

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0515

MANDATORY PENALTY  
IN THE MATTER OF

LINDA COUNTY WATER DISTRICT  
WASTEWATER TREATMENT PLANT  
YUBA COUNTY

This Complaint is issued to the Linda County Water District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2006-0096 (NPDES CA0079651).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the unincorporated area of Linda in Yuba County. Treated municipal wastewater is discharged to both the Feather River and to evaporation/percolation ponds that lie within the 100-year flood plain of the Feather River, a water of the United States. The ponds discharge directly to the Feather River during floods, and have hydraulic continuity with the Feather River.
2. On 22 September 2006, effective 11 November 2006, the Central Valley Water Board issued WDRs Order R5-2006-0096 to regulate discharges of waste from the wastewater treatment plant.
3. On 22 September 2006, the Board issued Time Schedule Order (TSO) R5-2006-0097 which required full compliance with the aluminum, ammonia, diazinon, iron, manganese, methoxychlor, and organochlorine pesticides effluent limitations by 21 September 2011. This Complaint considers the protection from Mandatory Minimum Penalties provided by TSO R5-2006-0097.
4. On 19 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0610 for mandatory minimum penalties for effluent violations from 1 January 2000 through 30 April 2008. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
5. On 18 February 2009, staff of the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV). The Discharger's consultant responded that all of the discharges were to Discharge 002, not to Discharge 001. Central Valley Water Board staff has prepared a technical memorandum, included as Attachment B and discussed in Finding 13 of this Complaint, which explains adjustments made to the ROV.

6. Discharges to the evaporation/percolation ponds are subject to mandatory minimum penalties. Because Linda County has an NPDES permit for discharges to the evaporation/percolation ponds, discharges from these ponds to the Feather River are not considered violations if the discharges to the ponds comply with effluent limits contained in the permit. These limits were developed under the presumption that the ponds discharge to the Feather River – it is for this reason that the beneficial uses of the surface water were considered in developing these effluent limits. Had the discharges to these ponds been solely considered discharges to land, only the beneficial uses of the underlying groundwater would have been considered in developing the effluent limits. Unfortunately, the Discharger cannot interpret the permit in two different ways, as convenience suits it. Having obtained protection from violations that would have resulted from discharges from the ponds to the Feather River during floods, the Discharger cannot then claim that subsequent discharges are exempt from mandatory minimum penalties because this discharge is exclusively a discharge to land. If this were the case, the December 2005 inundation of the evaporation/percolation ponds would have been subject to enforcement under different subsections of CWC section 13385 governing unpermitted discharges to surface waters. These subsections allow a penalty calculation of up to \$10 per gallon discharged over 1,000 gallons. Multiplied by the capacity of the evaporation/percolation ponds (which admittedly discharged to the Feather River during this, and previous, flood events), this potential penalty would have been several orders of magnitude greater than the mandatory minimum penalties proposed in this Complaint.
7. Additionally, the ponds appear to be hydrologically connected to the Feather River. The 5 March 2003 hydraulic study required by WDR Order 5-00-165 states that "...it also appears that the ponds cause a localized mounding of the groundwater table. This results in some volume of effluent percolating in all directions away from the ponds, including toward the river." Even though WDR Order R5-2006-0096 occasionally characterizes the discharge from EFF-002 as a "discharge to land," the first page of the permit (as well as other portions) reinforces the concept that the ponds exhibit the characteristics of hydrologic interconnectivity with the Feather River by characterizing the Feather River as a "receiving waterbody" which receives waste from the plant, "...via evaporation/percolation ponds within the floodplain." Since the ponds appear to be hydrologically connected to the Feather River, the NPDES permit effluent limit violations are subject to mandatory minimum penalties.
8. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.”

9. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

10. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.a. include, in part, the following interim limitations which are in effect until commencement of discharge from the proposed diffuser or until 18 May 2010, whichever is sooner: “...*the discharge of treated wastewater shall maintain compliance with the following limitations at EFF-002...*”

| Parameter              | Units | Effluent Limitations |                |               |                       |                       |
|------------------------|-------|----------------------|----------------|---------------|-----------------------|-----------------------|
|                        |       | Average Monthly      | Average Weekly | Maximum Daily | Instantaneous Minimum | instantaneous Maximum |
| Dibenzo(a,h)anthracene | µg/L  | 0.37                 | --             | 0.73          | --                    | --                    |

11. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b., include, in part, the following interim limitations which are in effect until commencement of discharge from the proposed diffuser or until 18 May 2010, whichever is sooner: “...*the discharge of treated wastewater shall maintain compliance with the following limitations at EFF-002...*”

| Parameter                               | Units | Effluent Limitations |                |               |                       |                       |
|-----------------------------------------|-------|----------------------|----------------|---------------|-----------------------|-----------------------|
|                                         |       | Average Monthly      | Average Weekly | Maximum Daily | Instantaneous Minimum | Instantaneous Maximum |
| Biochemical Oxygen Demand, 5-day @ 20°C | mg/L  | 45                   | 65             | --            | --                    | --                    |

12. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b.iii. Total Residual Chlorine, states, in part: “Effluent total residual chlorine shall not exceed the following:”
  - c) 0.019 mg/L as a one-hour average;
13. As described in the technical memorandum mentioned in Finding No. 5, Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
  - Violations 1-4 were to Discharge Point 002, not Discharge Point 001. The discharge points were changed but the violations were retained.
  - Violation 4 was assessed a penalty because it was the fourth violation within 180 days.
14. According to the Discharger’s self-monitoring reports, the Discharger committed four (4) serious Group II violation of the above effluent limitations contained in Order R5-2006-0096 during the period beginning 1 May 2008 and ending 31 December 2008. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
15. According to the Discharger’s self-monitoring reports, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in Order R5-2006-0096 during the period beginning 1 May 2008 and ending 31 December 2008. Two (2) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **six thousand dollars (\$6,000)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **eighteen thousand dollars (\$18,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
17. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**THE LINDA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **eighteen thousand dollars (\$18,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **15 April 2009**:
  - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **eighteen thousand dollars (\$18,000)**; or
  - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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PAMELA C. CREEDON, Executive Officer

16 March 2009

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Attachment A: Record of Violations  
Attachment B: Memorandum  
BLH: 16-Mar-09

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Linda County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0515 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4.  **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **eighteen thousand dollars (\$18,000)** by check, which will contain a reference to "ACL Complaint No. R5-2009-0515" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **15 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **11/12 June 2009** Central Valley Water Board meeting.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. 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 Discharger to further enforcement, including additional civil liability.

-or-

5.  **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0515**

**Linda County Water District  
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 May 2008 – 31 December 2008) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2006-0096)

|   | <u>Date</u> | <u>Violation Type</u>  | <u>Unit</u><br>s | <u>Limit</u> | <u>Measure</u><br>d | <u>Period</u><br><u>Type</u> | <u>Discharge Point</u> | <u>Remarks</u> | <u>CIWQS</u> |
|---|-------------|------------------------|------------------|--------------|---------------------|------------------------------|------------------------|----------------|--------------|
| 1 | 9-Jul-08    | Dibenzo(a,h)anthracene | µg/L             | 0.73         | 3.7                 | Daily                        | 002                    | 2              | 805936       |
| 2 | 31-Jul-08   | Dibenzo(a,h)anthracene | µg/L             | 0.37         | 3.7                 | Monthly                      | 002                    | 2              | 805935       |
| 3 | 31-Jul-08   | BOD                    | mg/L             | 45           | 46                  | Monthly                      | 002                    | 3              | 805931       |
| 4 | 31-Aug-08   | BOD                    | mg/L             | 45           | 48                  | Monthly                      | 002                    | 4              | 805933       |
| 5 | 13-Sep-08   | Chlorine               | mg/L             | 0.019        | 0.39                | 1-hour                       | 002                    | 2              | 805934       |
| 6 | 31-Oct-08   | BOD                    | mg/L             | 45           | 48                  | Monthly                      | 002                    | 4              | 805937       |
| 7 | 2-Nov-08    | Chlorine               | mg/L             | 0.019        | 0.051               | 1-hour                       | 002                    | 2              | 805938       |

