure to conduct individual monitoring and submit annual individual monitoring reports each year beginning 1 January 2007 is also considered to be a separate violation of the Conditional Waiver. The Central Coast Water Board may impose administrative civil liability for these violations beginning with the date that violations first occurred. As shown in Table 1, the earliest date of violation is 16 January 2006. Therefore, the

penalties here shall be calculated based on that date. As of 16 July 2012, Enrollee has accrued **2,374 days of violation**, as shown in Table 2 below:

Table 2: Failure to Pay Cooperative Monitoring Fees

From	To	Violation Days
12/20/2007	7/16/2012	1,670

CALCULATING ADMINISTRATIVE CIVIL LIABILITY

29. Enrollee's failure to pay Cooperative Monitoring Fees is a violation of the Conditional Waiver, subject to penalty under Water Code section 13350. Enrollee's failure to submit individual monitoring reports is a violation of the Conditional Waiver subject to penalty under both Water Code sections 13268 and 13350. Because the failure to pay Cooperative Monitoring Fees is the earliest violation, Water Code section 13350 controls.

30. **Maximum Penalty.** Pursuant to Water Code section 13350, subdivision (e)(1), the maximum penalty for the violation described above is **$8,350,000**, based on a calculation of the total number of per-day violations times the statutory maximum penalty (1,670 total days of violation X $5,000).

31. **Minimum Penalty (before Liability Factors).** Pursuant to Water Code section 13350, subdivision (e)(1)(A), the minimum penalty for the violations described above is **$167,000** (1,670 days of violation X $100), unless the Regional Board makes express findings setting forth the reasons for a lower penalty based upon the specific factors set forth in Water Code section 13327.

32. **Liability Factors.** 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, including those set forth in Water Code section 13327. This policy can be found at:

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

33. The administrative civil liability here was derived from the use of the penalty methodology in the Enforcement Policy based on a consideration of the Enrollee's failure to comply with the terms of the Conditional Waiver. The proposed civil liability takes into account factors set forth in Water Code section 13327, including the Enrollee's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The specific application of the Enforcement Policy methodology here is described in Attachment A and shown in the Penalty Calculation for Civil Liability contained in Attachment B.

34. **Alternative Violation Days Calculation.** Violations under Water Code section 13350 are assessed on a per day basis. However, the violations at issue are

primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy (at page 18). The failure to submit monitoring fees does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus one violation for each additional thirty-day period. In accordance with this approach, the number of violation days here is reduced to **62 days** (Attachment A).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

35. Based on consideration of the above facts and after applying the penalty methodology as shown in Attachments A and B, the Assistant Executive Officer of the Central Coast Water Board proposes that civil liability be imposed administratively on the Enrollee pursuant to Water Code section 13350, subdivision (e), in the amount of **five thousand five hundred fourteen dollars ($5,514),** of which $1,050 be accounted for as reimbursement of staff costs. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to seek in this action additional liability to cover the costs of investigation and enforcement incurred after the issuance of this ACL Complaint, including, but not limited to, all costs and expenses (including legal and expert witness costs) incurred in preparing for and appearing at the hearing.

GENERAL

36. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

37. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. (*See City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

38. Notwithstanding the issuance of this Complaint, the Central Coast Water Board retains the authority to assess additional penalties for violations of the requirements of the Conditional Waiver requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

39. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

40. Payment of the assessed liability amount does not absolve the Enrollee from complying with the Conditional Waiver or the Monitoring Reporting Program, as amended or modified. Additional civil liability may be assessed in the future if the Enrollee fails to comply with the Conditional Waive, the Monitoring Reporting Program and/or future orders issued by the Central Coast Water Board.

If you have questions regarding this matter, please direct them to Central Coast Water Board staff Jill North at (805) 542-4762, or Harvey Packard at (805) 542-4639. Para información in español, llame a Monica Barricarte a (805) 549-3881.

