EXHIBIT F

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

SAN JOAQUIN COUNTY

IN THE MATTER OF: HENRY J. TOSTA (DBA HENRY TOSTA DAIRY), HENRY J. TOSTA JR. FAMILY LIMITED PARTNERSHIP, AND HENRY J. TOSTA TRUST ("DAIRY")	Administrative Civil Liability Complaint No.: R5-2012-0561 **ANSWER/RESPONSE OF HENRY j. TOSTA TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

Henry J. Tosta (DBA Henry Tosta Dairy), Henry J. Tosta Jr. Family Limited Partnership, and Henry J. Tosta Trust)"Dairy) responds to the Administrative Civil Liability Complaint as follows:

Background

1. No response required.

2. The Dairy General Order is being revised and it is not clear whether the changes would affect these regulations.

3. See prior response.

4. As discussed in more detail in the documents submitted to the Board on Rebuttal, Mr. Tosta has engaged in a number of water saving practices, and will engage in more once the NRCS money is received that will help the Dairy to reduce the amount of water produced that would otherwise go to the Dairy's lagoons.

5. No response required.

Alleged Violations

Violation #1: Manure Discharege to Groundwater.

6. See response to Paragraph 2 above. Further, given the high background levels, there is no substantial evidence to support these violations. Dairy denies that it is engaged in any prohibited activity that meets the prohibitions of A.4.

7. There is no violation stated here. As indicated, with respect to the CAO, most of this material has been removed from the site.

8. Background nitrogen levels near the site are in the range of 40 mg/l and TDS at 11,391 mg/l. See materials submitted with the rebuttal. There is no evidence that activities at the site are the cause of contamination at those levels. Further as noted the manure is ¾ removed.

9. The sampling results indicated are not "high" compared to the background noted above. The consultant who drafted these reports is no longer employed by the Dairy.

10. Water with a background TDS greater than 3000 mg/l is not usable or treatable for drinking water per RWQCB policies.

11. Water with a background TDS greater than 3000 mg/l is not usable or treatable for drinking water per RWQCB guidelines. This groundwater has no beneficial uses, making this paragraph incorrect. Dairy denies that it has impacted beneficial uses, and denies that the Board has substantial evidence to support the conclusion that the Dairy has caused exceedances of water quality objectives or caused degradation of groundwater.

12. See Paragraphs 2 and 11, above. There is no proof that the Dairy contributed to the high background levels. The calculation of days of violation are speculative and unsupported by substantial evidence. Dairy does not believe that the amount of manure that was on site at the time of the CAO does not match the Board's calculations, and therefore, Dairy denies that it exceeded its stop capacity.

13. As noted, there is no evidence that this site has impacted beneficial uses. Dairy asserts that the State lacks substantial evidence to support these violations against the Tosta Dairy because of the existing high background levels in this area. No daily violations are warranted, and the duties charged by the Board Staff to calculate violations has no basis. Further, the mere presence of manure on a dairy is not a violation.

14. This Paragraph is a statement of the law and Dairy has no comments, however, Dairy does not deny that there is substantial evidence in the record that Dairy violated this section.

Violation No. 2: Failure to Sumit Adequate Waste Mangement Plan.

15. Dairy objects as this paragraph is an improper attempt to link WMP deficiencies to physical violations at the site.

16. This report was only submitted about 60 days late, along with a number of other dairies.

17. No violation is stated. Further, this Paragraph confuses Plan inadequacies with physical circumstances at the site.

18. See response to Paragraph 17. The records does not contain sufficient evidence to support any violations.

19. First, this violation is improper because the Dairy did in fact submit a WMP, although the Board argues that it was inadequate. The violation alleged herein is for "Any person failing or refusing to furnish technical or monitoring program reports," not for filing inadequate ones.

Violation No. 3: Failure to Comply with Cleanup Directives

20. The Dairy asserts that the Board has not established that the Dairy is a threat to groundwater given the levels of contaminants in the background groundwater.

21. No comments required.

22. Directive 1. As above, the violations as listed under the ordinance are for plans that are not submitted as opposed to plans that are determined to be inadequate. It also seems inequitable that the same Board staff that is determining and commenting on the adequacy of the Dairy submittals is the same as those that are now trying to fine them. The Dairy asserts that the Board has not established that the Dairy is a threat to groundwater given the levels in the background groundwater.

A. With respect to Directive 1A, this manure has been substantially removed. With respect to the removal of this material, Mr. Tosta indicated that has been completed except for certain berms along the southern most portion of the property and that he is merely awaiting recommendations from the supplier as to what chemicals can be used in that area to remove vegetation. Mr. Tosta also pointed out that the berms were made of dirt, not manure as had been alleged (see also, John Minney pictures). This project can be done in 30 days, as will the staking by August 1. See response to Violation #1, above.

