



Central Valley Regional Water Quality Control Board

8 September 2014

Charlie McElvany
President
McElvany Inc.
13343 Johnson Road
Los Banos, CA 93635-9704

CERTIFIED MAIL
7012 0470 0000 9904 0344

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0560 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, MCELVANY INC., BLOSSOM GROVE SUBDIVISION PROJECT, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Orders R5-2008-0082 and R5-2013-0073 (NPDES No. CAG995002) by the McElvany Inc. (Discharger) at the Blossom Grove Subdivision Project. The Complaint charges the Discharger with an administrative civil liability in the amount of **fifty seven thousand dollars (\$57,000)**, which represents the sum of accrued Mandatory Minimum Penalties for late report violations (identified in Attachment A to the Complaint) that occurred between 30 April 2013 and 31 March 2014.

On 17 July 2014, Central Valley Water Board staff issued a draft Record of Violations. In 30 July 2014 a telephone conversation, the Discharger acknowledged the violations.

Pursuant to Water Code section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver **by 8 October 2014**, a hearing will be scheduled for the **4/5 December 2014** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by David Coupe, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 18 September 2014**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. Payment must be received by

8 October 2014. The Discharger shall indicate on the check the number of this Complaint and send it to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, PO Box 1888 Sacramento, California, 95812-1888. The check shall be made payable to the *State Water Pollution Cleanup and Abatement Account*. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, CA 95670 attention to Wendy Wyels by **8 October 2014**.

The settlement will be considered final pending a 30-day 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 Central Valley Water Board staff person listed below. Should the Central Valley Water 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 Valley 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 Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley 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 Mohammed Farhad at (916) 464-1181 or mfarhad@waterboards.ca.gov.

ORIGINAL SIGNED BY

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACLC R5-2014-0560
Hearing Procedures
Waiver Form

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Laura Drabandt, Office of Enforcement, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Pamela Creedon, Central Valley Water Board Advisory Team, Rancho Cordova
Ken Landau, Central Valley Water Board Advisory Team, Rancho Cordova
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
San Joaquin County Environmental Health Department, Stockton
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton
Jae Kim, Tetra Tech, Fairfax, VA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0560

MANDATORY PENALTY
IN THE MATTER OF

MCELVANY INC.
BLOSSOM GROVE SUBDIVISION PROJECT
SAN JOAQUIN COUNTY

This Complaint is issued to McElvany Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint alleges that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2008-0082-030 and R5-2013-0073-030. Both Orders are assigned NPDES No. CAG995002.

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

1. On 20 March 2013, the Discharger applied for coverage under the *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Super Chlorination Projects, and Other Limited Threat Wastewater to Surface Water* (Limited Threat General Order) R5-2008-0082, and on 30 April 2013, the Executive Officer issued Notice of Applicability (NOA) R5-2008-0082-030 for coverage under the Limited Threat General Order.
2. On 31 May 2013, the Board issued WDRs Order R5-2013-0073, which contained new requirements and rescinded WDR R5-2008-0082, except for enforcement purposes. The Discharger was automatically enrolled under Limited Threat General Order R5-2013-0073-030. On 6 June 2014, the Board issued Order R5-2014-0080 which amended the Limited Threat General Order. The amended Order is assigned WDRs Order R5-2013-0073-01. The Discharger automatically retained enrollment under the amended Order.
3. On 15 July 2014, the Discharger requested its enrollment under the Limited Threat General Order be terminated, and on 22 July 2014, the Executive Officer terminated the Discharger's coverage.
4. This Complaint addresses administrative civil liability for late report violations that occurred during the period from 30 April 2013 through 31 March 2014. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.

5. The Limited Threat General Order requires that Dischargers submit quarterly monitoring reports which are designed to show whether or not the Discharger complied with the effluent limits in the Order. This Order assesses penalties for the failure to submit the 2nd Quarter 2013, Third Quarter 2013, 4th Quarter 2013 and 1st Quarter 2014 monitoring reports. The Monitoring and Reporting section of the 30 April 2013 Notice of Applicability states, in part:

Monitoring reports shall be submitted to the Central Valley Water Board on a quarterly basis, beginning with the Second Quarter 2013. If the discharge has not begun there is no need to monitor. However, a monitoring report must be submitted stating that there has been no discharge. Quarterly monitoring reports must be submitted until your coverage is formally terminated...even if there is no discharge during the reporting quarter.

