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Attorneys for Henry Tosta

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	Administrative Civil Liability Complaint No.: R5-2012-0561 **DECLARATION OF ROBERT FUHRMAN**

I, Robert Fuhrman, declare as follows:

1. The facts stated in this declaration are based on my personal knowledge, academic training, experience, and the documents I reviewed related to this case. I could and would testify competently to these facts if called upon to do so.

2. I am Principal and CEO of Seneca Economics and Environment, LLC, a consulting firm located in Germantown, Maryland, which I founded in January 2002. Before that time, for approximately fourteen years I was a principal and director of two different economic and management consulting firms. Attachment 1 is a copy of my resume.

3. I studied economics (24 semester hours) and political science (27 semester hours) at Columbia College of Columbia University, from which I received a Bachelor of Arts degree in 1971. In 1973, I received a Master of Business Administration ("MBA") degree from Harvard Business School.

4. I am an expert in reviewing and critiquing penalty assessments made by governmental agencies, including the U.S. Environmental Protection Agency (EPA) and state environmental agencies, and in providing alternative calculations for use in both settlement and litigated cases. Since 1986, I have worked on over 200 environmental civil penalty disputes and have testified on relevant matters in U.S. District Court, U.S. Bankruptcy Court, state court, and in hearings before U.S. EPA administrative law judges. I have published approximately thirty articles on matters related to the calculation of economic benefit and ability-to-pay in environmental civil penalty cases.

5. I am particularly familiar with both the EPA "BEN" model, which EPA and certain state environmental agencies use for determining the economic benefit of non-compliance, and the EPA "ABEL" model that is used by the EPA and other governmental agencies to calculate individual entities' ability-to-pay civil penalties.

6. For the purposes of this opinion, I reviewed the Federal Income Tax Returns for the Henry J. Tosta Jr. Family Limited Partnership (the "L.P." or the "Tosta Family L.P."); the California State Water Resources Central Board's Enforcement Policy dated May 2010; and various EPA policies, including EPA's "Framework for Statute-Specific Approaches to Penalty Assessments" dated February 16, 1984.

7. I reviewed the declarations of Henry Tosta attached as Exhibit 1 and Exhibit 2 to this Declaration.

8. I also reviewed the Analysis by Mr. Gerald Horner of the State Water Resources Control Board (SWRCB) that was included in the State's Rebuttal Submitted July 8, 2013.

9. Although Mr. Smith, Counsel for the Tosta Family L.P., was told that Mr. Horner or another staff member of the SWRCB used the BEN model to calculate the "economic benefit allegedly obtained due to noncompliance" in this case, I see no evidence in Mr. Horner's

Analysis that indicates that he or anyone else working for the SWRCB actually ran the ABEL model to determine the L.P.'s ability-to-pay a civil penalty. This strikes me as strange for two reasons: (1) ABEL, like BEN, is easy to download from the EPA web site; and (2) unlike Mr. Horner's Analysis, ABEL provides (a) probabilistic estimates of an entity's future cash flows that presumably would be available to pay a civil penalty (b) and calculated financial ratios that may be used to assess an entity's solvency, liquidity, ability to raise capital through debt financing, and its likelihood of imminent bankruptcy.

10. My major opinions are as follows:

a. The State's calculation of the L.P.'s ability-to-pay was improperly performed.

b. The State's calculation of L.P.'s ability-to-pay was based on improper assumptions and an incorrectly drawn inference about the L.P.'s future ability to generate "Capital Gains."

c. Based on use of the Tosta Family L.P.'s federal tax return data in the ABEL model and relying on the standard EPA assumptions for running this model, the Tosta Family L.P.'s ability to pay a one thousand dollar fine ($1,000) is less than 60 percent likely over the next five years based on ABEL's projection of the L.P.'s future cash flow. According to page 1 of the ABEL calculations I performed, which are attached as Attachment 2, "EPA typically employs a 70% probability level for determining ability to pay...." Thus, using EPA's standard probability cutoff and relying on the ABEL output, I conclude that the L.P. has no ability to pay a civil penalty.

d. The State's calculation of Economic Benefit is improper.

e. Based on my review of Mr. Tosta's declarations and the State's calculations, I believe that the L.P.'s economic benefit from alleged non-compliance was minimal.