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

|                                                |                          |
|------------------------------------------------|--------------------------|
| <b><u>VIOLATIONS AS OF:</u></b>                | <b><u>12/31/2008</u></b> |
| Group I Serious Violations:                    | 0                        |
| Group II Serious Violations:                   | 4                        |
| Non-Serious Exempt from MPs:                   | 1                        |
| Non-serious Violations Subject to MPs:         | 2                        |
| <b><u>Total Violations Subject to MPs:</u></b> | <b><u>6</u></b>          |

**Mandatory Minimum Penalty = (4 Serious Violations + 2 Non-Serious Violation) x \$3,000 = \$18,000**

- \* Discharge Point 001—To Feather River
- \* Discharge Point 002—To Ponds in Flood Plain



Linda S. Adams  
Secretary for  
Environmental Protection

## ATTACHMENT B

# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold  
Schwarzenegger  
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
Phone (916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

**TO:** Wendy Wyels, Supervisor  
NPDES Compliance and Enforcement

**FROM:** Barry Hilton, WRCE  
NPDES Compliance and Enforcement

**DATE:** 11 March 2009

**SIGNATURE:** \_\_\_\_\_

**SUBJECT:** LINDA COUNTY WATER DISTRICT ASSESSMENT OF MMPS

On 18 February 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period 1 May 2008 through 31 December 2008. The Discharger's consultant responded by telephone 27 February 2009. The following discusses the changes I made to the ROV during my preparation of the Administrative Civil Liability Complaint.

### **Discharge Point**

Violations 1-4. The Discharger stated that all discharges were to Discharge Point 002, not Discharge Point 001. I made the changes. These changes did not affect the number of violations subject to mandatory minimum penalties.

### **BOD**

Violation 4. This violation is subject to a mandatory minimum penalty because there were three violations during the prior 180 day period. I increased the number of chronic violations from five to six.

**California Environmental Protection Agency**



**Linda County Water District  
Wastewater Treatment Plant**

**RECORD OF VIOLATIONS (1 May 2008 – 31 December 2008) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2006-0096)**

|   | <u>Date</u> | <u>Violation Type</u>  | <u>Unit</u><br><u>s</u> | <u>Limit</u> | <u>Measure</u><br><u>d</u> | <u>Period</u><br><u>Type</u> | <u>Discharg</u><br><u>e Point</u> | <u>Remarks</u> | <u>CIWQ</u><br><u>S</u> |
|---|-------------|------------------------|-------------------------|--------------|----------------------------|------------------------------|-----------------------------------|----------------|-------------------------|
| 1 | 9-Jul-08    | Dibenzo(a,h)anthracene | µg/L                    | 0.73         | 3.7                        | Daily                        | <del>001</del> 002                | 2              | 805936                  |
| 2 | 31-Jul-08   | Dibenzo(a,h)anthracene | µg/L                    | 0.37         | 3.7                        | Monthly                      | <del>001</del> 002                | 2              | 805935                  |
| 3 | 31-Jul-08   | BOD                    | mg/l                    | 45           | 46                         | Monthly                      | <del>001</del> 002                | 3              | 805931                  |
| 4 | 31-Aug-08   | BOD                    | mg/l                    | 45           | 48                         | Monthly                      | <del>001</del> 002                | <del>3</del> 4 | 805933                  |
| 5 | 13-Sep-08   | Chlorine               | mg/l                    | 0.019        | 0.39                       | 1-hour                       | 002                               | 2              | 805934                  |
| 6 | 31-Oct-08   | BOD                    | mg/l                    | 45           | 48                         | Monthly                      | 002                               | 4              | 805937                  |
| 7 | 2-Nov-08    | Chlorine               | mg/l                    | 0.019        | 0.051                      | 1-hour                       | 002                               | 2              | 805938                  |

Remarks:

5. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
6. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
7. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
8. Non-serious violation subject to mandatory penalties.

|                                                |                          |
|------------------------------------------------|--------------------------|
| <b><u>VIOLATIONS AS OF:</u></b>                | <b><u>12/31/2008</u></b> |
| Group I Serious Violations:                    | 0                        |
| Group II Serious Violations:                   | 4                        |
| Non-Serious Exempt from MPs:                   | <del>2</del> 1           |
| Non-serious Violations Subject to MPs:         | <del>4</del> 2           |
| <b><u>Total Violations Subject to MPs:</u></b> | <b><u>5</u></b> 6        |