Harvey Packard

cn=Harvey C. Packard, o=Central Coast Regional Water Quality Control Board, ou, email=hpackard@waterboards.ca.gov, c=US
2012.07.26 14:41:12 -07'00'

for Michael J. Thomas
Assistant Executive Officer

Date: 26 July 2012

PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
PUBLIC HEARING AND PAYMENT

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person[3] must complete, sign, and submit the following ***Waiver Form*** and pay the penalty amount specified in the Complaint **no later than August 31, 2012, at 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver Form* are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Assistant Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at a hearing to be held on October 12, 2012, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. A panel of the Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to recommend that the full Central Coast Water Board accept the amount of the civil liability proposed by the Assistant Executive Officer, increase or decrease the amount, or to refer the matter to the State Attorney General. The panel will then present its recommendations and proposed Order to the full Central Coast Water Board for adoption at a later meeting. If the Central Coast Water Board adopts an Order, payment of the civil liability to the State Water Resources Control Board will be due and payable no later than 30 days following formal adoption by the Board, in accordance with the Order. The Central Coast Water Board may also decide to continue the matter to a future hearing. The October 12, 2012, panel hearing is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order. No date has been set for consideration of the panel recommendations by the full Board.

PAYMENT OF ADMINISTRATIVE CIVIL LIABILITY

Make your check payable to *State Water Resources Control Board Waste Discharge Permit Fund*, and note "Complaint No. R3-2012-0035" on the check. Mail the signed check and signed waiver form to Central Coast Water Board Enforcement Unit, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401.

---

[3] A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mine Brothers Malatesta Ranch and Gary Mine (hereinafter collectively referred to as "Enrollee") in connection with Administrative Civil Liability Complaint R3-2012-0035 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing.”

□ ***Check here if the Discharger waives the hearing requirement and will pay in full.***

a. I hereby waive any right the Enrollee may have to a hearing before the Central Coast Water Board.

b. I certify that the Enrollee will remit payment for the proposed civil liability in the full amount of **five thousand five hundred fourteen dollars ($5,514)** by check that references “ACL Complaint R3-2012-0035” made payable to the *State Waste Discharge Permit Fund*. Payment must be received by the Central Coast Water Board by **31 August 2012.** Mail the signed check and signed waiver form to Central Coast Water Board Enforcement Unit, Attn: Harvey Packard, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Coast Water Board receive significant new information or comments during this comment period, the Central Coast Water Board’s Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Enrollee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Enrollee to further enforcement, including additional civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

Attachment A – ACL Complaint No. R3-2012-0035
Specific Factors Considered – Civil Liability
Mine Brothers Malatesta Ranch

The proposed administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (the "Enforcement Policy") and using the "Penalty Calculation Methodology Worksheet, version date 6/24/2010" (the "Penalty Calculation Worksheet"; see Attachment B). The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Each factor of the Enforcement Policy and its corresponding score for the violation is presented below:

1. **Failure to submit fees or conduct individual monitoring:** The Conditional Waiver requires that the Enrollee must pay cooperative monitoring fees or submit individual monitoring annual reports. To date, the Enrollee has not submitted the fees or the necessary individual monitoring annual reports from 16 January 2006 through the present (16 July 2012).

   <u>Calculation of Penalty for Failure to Pay Cooperative Monitoring Fees</u>

   Step1. Potential for Harm for Discharge Violations
   This step is not applicable because the violation is a not a discharge violation.

   Step 2. Assessment for Discharge Violations
   This step is not applicable because the violation is a not a discharge violation.

   Step 3. Per Day Assessment for Non-Discharge Violations

   The per day factor is 0.20.

   This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements in accordance with Step 3 of the Enforcement Policy analysis (Enforcement Policy, pages 15-16). The **potential for harm** was determined to be **minor** because the failure to pay fees or conduct individual monitoring did not increase the amount of pollution discharged or threatened to discharge into Waters of the State. The **deviation from requirements** was determined to be **moderate** because the requirement to pay fees was not met and the effectiveness of the cooperative monitoring was partially compromised because, although there are still others participating in the cooperative monitoring program and cooperative monitoring is occurring, the long-term viability of the program is potentially compromised if the Enrollee does not pay its fair share of the monitoring fees. Using these categories as applied in Table 3 of the Enforcement Policy, the per day factor is 0.20.

