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9 CALIFORNIA WATER QUALITY CONTROL BOARD
10 LAHONTAN REGION

11 In the Matter of:)
12) Prosecution Team Rebuttal to the
13 Cease and Desist Order No. R6V-2011-) Adelanto Public Utility Authority's January
(Proposed) (January 11, 2011)) 28, 2011 Submission of Evidence, Report
14 Adelanto Public Utility Authority) and Response, and Letter dated
) January 28, 2011
15)

16
17 **I. INTRODUCTION**

18 The matter of Proposed Cease and Desist Order No. R6V-2011-(Proposed) for
19 the City of Adelanto Public Utility Authority's Wastewater Treatment Facility is set to be
20 heard before the Lahontan Regional Water Quality Control Board on March 9-10, 2011
21 at the Barstow Community Center in Barstow, California. The Prosecution Team first
22 issued the Proposed Cease and Desist Order (the Order) to the Adelanto Public Utility
23 Authority (the Discharger) on December 23, 2010, with an amended Order issued on
24 January 11, 2011.

25 The Prosecution Team submitted its evidence package to the Discharger and the
26 Advisory Team on January 7, 2011. The Discharger submitted its evidence, a letter, and
27 its Adelanto Public Utility Authority Report and Response to the Lahontan Regional
28 Water Board on January 28, 2011. The Prosecution Team submits the following

1 response and rebuttal to the Discharger's January 28, 2011 submission.

2 In this response, the Prosecution Team objects to testimony from witnesses
3 without supporting evidence; addresses the Discharger's insufficient evidence and its
4 arguments; and attaches rebuttal evidence that demonstrates the Discharger's
5 continued violations.

6
7 **II. OBJECTIONS TO TESTIMONY OF POTENTIAL WITNESSES WITHOUT
EVIDENCE FROM GEO GROUP AND/OR BAQAI & ASSOCIATES**

8 In accordance with Title 23, California Code of Regulations, section 648.4, the
9 Water Board endeavors to avoid surprise testimony or evidence. To avoid prejudicial
10 surprise subject matter at the hearing, the Prosecution Team respectfully objects to
11 hearing testimony from Ken Fortier or other representative from the GEO Group, and
12 Hisam Baqai, P.E., G.E., from Baqai & Associates without first receiving evidence
13 supporting or describing their testimony. The Prosecution Team requests that the
14 Discharger identify which exhibits these two potential witnesses will speak to; or, in the
15 alternative, the Prosecution Team requests a summary of their testimony. The
16 Prosecution Team does not object to considering any such evidence submitted as
17 rebuttal evidence, consistent with the Discharger's February 16, 2011 deadline for its
18 rebuttal evidence submission set forth by the Advisory Team. The Prosecution Team
19 does not object to the Discharger providing any rebuttal evidence or response to the
20 Prosecution Team via electronic mail.

21 The Prosecution Team respectfully objects to hearing *testimony* from Todd Litfin,
22 City Attorney of Adelanto and General Counsel to Adelanto Public Utility Authority, but
23 does not object to Mr. Litfin serving in his City Attorney capacity in presenting and
24 arguing the matter as an officer of the Superior Court of California. Similarly, the
25 Prosecution Team anticipates Staff Counsel Laura Drabandt will speak as an officer of
26 the Superior Court and not as a witness. The Prosecution Team considers Mr. Litfin's
27 information being contained on the Discharger's List of Potential Witnesses as a
28 courtesy to the Advisory Team. If this is not the situation, the Prosecution Team objects

1 to Mr. Litfin's testimony as a conflict of interest.

2 **III. THE DISCHARGER IS FAILING TO MAKE ITS BEST EFFORTS TO COMPLY**
3 **WITH WASTE DISCHARGE ORDER NOS. R6V-2002-050 AND R6V-2009-0036,**
4 **CEASE AND DESIST ORDER NO. R6V-2007-24, INVESTIGATIVE ORDER NO.**
5 **R6V-2010-0035, AND CLEANUP AND ABATEMENT ORDER NO. R6V-2010-**
6 **0054.**

7 The standard of review for administrative actions, such as the one scheduled for
8 this matter, is "substantial evidence in the light of the whole record." (Cal. Code Civ.
9 Proc. § 1094.5). Case law shows that upon review, "[w]here different, but reasonable
10 inferences can be drawn from a set of given facts, a reviewing court must follow the
11 inference drawn by the administrative agency." (*Yakov. v. Bd. of Medical Examiners*
12 (1968) 68 Cal.2d 67, 72). Further, "[a]n agency may rely upon the opinions of staff to
13 reach decisions and the opinion of staff has been recognized as constituting substantial
14 evidence." (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation*
15 *Comm.* (1976) 55 Cal.App.3d 525, 535-536).

