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BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

In the Matter of:)

Administrative Civil Liability Order)
No. R5-2012-XXXX)
Riviera West Mutual Water Company,)
Domestic Water Treatment Plant, Lake)
County)

PROSECUTION TEAM BRIEF ON
REVISED ACLO

February 3, 2012

I. SCOPE OF THIS BRIEF

This brief addresses only the highlighted portions of the Revised Administrative Civil Liability Order ("ACLO"), posted February 1, 2012, which represented new or modified language. On March 14, 2012, the Prosecution Team will submit a Response to Comments to substantive arguments made by Riviera West on January 6, 2012 and to any additional comments made by Riviera West regarding the modified language, as well as any comments from interested persons.

II. RELEVANT FACTUAL BACKGROUND

As described in the Prosecution Team's opening brief, the original Administrative Civil Liability Complaint was issued in 2008, after which Riviera West and the Prosecution Team entered into settlement negotiations. Prior to issuance of the ACLC, the Regional Board had taken several enforcement steps to compel Riviera West to submit monitoring

1 reports, and to obtain needed information about the facility to allow it to be re-permitted
2 and to protect water quality. Riviera West was non-responsive and ignored several NOVs
3 and a CDO, and provided the Regional Board with partial information only after the ACLC
4 was issued. During settlement negotiations, on January 23, 2009, Riviera West
5 produced lab results for the period of December 2003 through April 2006 that indicated
6 effluent violations were occurring in Riviera West's discharges. An additional laboratory
7 report for June 2006 was found in the December 29, 2008 Report of Waste Discharge.
8 Although incomplete and late, these reports allowed Regional Board staff to evaluate
9 compliance with some of the effluent limitations set forth in WDRs Order R5-2002-0130.
10 The ACLO was revised to include the MMPs related to effluent violations in those lab
11 reports.

12 13 A. MMPs Must Still Be Issued for the Late Lab Reports

14 A large part of the ACLO is comprised of MMPs for reports submitted late or not at
15 all. The first issue to address is whether the lab reports (aka, incomplete monitoring
16 reports) submitted by Riviera West in January 2009 are subject to MMPs for the late
17 submittal of reports. The answer is yes, according to the clear language of Water Code
18 13385.1. Riviera West's lab reports were for the periods of December 2003 – April 2006,
19 and for June 2006. Even though the lab reports were eventually submitted, the Regional
20 Board must assess MMPs "for each complete period of 30 days following the deadline for
21 submitting the report, if the report is designed to ensure compliance with limitations
22 contained in waste discharge requirements that contain effluent limitations." Water Code
23 13385.1(a)(1). The "relief" a discharger gets from turning in late reports is that penalties
24 stop accruing on the date of submission, not that the any penalties for late submissions
25 are wiped out, which would make the 13385.1 meaningless, and only give meaning to
26 MMPs for effluent violations (embodied in 13385(h) and (i)) and not timely reporting. The
27 purpose of the 13385.1 is compliance with monitoring requirements in WDRs and permits
28 and so MMPs under 13385.1 are to penalize the tardy submission of information. These

1 penalties for late reporting were included in the initial complaint and order.

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3 **B. MMPs Must Also Be Issued for Effluent Violations Within Riviera West's Lab Reports**

4 The ACLO was revised to include, in part, new language in paragraph 10, and
5 modified information in paragraphs 24-28. Once a Board has penalized a Discharger for
6 the submittal of late reports under 13385.1, penalizing for effluent violations under Water
7 Code 13385(h) and (i) is not duplicative. A Discharger should be penalized both for
8 withholding the information and then for failing to meet a particular water quality standard
9 in its permit. Section 13385.1 deals with reporting violations and seeks to improve
10 communication between the regulated community and the regional boards. Section
11 13385(h) and (i) deal with effluent violations, and is a more direct method of protecting
12 water quality. Often Dischargers mistake the \$3,000 mandatory minimum penalty
13 structure as one or the other, or a penalty to be paid for both types of violations, but the
14 penalties are embodied in different sections of the Water Code and pertain to different
15 methods of compliance.

16 Throughout the years of its permit coverage, Riviera West violated effluent
17 violations for pH, dissolved oxygen, chlorine, aluminum, and bromodichloromethane. It
18 should be noted that because of Riviera West's inconsistent production of information,
19 there may be additional effluent violations for the time periods for which monitoring
20 reports were not submitted or were incomplete.

21
22 **V. CONCLUSION**

23 The modification of the ACLO represents an increase of the MMPs to account for
24 the effluent violations found in the lab reports submitted by Riviera West. The ACLO was
25 modified so a single proceeding could resolve all of the outstanding mandatory minimum
26 penalties against Riviera West. The Prosecution Team recommends the Regional Board
27 assess \$2,844,000 in mandatory minimum penalties against Riviera West as set forth in
28 Order No. R5-2012-XXXX.

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Respectfully submitted,

Julie Macedo

Date: February 3, 2012

Julie Macedo
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