Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2015-0520

ISSUED TO

CHRISTOPHER CORDES, EDDIE AXNER CONSTRUCTION, INC., AND EDDIE AXNER
ASSESSOR PARCEL 041-300-035-000
SHASTA COUNTY

SCHEDULED FOR 4/5 JUNE 2015

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 Christopher Cordes, Eddie Axner Construction Inc., and Eddie Axner (Dischargers) alleging violations of Water Code section 13376, federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311) Section 301 and prohibitions established in The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan), and seeks administrative civil liabilities pursuant to Water Code section 13385. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the total combined amount of $244,800. A hearing is currently scheduled to be conducted before the Board during its 4/5 June 2015 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; Adam Laputz, Assistant Executive Officer, and Patrick Pulupa, Senior Staff Counsel. Members of the Prosecution Team are: Andrew Altevogt, Assistant Executive Officer, Clint Snyder, Assistant Executive Officer; George Day, Senior Water Resources Control Engineer; Roy (Trey) Sherrell, Environmental Scientist; and Yvonne West, Senior 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. Andrew Altevogt and Clint Snyder regularly advise the Central Valley Water Board in other, unrelated matters, but are not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team may act or 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.

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. Christopher Cordes, Eddie Axner Construction, Inc., and Eddie Axner

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
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Pamela.Creedon@waterboards.ca.gov

Adam Laputz, Assistant Executive Officer
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Patrick Pulupa, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
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Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5189; Fax: (916) 341-5199
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Prosecution Team:

Andrew Altevogt, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
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Andrew.Altevogt@waterboards.ca.gov

Clint Snyder, Assistant Executive Officer
364 Knollcrest Drive, Suite 205, Redding, CA 96002
Phone: (530) 224-3213; Fax: (530) 224-4857
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Roy (Trey) Sherrell, Environmental Scientist
364 Knollcrest Drive, Suite 205, Redding, CA 96002
Phone: (530) 224-4847; Fax (530) 224-4857
Roy.Sherrell@waterboards.ca.gov

Yvonne M. West, Senior Staff Counsel
State Water Resources Control Board, [Office of Chief Counsel/Office of Enforcement]
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3626; Fax: (916) 341-5896
Yvonne.West@waterboards.ca.gov

Discharger

Christopher Cordes
101 South F Street
Pensacola, VL 32502

Mr. Eddie Axner (as individual and as Agent for service of process)
Eddie Axner Construction, Inc.
5429A Old Oregon Trail
Redding, CA 96002

Douglas A. Wright [Attorney for Eddie Axner]
250 Hemsted Dr., Suite 330
Redding, CA 96002

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 **45** 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 Clint Snyder (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.

March 20, 2015	▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
March 27, 2015	▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
April 3, 2015	▪ Deadline to submit opposition to requests for Designated Party status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
April 3, 2015	▪ Discharger's deadline to submit *90-Day Hearing Waiver Form.* Electronic *or* Hard Copy to: Prosecution Team Primary Contact
April 8, 2015*	▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
April 16, 2015*	▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons Electronic *and* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney
May 6, 2015*	▪ 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. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
May 13, 2015*	▪ 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 *this* deadline. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
May 14, 2015*,†	▪ Prosecution Team submits Summary Sheet and responses to comments. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons Electronic *and* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney
4/5 June 2015*	▪ 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.