B. With respect to Directive 1B, see response above. Manure was not used to build the embankments; the gages will be installed this month. Mr. Tosta is making an effort to minimize the amount of water that is used on the site. As discussed above, Mr. Tosta has removed three-quarters of the manure that was located in this area. We have attached pictures that Mr. Minney took at the site on Thursday afternoon, June 27, after our meeting. In addition, Mr. Tosta has arranged for funding from the NRCS to assist in payment or the installation of a concrete pad and underlying drainage piping for this area. He has also arranged for funding to convey the runoff from the roof of the Dairy Barn to an off-site location rather than to add to the lagoons. Mr. Tosta has also voluntarily ceased using cooling plates and is also considering a new system for conserving additional water to diminish the existing wastewater flows in the

system. Mr. Tosta believes that if these issues with the Barn are resolved there will be additional federal funding for future water conservation means. It is estimated that the remainder of the manure will be removed from the site by September 1, 2013. See letter to Ms. Young dated June 27, 2013 with respect to compliance with the CAO, which is attached to this response and incorporated herein.

C. Mr. Tosta indicated that this manure from the settling ponds has already been removed. However, since the Dairy continues to be in use there is existing water manure in those ponds. Mr. Tosta will have wastewater from the milk barn tested and provided to the Board to indicate the minimum amount of manure that is associated with this wastewater and thus would have minimal impacts on existing groundwater quality. This data will be submitted with the data from the wells that will be taken next week and should be returned to the Board by August 1, 2013.

D. With respect to Directive 6, Dairy asserts herein that it has compiled most of the information from its Management Plan that would be required in a CNMP that was done for the NRCS and will be submitted to the Regional Board for review to determine how much additional work needs to be done in order to comply with the requirements for a waste management plan. He will continue ongoing discussions between the Discharger and the Board staff to determine the scope of the required waste management plan. However, such a plan could be completed by September 2013. The CNMP will be transmitted next week.

E. With respect to Directive 7, Dairy asserts that this requirement is premature until the Dairy has results from the samples that will be taken. Once the samples are in, they will be reviewed and the scope of the remediation plan, if any, would be discussed in ongoing discussions with Board. Additionally, the requirements of the 13267 letter that was issued may allow for the continuing discussions with the Board concerning this issue.

23. Dairy asserts that none of these are ongoing violations that necessitate a daily violation. There is no substantial evidence that this Dairy is creating a groundwater quality impact, that affects beneficial uses.

24. As indicated in documents submitted herewith, the Board Staff has incorrectly calculated the potential penalties, further as indicated in documents submitted herewith. They have incorrectly identified non-existent economic benefits, and they a have also incorrectly calculated Mr. Tosta's ability to pay. The violations asserted are not supported by substantial evidence; Mr. Tosta is having the manure removed from his property at no charge because of its use as a valuable commodity; in turn with the losses that are being incurred by the Dairy industry and the compliance costs that he is already incurring, and will incur a minimal penalty is all that he can sustain.

25. The Staff's calculations are inconsistent with the State Board's policy as noted above.

26. See response to Paragraph 24, above.

27. The penalty that has been calculated by the Board Staff is unreasonable and unsupported by the evidence and the calculations that were made. As noted, the penalties were improperly calculated the economic benefit to the Dairy was exaggerated many times over, and the ability to pay calculation was not properly carried out.

28. See prior comments which are incorporated herein. Dairy denies that Dairy committed any violations, or that the penalties calculated are appropriate or properly calculated.

29. No response required.

NOTICE SECTION:

1. The penalty that has been calculated by the Board Staff is unreasonable and unsupported by the evidence and the calculations that were made. As noted, the penalties were improperly calculated, the economic benefit to the Dairy was exaggerated many times over, and the ability to pay calculation was not property carried.

2. No response required.

3. If the Board chooses to make any changes to increase the amount demanded, it must be based on substantial evidence. Further, the Dairy must be given notice of these changes in order to comply with the requirements of due process.

4. Deny that there are no statutes of limitations that apply to administrative actions.

5. The remainder of the allegations that were not specifically addressed above are generally denied.

Dated: July 2, 2013

Respectfully submitted,

THOMAS H. TERPSTRA,
A Professional Corporation

By: _____
Thomas H. Terpstra, Esq.
Co-Counsel for Henry Tosta

– AND –

Dated: July 2, 2013

WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
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