Initial Liability

Pursuant to California Water Code section 13350, subdivision (e)(1), violations of the Conditional Waiver are subject to administrative civil liability of up to five thousand dollars ($5,000) for each day the violation occurs. Pursuant to Water Code section 13350, subdivision (e)(1)(B), violations of the Conditional Waiver that do not result in discharge shall not be less than one hundred dollars ($100) for each day the violation occurs, unless the Regional Board makes express findings setting forth the reasons for a lower violation based upon the specific factors required to be considered pursuant to Water Code section 13327. The use of the Enforcement Policy methodology addresses the factors set forth in Water Code section 13327.

As of 16 July 2012, Enrollee has accrued **1,670 days of violation** for failing to pay cooperative monitoring fees beginning 20 December 2007. Water Code section 13350, subdivision (e), allows an initial liability amount between $100 and $5,000 per day of violation. However, a significant portion of Enrollee's violations are based on the failure to submit annual individual monitoring reports, which are subject to penalty under Water Code section 13268. Section 13268 provides for a maximum administrative civil liability of $1,000 for each day of violation. Therefore, it is appropriate to use $1,000 per day of violation to calculate the initial liability amount here. Using that amount over 1,670 days of violation, Enrollee is subject to an initial liability amount of **$1,670,000**.

The Enforcement Policy (page 18) provides an alternative approach to penalty calculation where the violation does not cause daily detrimental impacts to the environment or the regulatory program. The alternative approach calls for daily penalties for the first violation, plus an assessment of one day for each five day period of violation until the 30th day, plus one violation for each additional thirty day period. The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable as the failure to submit required fees does not cause a daily detrimental impact to the environment or the regulatory program.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals **62 days of violation**. A calculation of initial liability totals **$12,400** (0.2 per day factor X 62 adjusted days of violation X $1,000 per day).

Step 4. Adjustment Factors

a) *Culpability*: 1.2

Discussion:

The Enrollee is highly culpable because the enrollee had repeated reminders to return to compliance by Central Coast Water Quality Preservation, Inc., four Notices of Violation and an EPL from Water Board staff. According to the Enforcement Policy, 1.5 is the top of the multiplier range. Even though the enrollee is highly culpable staff has conservatively accessed a multiplier of 1.2 for this violation

Given the number of opportunities to return to compliance, a reasonable and prudent person would have come into compliance long before reaching this ACL complaint. The EPL notice itself stated that future formal enforcement would likely result in a higher liability than set forth in the EPL settlement offer.

Enrollees in the Conditional Waiver have the option of collectively paying fees to support a cooperative monitoring program conducted by a third party (Central Coast Water Quality Preservation, Inc.) to collect representative runoff samples and to submit monitoring reports. This program is intended to lower the individual enrollee's costs of monitoring and reporting by sharing costs with a large number of other enrollees, and is the most commonly selected monitoring option. Alternatively, each enrollee has the option of electing to conduct its own monitoring and reporting.

Enrollee selected the cooperative monitoring option in its enrollment application (i.e., Notice of Intent to Comply with the Conditional Waiver) and received from Central Coast Water Quality Preservation, Inc. one or more invoices for each year the fees were due, and three statements per year indicating its failure-to-pay status. Central Coast Water Board staff and/or Central Coast Water Quality Preservation, Inc. gave Enrollee sufficient notice that cooperative monitoring fees are required and that it has failed to pay those fees. Enrollee continued or is continuing its operations without paying its share of cooperative monitoring fees, thus leaving the support of the monitoring program to the enrollees that comply with the Conditional Waiver, and is therefore conducted or is conducting its business unfairly.

The Conditional Waiver requires enrollees that do not participate in the cooperative monitoring program to conduct their own monitoring and submit timely reports individually. This applies to enrollees that elect individual monitoring and reporting upon enrollment and to those that default on their commitment to pay fees to support cooperative monitoring. In response to its failure to pay cooperative monitoring fees, the Enrollee did not conduct individual monitoring and reporting, and therefore did not pay the associated individual monitoring costs. This further demonstrates that the Enrollee is conducting its business unfairly in comparison to enrollees that comply with the Conditional Waiver cooperative or individual monitoring and reporting requirements.

b) *Cleanup and Cooperation*: 1

Discussion: Enrollee was given the neutral score of 1, which neither increases nor decreases the fine. The violation of the Conditional Waiver alleged herein a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations*: 1

Discussion: Enrollee was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations previous to this violation for the Enrollee.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

a) *Total Base Liability Amount* : $14,880 (Initial Liability ($12,400) x Adjustments (1.2)(1)(1).