**Mandatory Minimum Penalty = (4 Serious Violations + 42 Non-Serious Violation) x \$3,000 = \$1518,000**

- \* Discharge Point 001—To Feather River
- \* Discharge Point 002—To Ponds in Flood Plain

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2009-0515

ISSUED TO  
LINDA COUNTY WATER DISTRICT  
MARYSVILLE  
YUBA COUNTY

SCHEDULED FOR 11/12 JUNE 2009

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 Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to Linda County Water District (“Discharger”) alleging that it has violated CWC section(s) 13385 by exceeding effluent limits contained in Waste Discharge Requirements (WDRs) Order R5-2006-0096 (NPDES No. CA0079651). The Complaint proposes that a mandatory minimum penalty in the amount of eighteen thousand dollars (\$18,000) be imposed. A hearing is currently scheduled to be held before the Central Valley Water Board during its 11/12 June 2009 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 11/12 June 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

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

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings).

**Hearing Procedures**

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board’s Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley

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 Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 30 MARCH 2009, 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.

### **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 the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

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

1. Central Valley Water Board Prosecution Team
2. Linda County Water District, referred to as the Discharger

### **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 **6 April 2009** to Lori Okun (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 in the hearing and the potential actions by the Central Valley Water Board affect the person), 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 **15 April 2009**. The parties will be notified by 5 p.m. on 20 April 2009 whether the request has been granted or denied.

## **Primary Contacts**

### **Advisory Team:**

Ken Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Phone: (916) 464-4726; fax: (916) 464-4758  
[klandau@waterboards.ca.gov](mailto:klandau@waterboards.ca.gov)

Lori Okun, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814  
Phone: (916) 341-5165; fax: (916) 341-5199  
[lokun@waterboards.ca.gov](mailto:lokun@waterboards.ca.gov)

### **Prosecution Team:**

Pamela Creedon, Executive Officer  
Joe Karkoski, Acting Assistant Executive Officer  
Wendy Wyels, Environmental Program Manager

Barry Hilton, Water Resources Control Engineer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Phone: (916)464-4762  
[bhilton@waterboards.ca.gov](mailto:bhilton@waterboards.ca.gov)

Patrick Pulupa, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814  
Phone: (916) 341-5189; fax: (916) 341-5199  
[ppulupa@waterboards.ca.gov](mailto:ppulupa@waterboards.ca.gov)

### **Discharger:**

Douglas Lofton, District Manager  
Linda County Water District  
1280 Scales Street  
Marysville, CA 95901  
(530) 743-2043

### **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 Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Joe Karkoski, Acting Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Barry Hilton, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. 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. Members of the Prosecution Team may have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board 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 Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member 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 verbal). 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.

### **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 25 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 no later than ten days after all of the evidence has been received. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Submission of Evidence and Policy Statements**

The following information must be submitted 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 Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley 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.
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.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based will have been entered into the administrative file at the time the Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on **20 April 2009**. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on **20 April 2009**.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on **4 May 2009**. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on **1 June 2009**, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing.

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. 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 Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing

of good cause and lack of prejudice to the parties, the Central Valley Water Board 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 Central Valley Water Board 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. 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 Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova. 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 Central Valley Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralvalley/>. Although the web page is updated regularly, to assure access to the latest information, you may contact Barry Hilton at (916) 464-4762.

### **Questions**

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

### **IMPORTANT DEADLINES**

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

|               |                                                                                                                                                                      |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16 March 2009 | Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice |
| 30 March 2009 | Objections due on proposed Hearing Procedure                                                                                                                         |
| 6 April 2009  | Deadline for submission of request for designated party status.                                                                                                      |
| 15 April 2009 | Deadline for opposition to request for designated party status.                                                                                                      |
| 15 April 2009 | Discharger's deadline for submitting signed form to waive right to hearing within 90 days.                                                                           |
| 20 April 2009 | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.                                                |

- 20 April 2009      Advisory Team issues decision on requests for designated party status, if any.
  
- 4 May 2009        Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
  
- 1 June 2009        All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
  
- 11/12 June 2009    Hearing