11. My analysis of Mr. Horner's Analysis is as follows:

a. The State's opinion is based on a one-time, "Capital Gain" incident that occurred in 2012. In his Analysis, Mr. Horner acknowledged that he did not know for certain what caused the apparent "Capital Gain." However, he assumed that it represented the "sale of farm animals held for more than one year." As shown on Table 1 of Mr. Horner's Analysis, this "net long-term capital gain" directly led to the L.P. achieving positive net income in 2012 totaling $572,576.

b. On this basis, on page 2 of his Analysis, Mr. Horner wrote: "The trend in annual income has improved from a negative income of $973,823 in the year 2009 to a positive income of $572,576 in 2012. The increasing income trend provides a solid foundation to pay the proposed ACL [administrative civil liability]."

c. Contrary to Mr. Horner's assumption of a positive trend, his Analysis failed to provide any evidence that this "Capital Gain" incident is likely to recur at any time during the next five years. His conclusion regarding the Tosta Family L.P.'s ability-to-pay is therefore not only questionable; it is highly speculative and lacks a proper foundation in financial analysis.

d. Based on discussion with Counsel, Henry Tosta's Second Declaration, and my review of general ledger information, I understand that the "Capital Gain" at issue was actually a decrease in the debt owed to a bank both by the sale of, and due to its seizure of a portion of the Tosta Family L.P.'s herd of cattle, the subsequent sale of the seized animals, and the credit the bank provided against the outstanding amount of debt owed to the bank by the L.P. Thus, although the event in question looked to Mr. Horner to be positive cash flow, it was actually a liquidation of a portion of the Tosta Family L.P.'s income-generating herd, resulting in a reduction in the L.P.'s outstanding amount of bank debt <u>and</u> in its ability to generate future cash flow. As indicated on Schedule L of the L.P.'s 2012 tax return, the Tosta Family L.P. started 2012 with $5,786,315 and ended it with only $3,352,918 in buildings and other depreciable assets. (See Line 9a of Schedule L of the 2012 tax return.)

e. Mr. Horner's Analysis offered no valid evidence that the L.P. can afford to pay a penalty of $1,140,713, which is 70 percent of its total shareholder's equity as of the end of 2012, without going out of business. As shown by Mr. Horner's Table 3, and as confirmed by Schedule L of the L.P.'s 2012 tax return, at the end of 2012, the L.P. did not have on hand any cash, and most of its assets were needed to cover its liabilities. (Statement 4 of the tax return indicates that the L.P. actually ended the year with a bank overdraft of $4,454, credit card liabilities of $63,345, and payroll liabilities totaling $9,018.)

f. Mr. Horner's Table 2 indicates that if the L.P.'s cash flows for the next five years would be identical to its cash flows during last five years (which includes the positive amount of net income due to the "Capital Gain" in 2012), the L.P. would incur losses over the next five-year period totaling $368,334. If the L.P. were to pay any amount of civil penalties plus additional interest on a loan to finance such a payment, the L.P.'s total net losses would be even greater. Obviously, all this assumes that there is a lender who would be willing to loan money to the L.P. against its assets that are currently not fully pledged as collateral. Mr. Horner's Analysis did not include any basis for reaching a conclusion about L.P.'s ability to engage in additional debt financing.

g. Based on the above, I believe that Mr. Horner's Analysis is improper and highly deficient, and does not provide the State an appropriate basis for penalty-setting purposes.