Step 6. Ability to Pay and Continue in Business

a) *Adjusted Combined Total Base Liability Amount:* ***$4,464***

Discussion: The Enrollee has the ability to pay the total base liability amount based on 1) The Enrollee farms approximately 223 acres in Santa Cruz County (as of November 1, 2010), a significant asset, 2) the Enrollee conducts agricultural operations on the property, an ongoing business that generates profits. The Water Board has no information that would indicate the Enrollee cannot pay the recommended liability or that would indicate that Enrollee's payment of the recommended liability would adversely affect its ability to continue in business.

Based on the reasons discussed above, an ability to pay factor of .3 has been applied to the Combined Total Base Liability Amount.

Step 7. Other Factors as Justice May Require

a) *Adjusted Combined Total Base Liability Amount:* $4,464+$1,050 (Staff Costs) = **$5,514.**

b) *Discussion:* The State and Regional Water Board has incurred $5,400 in staff costs associated with the investigation and enforcement of the violations alleged herein. This includes staff time spent on the notices of violations,

EPL and this ACL complaint. This represents approximately 36 hours of staff time devoted to investigating and drafting the complaint at $150 an hour. Staff have conservatively added $1,050 of this cost to the Combined Total Base Liabilty Amount.

Step 8. Economic Benefit

a) *Estimated Economic Benefit:* **$2,589.80**

Discussion: The Enrollee realized cost savings by either failing to pay cooperative monitoring fees or failing to perform required individual water quality monitoring and reporting. Central Coast Water Board staff estimates the cost savings for non-compliance to be no less than **$2,589.80**, based on the Enrollee's cost to participate in the cooperative monitoring program (typically the least expensive monitoring option) beginning in 2006. The adjusted total base liability amount of **$5,514**is more than at least 10% higher than the economic benefit amount as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount:* ***$2,848.78***

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Enrollee's economic benefit obtained from the violations cited in this Complaint is **$2,848.78.**

b) *Maximum Liability Amount:* ***$8,350,000***

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13350, subdivision (e)(1): five thousand dollars ($5,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (1,670 total days X $5,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the cooperative monitoring fees or individual monitoring reports is **$5,514.** Attachment B is a spreadsheet that demonstrates the use of the penalty calculation methodology.

Penalty Calculation Methodology Worksheet - Version Date: 6/24/2010

Password for Workbook Protection: **enforcement**

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item	2 = Below Moderate
Select Item	3 = Discharged material poses above moderate
Select Item	< 50% of Discharge Susceptible to Cleanup or A
Select Item	Major

Discharger Name/ID: Mine Brothers

			Violation 1		
Discharge Violations	**Step 1**	Potential Harm Factor (Generated from Button)	0	N/A Non Discharge violation	
	Step 2	Per Gallon Factor (Generated from Button)	0		
		Gallons	-		
		Statutory / Adjusted Max per Gallon ($)	0.00		
		Total		**$**	**-**
		Per Day Factor (Generated from Button)	0	N/A Non Discharge violation	
		Days	0.00		
		Statutory Max per Day	0.00		
		Total		**$**	**-**
Non-Discharge Violations	**Step 3**	Per Day Factor	0.20		
		Days	62.00		
		Statutory Max per Day	1,000.00		
		Total		$	12,400.00
		Initial Amount of the ACL		**$**	**12,400.00**
Add'l Factors	**Step 4**	Culpability	1.20	$	14,880.00
		Cleanup and Cooperation	1.00	$	14,880.00
		History of Violations	1.00	$	14,880.00
	Step 5	**Total Base Liability Amount**		**$**	**14,880.00**
	Step 6	Ability to Pay & to Continue in Business	0.30	$	4,464.00
	Step 7	Other Factors as Justice May Require	1.00	$	4,464.00
		Staff Costs	1,050.00	$	5,514.00
	Step 8	Economic Benefit	2,589.80	**$**	**5,514.00**
	Step 9	Minimum Liability Amount	2,848.80		