The Enforcement section of the Notice of Applicability states:

Failure to comply with the Limited Threat General Order may result in enforcement actions, which could include civil liability. Effluent limitation violations are subject to a Mandatory Minimum Penalty (MMP) of \$3,000 per violation. In addition, late monitoring reports may be subject to MMPs. When discharges do not occur during a quarterly report monitoring period, the Discharger must still submit a quarterly monitoring report indicating that no discharge occurred to avoid being subject to enforcement actions.

6. As described below, the Water Code requires assessment of MMPs for each 30 day period in which a monitoring report has not been received, unless the Discharger submits a statement certifying that there were no discharges to waters of the United States during the monitoring period. On 3 July 2014, Central Valley Water Board staff sent the Discharger a Notice of Violation (NOV) for the missing reports and provided an opportunity to explain the reason for the lack of reports and to certify whether or not there was a discharge during the period. The Discharger responded on 10 July 2014 and submitted monitoring reports for discharges during the 2nd and 3rd Quarters 2013. The Discharger also certified that discharges stopped by 13 September 2013, and that there was no discharge during the 1st or 2nd Quarters of 2014.
7. On 17 July 2014, Central Valley Water Board staff issued a NOV and draft Record of Violations, proposing to assess MMPs for the 2nd and 3rd Quarter 2013 missing reports. In a 30 July 2014 telephone conversation, the Discharger acknowledged the violations and requested that MMPs not be assessed. Because there was a discharge to surface water, the penalties are mandatory and not discretionary.
8. Water Code section 13385(h) requires assessment of mandatory penalties and states, in part, the following:

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.
9. Water Code section 13385.1 subdivision states, in part:

Water Code section 13385.1(a)(1) states:

For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph only applies to violations that occur on or after January 1, 2004.

Water Code section 13385.1(a)(2)(A) states:

Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

- (i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.
- (ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

10. Water Code 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.

11. WDRs Order R5-2008-0082 Self-Monitoring Reports (SMRs), Attachment E-X.B.3., states, in part:

- 3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Table E-7 Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

12. WDRs Order R5-2013-0073 Self-Monitoring Reports (SMRs), Attachment E-X.B.3., states, in part:

- 3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Table E-7 Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

13. The 2nd Quarter 2013 self-monitoring report was required to be submitted by 1 August 2013. The Discharger did not submit it by the deadline; however, in response to the 3 July 2014 NOV the Discharger submitted the 2nd Quarter 2013 monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 10 July 2014, which is 343 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to timely submit the 2nd Quarter 2013 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period late. The Discharger committed eleven (11) serious violations for failure to timely submit the 2nd Quarter 2013 self-monitoring report required by WDRs Orders R5-2008-0082-01 and R5-2013-0073. The mandatory minimum penalty for these serious violations is **thirty three thousand dollars (\$33,000)**.
14. The 3rd Quarter 2013 self-monitoring report was required to be submitted by 1 November 2013. The Discharger did not submit it by the deadline; however, in response to the 3 July 2014 NOV the Discharger submitted the 3rd Quarter 2013 monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 10 July 2014, which is 251 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to timely submit the 3rd Quarter 2013 self-monitoring report is subject to is subject to a mandatory minimum penalty of \$3,000 for each 30-day period late. The Discharger committed eight (8) serious violations for failure to timely submit the 3rd Quarter self-monitoring report required by WDRs Orders R5-2008-0082-01 and R5-2013-0073. The mandatory minimum penalty for these serious violations is **twenty four thousand dollars (\$24,000)**.
15. The 4th Quarter 2013 and 1st Quarter 2014 self-monitoring reports were required to be submitted by 1 February 2014 and 1 May 2014. The Discharger did not submit the reports. In response to the 3 July 2014 NOV, the Discharger certified that there was no discharge to surface waters during these monitoring periods. Therefore, pursuant to Water Code section 13385.1(a)(2)(A), mandatory minimum penalties do not apply to this violation. This Complaint does not address or resolve this violation. The Central Valley Board reserves its right to take any enforcement action authorized as law.
16. The total amount of the mandatory penalties assessed for the alleged effluent violations is **fifty seven thousand dollars (\$57,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

17. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
18. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

MCELVANY INC. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifty seven thousand dollars (\$57,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 December 2014**, unless the Discharger does one of the following by **8 October 2014**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **fifty seven thousand dollars (\$57,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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.