12. Using the available tax return information of the Tosta Family L.P., I performed my analysis using the EPA ABEL model, which, as stated before, generates both probabilistic estimates of future cash flows and financial ratios for historical years.

13. Because EPA has yet to release an updated version of ABEL, I used the ABEL formats produced by the currently existing version of the model for the most recent five-year period. The relevant column headings ranged from years 2006 to 2010. Manually I corrected

the spreadsheets' column headings to reflect the actual years for which tax return data was entered into the model, i.e., years 2008 through 2012. This off-line adjustment had no effect on the results of the analyses that are reflected in the printouts.

14. ABEL does not require or use information on capital gains as an input into the model because the implication of such information is already embedded in the entry marked "Taxable Income Before NOL (Net Operating Loss) and Special Deductions," which appears on page 4 of the ABEL printout. The entry on that line for tax year 2012 totaled $572,576.

15. As shown on Attachment 2 to this Declaration, ABEL's financial ratio analyses, which reflect the capital gain that occurred in 2012, indicate that:

- For all five years covered by the tax returns considered in the ABEL, as indicated by the L.P.'s Debt-to-Equity Ratio, the L.P. faced possible difficulty in borrowing additional capital.
- The L.P.'s Current Ratio (i.e., current assets divided by current liabilities) indicated serious liquidity problems in each year.
- In four of the five years considered, the L.P.'s "Times Interest Earned Ratio" was a negative value, which is strongly indicative of difficulty in meeting future interest payments.
- In four of the five years, the L.P.'s "Beaver Ratio" was either negative or below 0.1, which indicated that the L.P. was in "poor financial condition" in those years. The Beaver Ratio was "inconclusive" only in 2012.
- In all five years, the L.P.'s "Altman Z-Score" indicated possible bankruptcy of the L.P. within two years.

I would anticipate that these historic financial ratios would make a lending institution risk-averse about lending additional funds to the Tosta Family L.P. at the present time.

16. Mr. Horner's conclusion that the L.P. can raise $1,140,713 to pay a civil penalty is not supported by rigorous analysis and is directly contradicted by the results I obtained through use of the EPA ABEL model. The model essentially projected on a probabilistic basis that the L.P. is unlikely to generate from operations sufficient cash flow – essentially zero – to

pay a civil penalty. It also calculated past financial ratios that undermine the notion that it can to raise sufficient additional capital from credit markets to pay a significant civil penalty. Mr. Horner's reliance on a "Capital Gain" in one year as evidence of a future trend is both overly simplistic and fatally flawed. The 2012 "Capital Gain" did not represent a positive trend, as Mr. Horner had asserted. Instead, it was indicative of the L.P.'s poor financial condition and of the Bank of the West's desire to recoup a significant portion of the amount of money that the L.P. had borrowed from the bank.

17. I also have several opinions with respect to the amount of Economic Benefit that was calculated by the Regional Board.

18. As portrayed on State's Exhibit 26, based the EPA BEN Model, the Board staff calculated that the Tosta Family L.P. had obtained an economic benefited from non-compliance totaling $751,000.

19. According to that exhibit, there were several minor cost items and two very substantial cost items. According to the State, the L.P. avoided Manure Management costs resulting in $659,268 in economic benefit and avoided General Maintenance adding an additional $85,991 to economic benefit. Mr. Tosta has contested the underlying assumptions and, per his Declarations, has stated that the estimated costs do not accurately represent his actual costs, if any.

20. Mr. Tosta stated that since he began operating the dairy in 1994, his neighbors have been willing to take his manure without charge, and did so on numerous occasions.

21. According to Mr. Tosta, some years he was not able to give his neighbors access to his property, did not have employees who were available to load manure, or it was the wrong time of the year for manure use.