Maximum Liability Amount	8,350,000.00	
Step 10 Final Liability Amount		**$ 5,514.00**

Penalty Day Range Generator

Start Date of Violation=	1/16/06	
End Date of Violation=	7/16/12	
Maximum Days Fined (Steps 2 & 3) =	2374	Days
Minimum Days Fined (Steps 2 & 3) =	85	Days

Hearing Panel of the
Central Coast Regional Water Quality Control Board

[DRAFT] HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R3-2012-0035

ISSUED TO
MINE BROTHERS GARY MINE
MALATESTA RANCH
SANTA CRUZ COUNTY

SCHEDULED FOR 12 OCTOBER 2012

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code section 13323 to Mine Brothers Malatesta Ranch and Gary Mine (collectively "Enrollee") alleging violations of Water Code sections 13267 and/or 13269 by failing to pay cooperative monitoring fees or conduct individual monitoring and submit annual individual monitoring reports in violation of the *Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands in the Central Coast* (Conditional Waiver), Order No. R3-2004-0117 as extended by Order No. R3-2011-0017, and others.

The Complaint proposes an administrative civil liability in the amount of $5,514. A hearing is currently scheduled to be conducted before a Hearing Panel of the Central Coast Water Board on **12 October 2012.** Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the Central Coast Water Board will convene a hearing to hear evidence and argument and to propose a recommendation to the Central Coast Water Board about resolution of the Complaint. The recommendation of the Hearing Panel will be presented to the board at a subsequent meeting. You will be notified of the date of the meeting. At the meeting, the full Board may adopt, modify, or reject, the recommendation of the Hearing Panel.

Purpose of the Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. The Hearing Panel will consider whether it should recommend to the Central Coast Water Board the issuance of an administrative civil liability order assessing the

proposed liability, or a higher or lower amount, or rejecting the proposed liability. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Hearing Panel meeting agenda. The meeting will be held at

895 Aerovista Place, Suite 101, San Luis Obispo, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Coast Water Board's web page at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/index.shtml

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been proposed by the Prosecution Team and is subject to further revision by the Hearing Panel's Advisory Team. These Hearing Panel Procedures will become final by 17 August 2012 unless the Hearing Panel's Advisory Team makes further revisions. A copy of the general procedures governing adjudicatory hearings before the Central Coast Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Panel Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE HEARING PANEL'S ADVISORY TEAM NO LATER THAN 5 PM 10 AUGUST 2012, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from members of the Hearing Panel, staff or others, at the discretion of the Hearing Panel.

The following participants are hereby designated as parties in this proceeding:

1. Central Coast Water Board Prosecution Team

2. Mine Brothers Gary Mine Malatesta Ranch

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on 10 August 2012, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed at the hearing and the potential actions by the Central Coast Water Board affect the person, and the need to present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on 17 August 2012. The parties will be notified by 5 p.m. on 23 August 2012 whether the request has been granted or denied.

Primary Contacts

Advisory Team:
John Robertson
895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401
Phone: (805) 542-3147
jrobertson@waterboards.ca.gov

Frances McChesney, Staff Counsel IV
Jessica Jahr, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5168; fax (916) 341-5199
fmcchesney@waterboards.ca.gov
jjahr@waterboards.ca.gov

Prosecution Team:
Michael J. Thomas, Assistant Executive Officer
Harvey Packard, Supervising Water Resource Control Engineer
Jill North, Environmental Scientist
895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401
Phone: (805) 549-3147; fax: (805) 543-0397
jnorth@waterboards.ca.gov

Andrew Tauriainen, Staff Counsel III
State Water Resources Control Board, Office of Enforcement

Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5445; fax: (916) 341-5896
atauriainen@waterboards.ca.gov

Enrollee:
Mine Brothers
Malatesta Ranch
Gary Mine
P.O. Box 2156
Watsonville, CA 95077