4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

ORIGINAL SIGNED BY
ANDREW ALTEVOGT, Assistant Executive Officer

8 September 2014
DATE

Attachment A: Record of Violations

MoF/WSW: 8 Sept 14

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the McElvany Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0560 (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."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifty seven thousand dollars (\$57,000)** by check that references "ACL Complaint R5-2014-0560" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **8 October 2014**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **8 October 2014**.
- 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 Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger 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 Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A TO ACLC R5-2014-0560

**McElvany Inc.
Blossom Grove Subdivision Project
MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS
RECORD OF VIOLATIONS (30 April 2013 through 31 March 2014) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0082-030 and R5-2013-0073-030)**

	<u>SMR</u>	<u>Due Date</u>	<u>Received Date</u>	<u># of 30-day Periods Late</u>	<u>Discharge</u>	<u># of 30-day periods Subject to MMPs</u>	<u>Remarks</u>	<u>CIWQS</u>
1	2Q2013	1-Aug-13	10-Jul-14	11	Yes	11	1	*
2	3Q 2013	1-Nov-13	10-Jul-14	8	Yes	8	1	†
3	4Q 2013	1-Feb-14	10-Jul-14	5	No	0	2	971780
4	1Q 2014	1-May-14	10-Jul-14	2	No	0	2	971781

Remarks:

1. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report when a discharge occurred.
2. Violation not subject to MMPs because no discharge occurred. However, discretionary penalties may still be assessed. This violation is not addressed or resolved in this Complaint. The Central Valley Board reserves the right to take any enforcement action authorized by law

<u>VIOLATIONS AS OF:</u>	<u>3/31/14</u>
Serious Violations Subject MMPs:	19
<u>Violations not subject to MMPs:</u>	<u>7</u>
Total Violations Subject to MMPs:	19

Mandatory Minimum Penalty = (19 Serious violations) x \$3,000 = \$57,000

* CIWQS Violation IDs 972396-972406

† CIWQS Violation IDs 971779 and 972389-972395

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2014-0560

ISSUED TO
MCELVANY INC.
BLOSSOM GROVE SUBDIVISION PROJECT
SAN JOAQUIN COUNTY

SCHEDULED FOR 4/5 DECEMBER 2014

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.

Overview

Pursuant to Water Code section 13323, the Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to McElvany Inc., alleging violations of Water Code section 13385 for late report violations. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$57,000. A hearing is currently scheduled to be conducted before the Board during its 4/5 December 2014 meeting.

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. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's 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 Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The 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 are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory 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 Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Pamela Creedon, Executive Officer; Ken Landau, Assistant Executive Officer and David Coupe, senior staff counsel. Members of the Prosecution Team are: Andrew Altevogt, Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Nichole Morgan, Senior Water Resources Control Engineer; Mohammad Farhad, Water Resources Control Engineer, and Laura Drabandt, attorney.

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. Andrew Altevogt regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or 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.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties 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). At the hearing, 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 Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. McElvany Inc.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" 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 affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4839
Pamela.Creedon@waterboards.ca.gov

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

David P. Coupe, Senior Staff Counsel
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2306; fax: (510) 622-2460
dcoupe@waterboards.ca.gov

Prosecution Team:

Wendy Wyels, Environmental Program Manager
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4681
wwyels@waterboards.ca.gov

Laura Drabandt, Staff Counsel
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) 341-5180; fax: (916) 341-5896
Laura.Drabandt@waterboards.ca.gov

Discharger

Charlie McElvany, President
Mc Elvany Inc.
13343 Johnson Road, Los Banos, CA 93635-9704
Phone: (209) 826-1102

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

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 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. 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 the deadline listed under "Important Deadlines" below. Additional time may be

provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

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

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information 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. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, 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.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that

they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: 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 the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: 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 Board Chair 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.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL 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, Rancho Cordova, CA 95670. 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/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above) for assistance obtaining copies.

Questions

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

IMPORTANT DEADLINES

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

8 September 2014	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
18 September 2014	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request “Designated Party” status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
23 September 2014	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
8 October 2014	<ul style="list-style-type: none"> ▪ Discharger’s deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
10 October 2014*	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
16 October 2014*	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence and Policy Statements,” above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
4 November 2014*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence and Policy Statements” above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons’ comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
10 November 2014*	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
13 November 2014*,†	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
4/5 December 2014*	<ul style="list-style-type: none"> ▪ Hearing

* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “*” will be revised if a settlement cannot be reached.

† This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.