22. The BEN calculations provided by the State assumed 1/1/96 as the initial date of noncompliance. That date is well beyond the statute of limitations in this case, which Counsel believes was three years prior to the SWRCB or the regional water quality control board discovering the facts constituting the grounds for commencing actions in this matter related to their jurisdiction. Additionally, the State's relevant BEN calculations apparently did not take

into account the amounts of manure removed by Mr. Tosta's neighbors during relevant years at little or no cost to the L.P. The State's economic benefit calculations are therefore deficient and not reliable. Further, according to Mr. Tosta, the Dairy General Order was not in place until 2007 and the requirements for a fully implemented Waste Management Plan were not instituted until 2011, therefore no violations of the order could have occurred prior to that time.

23. Because there is little to no cost associated with the removal of manure during these years, the State has not accurately calculated economic benefit.

24. Even if there were a cost associated with loading of manure in certain years, this would be a delayed cost rather than an avoided cost, the latter being the way in which the State has modeled economic benefit for purposes of its BEN calculation. As delayed costs, economic benefit would be a function of inflation and the interest on the delayed costs. Instead, for economic benefit purposes, the State has treated those costs as if they were totally avoided. This is incorrect.

25. There is no evidence indicated to support the inclusion of the "Avoided General Maintenance Costs" included in Exhibit 26. From that Exhibit, the rationale or evidentiary basis for including some or all of those costs in the State's BEN analysis is, at best, unclear.

26. EPA's guidance document titled "A Framework Statute Specific Approaches to Penalty Assessments" (1984) stated that "Among the types of violations that would result in savings from deferred costs are the following: ...[I]mproper disposal, where proper disposal is still required to achieve compliance."

27. In my opinion, the State's economic benefit calculation incorrectly treated the alleged avoided costs. The Manure Management costs were not completely avoided. Some of these costs were incurred on time and for little or no money; the incurrence of some of some of these costs were postponed to a later date. The State's BEN analysis does not capture this information, and therefore significantly overstates the economic benefit obtained by the L.P.

28. It is my expert opinion that the BEN is based on an incorrect financial methodology. The interest forward rate in BEN applied to past cost savings due to noncompliance is based on the weighted average cost of capital for for-profit entities. To the

best of my knowledge, EPA has never cited in a court a peer-reviewed article from published academic financial literature that supports the methodology EPA adopted in this regard. Although this methodology has been upheld in some courts, it has been rejected in others, notably U.S. v. WCI Steel, a 1999 case in federal district court in Ohio. *U.S. v. WCI Steel,* 72 F. Supp. 2d 810, at 831. That Court adopted the after-tax rate of interest associated with short-term U.S. Treasury bills for the purpose of adjusting past calculated values to the present time. There is peer-reviewed, published academic literature in the field of corporate finance that supports the use of the Treasury bill rates to adjust past costs to present values. (See, R.F. Lanzillotti and A.K. Esquibel, "Measuring Damages in Commercial Litigation: Present Values of Lost Opportunities," *Journal of Accounting, Auditing and Finance*, Winter 1990, pages 125-142, at page 134; and Franklin M. Fisher and R. Craig Romaine, "Janet Joplin's Yearbook and the Theory of Damages," *Journal of Accounting, Auditing and Finance*, Winter 1990, pages 145-157.)

29. Based on my review it appears that an inappropriately high interest rate in the economic benefit analyses generated by the State was used. However, we were not provided with the original BEN analysis, which apparently would serve as the evidence for the information presented in their analysis. Additionally, without reviewing the State's BEN calculations, I cannot identify other problems that may exist related to these calculations.

Executed this 18th day of July, 2013, at Germantown, Maryland.