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Hearing Panel (Prosecution Team) have been separated from those who will provide advice to the Hearing Panel (Advisory Team). Members of the Advisory Team are John Robertson, Frances McChesney, and Jessica Jahr. Members of the Prosecution Team are Michael Thomas, Harvey Packard, Jill North and Andrew Tauriainen. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Michael Thomas regularly advises the Central Coast Water Board in other, unrelated matters, but is not advising the Central Coast Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Coast Water Board in other, unrelated matters, but they are not advising the Hearing Panel in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Hearing Panel or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Coast Water Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Central Coast Water Board or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Team must be copied to all designated parties: Objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **20** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have **3** minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. **Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on 14 September 2012**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Hearing Panel Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Enrollee could not adequately provide the testimony, comments or legal argument in writing before the hearing.

A timer will be used, but will not run during questions by the members of the Hearing Panel or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Case in Chief: The Prosecution Team, the Enrollee and each other designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Hearing Panel to consider. Evidence and exhibits already in the public files of the Central Coast Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Hearing Panel members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team's information must include the legal and factual basis for its claims against each Enrollee; a list or attached copy of all evidence on which the Prosecution

Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff. The Prosecution Team shall provide an electronic copy of all documents cited in the complaint or Staff Report to the Advisory Team and the other designated parties no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

The Prosecution Team shall submit one hard copy and one electronic copy to Roger Briggs/John Robertson and one electronic copy each to Frances McChesney and Jessica Jahr and the other designated parties. Each other designated party shall submit 3 hard copies and one electronic copy to Roger Briggs/John Robertson and one electronic copy each to Frances, McChesney, Jessica Jahr and the other designated parties no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

Rebuttal: Any designated party that would like to submit evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies of their rebuttal information to Roger Briggs/John Robertson and one electronic copy of the information each to Frances McChesney, Jessica Jahr and the other designated parties so that they are received by 5 p.m. on the due date under Important Deadlines, below. “Rebuttal” means evidence, analysis or comments offered to disprove or contradict other designated parties’ submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Closing of Hearing: Designated Parties should be sure to submit all evidence or rebuttal evidence they want the Hearing Panel to consider by the dates set forth in the Important Deadlines, below. Once the Hearing Panel adjourns the hearing, the evidentiary record on which that recommendation is based will be closed. The Central Coast Water Board will not ordinarily allow new evidence to be presented or considered at the future Board meeting.

Copies: Hearing Panel members will receive copies of all materials submitted in hard copy or electronic format. The Hearing Panel’s copies will be printed in black and white from the designated parties’ electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra three paper copies for the Hearing Panel members. For items with voluminous submissions, Hearing Panel members may receive copies electronically only. Electronic copies are also posted on the Board’s website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Hearing Panel will not reject materials solely for failure to provide electronic copies.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be

received by 1 October 2012. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Coast Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Hearing Panel may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Hearing Panel and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Coast Water Board office at 895 Aerovista Place, Suite 101, San Luis Obispo, California. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Hearing Panel Chair. Many of these documents are also posted on-line at

http://www.waterboards.ca.gov/centralcoast/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to ensure access to the latest information, you may contact Jill North (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

(Note: the Central Coast Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

All required submissions must be received by 5:00 p.m. on the due date.

26 July 2012	Prosecution Team issues ACL Complaint to Enrollee and Advisory Team, sends proposed Hearing Procedure to Enrollee and Advisory Team
10 August 2012	Objections due on proposed Hearing Procedure
10 August 2012	Deadline for submission of request for designated party status.
17 August 2012	Hearing Procedures finalized.
17 August 2012	Deadline for opposition to request for designated party status.
17 August 2012	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
23 August 2012	Advisory Team issues decision on requests for designated party status, if any.
31 August 2012	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
14 Sept 2012	Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.
14 Sept 2012	Prosecution Team submits an electronic copy to Advisory Team of all documents cited in the complaint or Staff Report, unless previously submitted.
14 Sept 2012	Requests for additional hearing time (see Hearing Time Limits, above).
19 Sept 2012	All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
1 Oct 2012	Interested persons' comments are due.

8 Oct 2012	If *new* rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal.
12 Oct 2012	Hearing