Robert H. Fuhrman

ROBERT FUHRMAN

ATTACHMENT 2

Ability to Pay Analysis

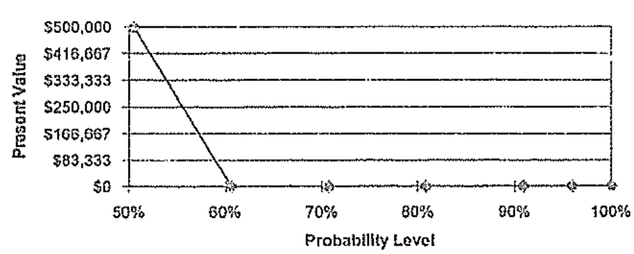
Partnership: Tax Form 1065 *Run Name: Run 1*

Penalty Amount:	$1,000 (2011 dollars)
Reinvestment Rate:	0
Inflation & Discount Rates	1.5% & 6.9%
Weighted-Average Smoothing Constant:	0.3
Marginal Income Tax Rate:	41.7%
No. of Years of Considered Future Cash Flow:	5

Your model version may be outdated: go to www.epa.gov/compliance/civil/econmodels

Summary of Predicted Cash Flow *all tabular figures expressed in Dollars*

Probability of Cash Flow	Total Generated After-Tax Cash Flow	Penalty Payment	After-Tax Initial Pollution Control Expenditures	Present Value of Annual Pollution Control Costs	Cash Flow Net of Penalty and Compliance Costs
50%	$499,087	$1,000	$0	$0	$498,087
60%	$0	$1,000	$0	$0	($1,000)
70%	$0	$1,000	$0	$0	($1,000)
80%	$0	$1,000	$0	$0	($1,000)
90%	$0	$1,000	$0	$0	($1,000)
95%	$0	$1,000	$0	$0	($1,000)
99%	$0	$1,000	$0	$0	($1,000)



Conclusions *(All figures are expressed as of 2011.)*

- ABEL estimates a 59% probability that Tosta Family L.P. can currently afford a $1,000 penalty after meeting total Pollution Control Expenditures of $0 (see below for detailed breakout of expenditures).
- ABEL estimates a 70% probability that Tosta Family L.P. could afford to pay a penalty of $0 after meeting total Pollution Control Expenditures of $0 (see below for detailed breakout of expenditures).
- This is based only on cash flow the firm is projected to generate in the next 5 years. (Additional ability to pay could follow from an examination of unnecessary expenses, assets unrelated to business operations, and/or other sources.)
- EPA typically employs the 70% probability level for determining ability to pay, but the litigation team must ultimately determine the appropriate cutoff for the case.
- For the payment schedule (which does not affect the ability to pay), 3 Yearly payments (at a 6.9% interest rate) of $0.00 are the equivalent of the lump-sum affordable amount.

Note that the owners may be individually liable for this partnership's liabilities
See the ABEL User's Manual or help system for further details.

Pollution control expenditures include $0 for depreciable capital investment, $0 for tax-deductible one-time expenditure, $0 for non-tax-deductible one-time expenditure, and $0 for annually recurring costs.

Partnership: Tax Form 1065

In Dollars

Financial Profile: Financial Statements

	2010	2009	2008	2007	2006
	2012	2011	2010	2009	2005
	Balance Sheet				
Assets					
Cash	-	102,893	91,249	-	-
Accounts Receivable	-	-	-	-	-
Inventories	-	-	-	-	-
U.S. Government Obligations	-	-	-	-	-
Tax-Exempt Securities	-	-	-	-	-
Other Current Assets	-	-	-	-	-
All Other Assets*	5,988,932	6,006,911	6,066,974	6,291,697	6,671,561
Total Assets	$ 5,988,932	$ 6,109,804	$ 6,158,223	$ 6,291,697	$ 6,671,561
Liabilities					
Accounts Payable	-	-	-	-	-
Mortgages, Bonds Payable in <1 Year	736,964	1,341,279	1,043,875	795,825	2,010,200
Other Current Liabilities	76,817	41,483	64,327	62,613	56,991
Loans from Stockholders	-	-	-	-	-
Mortgages, Bonds Payable in >1 Year	3,448,760	3,664,643	3,799,126	3,943,391	2,096,220
Other Liabilities	-	-	-	-	-
Total Liabilities	$ 4,262,541	$ 5,047,405	$ 4,907,328	$ 4,801,829	$ 4,163,411
Stockholders' Equity	$ 1,726,391	$ 1,062,399	$ 1,250,895	$ 1,489,868	$ 2,508,150
Total Liabilities and Stockholders' Equity	$ 5,988,932	$ 6,109,804	$ 6,158,223	$ 6,291,697	$ 6,671,561
	Income Statement				
Gross Sales	$ 2,357,778	$ 3,590,991	$ 2,754,012	$ 2,178,063	$ 2,742,851
Cost of Goods Sold	$ -	$ -	$ -	$ -	$ -
Operating Profit	$ 2,357,778	$ 3,590,991	$ 2,754,012	$ 2,178,063	$ 2,742,851
Other Expenses and Income					
Interest Expense	31,406	32,906	33,782	32,793	33,004
Depreciation	78,673	96,396	246,491	407,555	415,326
Depletion and Amortization	1,545	1,545	4,258	229	100
Other Expenses (Income)**	1,673,578	3,627,910	2,689,719	2,711,309	3,125,622
Total Expenses (Income)	$ 1,785,202	$ 3,758,757	$ 2,974,250	$ 3,151,886	$ 3,574,052
Taxable Income Before NOL	$ 572,576	$ (167,766)	$ (220,238)	$ (973,823)	$ (831,201)
	Summary of Estimated Cash Flow				
Taxable Income Before NOL	572,576	(167,766)	(220,238)	(973,823)	(831,201)
Tax	-	-	-	-	-
Credit for Regulated Investment	-	-	-	-	-
Credit for Federal Fuels	-	-	-	-	-
Depreciation	78,673	96,396	246,491	407,555	415,326
Depletion and Amortization	1,545	1,545	4,258	229	100
Income Not Included on Return	-	-	-	-	-
Available After-Tax Cash Flow* **	$ 652,794	$ (69,825)	$ 30,511	$ (566,039)	$ (415,775)
Available Pre-Tax Cash Flow	$ 652,794	$ (69,825)	$ 30,511	$ (566,039)	$ (415,775)

* May include loans to stockholders, mortgage and real estate loans, other investments, buildings and other depreciable assets, depletable assets, land, intangible assets, and other long-term assets; see Schedule L of firm's federal income tax return.

** Includes additional income categories listed on page 1, Income Section, of firm's federal income tax return and additional expense categories listed on page 1, Deductions Section, of firm's tax return.

*** User-specified reinvestment rates (i.e., optional run inputs) are reflected only in ability to pay analysis.

Financial Profile: Ratio Analysis

Historical Financial Ratios	~~2010~~ 2012	~~2009~~ 2011	~~2008~~ 2010	~~2007~~ 2009	~~2006~~ 2008
Debt to Equity (D/E)	2.47	4.75	3.92	3.22	1.66
Current Ratio (CR)	0.00	0.07	0.08	0.00	0.00
Times Interest Earned (TIE)	19.23	-4.10	-5.52	-28.70	-24.18
Beaver's Ratio (BR)	0.15	-0.01	0.01	-0.12	-0.10
Altman's Z-Score (AZS)	0.96	0.59	0.49	0.08	0.29

Debt to Equity (D/E)	2.47	4.75	3.92	3.22	1.66

- Defined as total liabilities divided by stockholders' equity.
- Measures the degree to which debt constitutes the company's financing.
- Less than zero or "na" indicates no stockholder equity, an extremely poor financial condition.
- Greater than 1.5 indicates possible difficulty in borrowing additional capital.
- Less than 1.5 but greater than or equal to zero generally indicates additional debt capacity.

Current Ratio (CR)	0.00	0.07	0.08	0.00	0.00

- Defined as current assets divided by current liabilities.
- Assesses whether cash and other easily liquidated current assets can cover short-term debts.
- Less than 1.0 indicates serious liquidity problems.
- Between 1.0 & 2.0, or "na" combined w/ no current assets, indicates possible liquidity problems.
- Greater than 2.0, or "na" combined with current assets greater than zero, indicates good liquidity.

Times Interest Earned (TIE)	19.23	-4.10	-5.52	-28.70	-24.18

- Defined as earnings before interest and taxes divided by interest expense payments.
- Indicates how easily the firm can pay the interest expense on its debt.
- Less than 2.0 indicates possible difficulty in meeting future interest payments; the lower the value, the higher this possibility.
- Greater than 2.0 indicates the ability to meet interest payments.
- No interest expense is indicated by "na", which can mean either the simple absence of required debt service or instead missed interest payments (an indicator of financial distress)

Beaver's Ratio (BR)	0.15	-0.01	0.01	-0.12	-0.10

- Defined as after-tax cash flow divided by total liabilities.
- Can predict a firm's long-term solvency and likelihood of staying in business.
- Indicates whether internally generated cash flow is sufficient for current and long-term obligations.
- Less than 0.1 indicates poor financial condition.
- Between 0.1 and 0.2 is inconclusive.
- Greater than 0.2 indicates solvency and good financial condition.
- No liabilities are indicated by "na", an extremely unusual situation: recheck data entry & tax returns.

Altman's Z-Score (AZS)	0.96	0.59	0.49	0.08	0.29

- Calculated as a weighted average of several financial ratios.
- Predictor of firm failure; most accurate within two years prior to bankruptcy.
- Less than 1.23 indicates possible bankruptcy in next two years if financial condition does not improve
- Between 1.23 and 2.90 is inconclusive.
- Greater than 2.90 indicates that bankruptcy is unlikely within the next two years
- No assets or liabilities are indicated by "na", an extremely unusual situation: recheck data

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- These ratios provide a rough indication of the firm's financial condition, but can be misinterpreted
- Acceptable debt ratios can vary considerably by industry.
- The guidelines listed above are "rules of thumb" that may not apply to all firms
- See the ABEL help system for a more detailed discussion on how to interpret these ratios.

Tax Return Data Summary	2012	2011	2010	2009	2008
Partnership: Tax Form 1065	2010	2009	2008	2007	2006
Gross Receipts or Sales Less Returns and Allowances	2,357,778	3,590,991	2,754,012	2,178,063	2,742,851
Cost of Goods Sold	-	-	-	-	-
Interest Expense	31,406	32,906	33,782	32,793	33,004
Depreciation first page	78,673	96,396	246,491	407,555	415,326
Depreciation: detailed approach	-	-	-	-	-
Depreciation: detailed approach	-	-	-	-	-
Depreciation: detailed approach	-	-	-	-	-
Depreciation: detailed approach	-	-	-	-	-
Depreciation amount to be used :	*78,673*	*96,396*	*246,491*	*407,555*	*415,326*
Depletion	-	-	-	-	-
Amortization	1,545	1,545	4,258	229	100
Taxable Income Before NOL and Special Deductions	572,576	(167,766)	(220,238)	(973,823)	(831,201)
NOL Deductions	-	-	-	-	-
Special Deductions	-	-	-	-	-
Total Tax	-	-	-	-	-
Credit from Regulated Investment Companies	-	-	-	-	-
Credit for Federal Tax on Fuels (Form 4136)	-	-	-	-	-
Cash	-	102,893	91,249	-	-
Trade Notes & Accounts Receivable Less Allowance for Bad Debts	-	-	-	-	-
Inventories	-	-	-	-	-
U.S. Government Obligations	-	-	-	-	-
Tax-Exempt Securities	-	-	-	-	-
Other Current Assets	-	-	-	-	-
Accounts Payable	-	-	-	-	-
Mortgages, Notes, Bonds Payable in Less than One Year	736,964	1,341,279	1,043,875	795,825	2,010,200
Other Current Liabilities	76,817	41,483	64,327	62,613	56,991
Loans from Stockholders	-	-	-	-	-
Mortgages, Notes, Bonds Payable in One Year or More	3,448,760	3,664,643	3,799,126	3,943,391	2,096,220
Other Liabilities	-	-	-	-	-
Appropriated Retained Earnings	1,632,944	1,062,399	1,250,895	1,489,868	2,508,150
Unappropriated Retained Earnings	-	-	-	-	-
Total Liabilities and Stockholders' Equity	5,988,932	6,109,804	6,158,223	6,291,697	6,671,561
Income Recorded on Books Not Included in Return	-	-	-	-	-

EXHIBIT 1

THOMAS H. TERPSTRA – SBN: 142972
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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	Administrative Civil Liability Complaint No.: R5-2012-0561 **DECLARATION OF HENRY TOSTA**

I, Henry Tosta, declare as follows:

1. The facts stated in this declaration are based on my personal knowledge, and I could and would testify competently to these facts if called upon to do so.

2. I am the owner and operator of Henry Tosta Dairy, which is the subject of the instant proceedings.

3. During my entire time in operation at this location, I have been able to transfer dried manure at no cost by any or all of the following methods:

a) I also apply some portion of the manure at agronomic rates to agricultural properties which I own or control, including parcels which are contiguous to the dairy, and others which are within San Joaquin and Stanislaus County.

b) By allowing farmers who own land near the dairy to remove dried manure, free of charge, for application to their fields. Farmers who have taken manure under this type of arrangement include Joe Enriques (99 loads of about 20 tons each in 2012 alone), Amaudo Brothers and Tom Genace.

c) By allowing other parties, most notably Bruce Mellor Trucking, to haul dry manure to Hyponex, which in turn bags the material and sells it as fertilizer.

4. Using the methods outlined above, I have been able to get rid of excess dry manure from my dairy without cost.
5. At all times relevant to this case, I was able to transfer manure at no cost.
6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6 day of July, 2013, at Tracy, California.

Henry Tosta

HENRY TOSTA

EXHIBIT 2

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IN THE MATTER OF: HENRY J. TOSTA (DBA HENRY TOSTA DAIRY), HENRY J. TOSTA JR. FAMILY LIMITED PARTNERSHIP, AND HENRY J. TOSTA TRUST	Administrative Civil Liability Complaint No.: R5-2012-0561 **SECOND DECLARATION OF HENRY TOSTA**

I, Henry Tosta, declare as follows:

1. Since I began the dairy business in the greater Tracy area I have been able to find someone who is willing to take the manure generated at my dairy, at no charge to me. Every year including 2010, 2011, 2012, and 2013 some percentage of the manure at the dairy has been removed at no cost to me.

2. On an annual basis, I also use some portion of the manure on my own crops during proper times.

3. At various times I have not been able to have the manure removed due to weather or other access issues, issues with available equipment, and crews that were otherwise occupied.

4. During the wet part of the year, it is not always possible to get equipment in to remove all the manure.

5. In 2010, I removed the majority of the manure from my dairy.

6. In 2011, one-half of the manure was removed .

7. In 2012, about eighty percent (80%±) was removed.

8. In 2013 at least seventy-five percent (75%) of the manure has been removed, and we are continuing to remove the remainder.

9. At no time that I recall, did we pay anyone for the removal of manure.

10. It is my understanding that the Dairy General Order was adopted in 2007 but that the requirements for a fully implemented Waste Management Plan were not effective until 2011.

11. Attached to this Declaration is a true and correct copy of Form 8949 from 2012 (and my 2012 General Ledger) which indicates that the capital gain we received in 2012 was due to the forced sale of part of the herd. The proceeds were used to pay down the bank debt owed.

Executed this 18 day of July 2013, at Tracy, California.

Henry Tosta

HENRY TOSTA