16 In its January 28, 2011 letter to Mr. Harold Singer and the Members of the Board,
17 the Discharger asserts that it ". . . has been and currently is committed to making its best
18 efforts to comply with the Board requirements . . ." (p. 2). It is a misleading theme
19 recurring throughout the Discharger's evidence submission and in communications with
20 enforcement staff at the Water Board. The Discharger has failed to present substantial
21 evidence supporting its statements that it will be in compliance with Water Board Orders
22 within 120 days without the assistance of the proposed Cease and Desist Order.

23 The Prosecution Team opposes any delay in issuing the proposed Cease and
24 Desist Order containing a connection ban because of the Discharger's inability to
25 maintain compliance with its waste discharge requirements in the past five years. The
26 Discharger has not set forth any reliable evidence to ensure compliance in the next 120
27 days.

28 The Discharger's consistent non-compliance with every order issued by the Water
Board since its 2002 Waste Discharge Requirements Order (R6V-2002-050)

1 demonstrates that the Discharger continually delays taking the necessary steps to
2 achieve compliance with the Water Board's orders. The following summarizes the
3 Water Board's orders and the Discharger's inability to comply, with the overall focus on
4 the Discharger's failure to adequately address its capacity limits, evidenced by
5 unauthorized wastewater discharges.

6 **A. Order Nos. R6V-2002-050 and R6V-2009-0036 Waste Discharge**
7 **Requirements**

8 The Proposed Cease and Desist Order (January 11, 2011) describes the
9 Discharger's Waste Discharge Requirements Permit History (pp. 3-4). Exhibit No. 10 in
10 the Prosecution Team's January 7, 2011 evidence submission identifies 2,418 violations
11 of Order No. R6V-2002-050 and R6B-2009-0036 for influent flow limitations, biochemical
12 oxygen demand (BOD) effluent limitations, and freeboard violations from June, 2004
13 through December 10, 2010. (Prosecution Evidence pp. 279-303.) Exhibit 10 only
14 includes violations for these parameters because they demonstrate the problems with
15 the wastewater treatment facility taking in more wastewater than it can safely process.
16 While other permit violations occurred, they are not the basis for the Proposed Cease
17 and Desist Order, which contains further analysis of these parameters.

18 The Discharger's self monitoring reports indicate the influent flow to the
19 wastewater treatment plant has consistently exceeded its maximum daily flow capacity
20 of 1.5 MGD since February 2004 (*Id.*, p. 103, pp. 279-303). On August 16, 2005, Water
21 Board staff issued a Notice of Violation to the Discharger citing several flow limitation
22 violations for 121 of the 122 day reporting period from March through June, 2005.
23 (Prosecution Rebuttal Evidence pp. 443-445.) Water Board staff issued a second
24 Notice of Violation to the Discharger on January 10, 2007, stating continued violations
25 indicated that the facility was not designed for the influent flow capacity it was receiving.
26 (*Id.*, pp. 456-465.) The Discharger continues to consistently have influent flow capacity
27 issues over five years later.

28 Clearly, the Discharger has known about its influent flow capacity issues since at

1 least January 2004, was noticed by the Water Board staff in 2005, but has failed to
2 adequately address the causes. (Pros. Evid. p. 103.) Since the Discharger has
3 consistently failed to cease its violations, the Prosecution Team is seeking to prohibit
4 any additional flow to the plant until the Discharger is able to properly manage the flow it
5 already accepts.

6 **B. Order No. R6V-2007-024 Cease and Desist Order**

7 In 2007, the Water Board issued Cease and Desist Order No. R6V-2007-024 to
8 the Discharger to address its consistent violations of influent flow limits and BOD effluent
9 limitations violations. The order cited the cause of the violations as the influent flow
10 consistently exceeding the plant's maximum daily flow capacity of 1.5 million gallons
11 (MGD) since February 2004. (Pros. Evid. p. 96.) The order required the Discharger to
12 submit Interim and Long-Term Action Plans, and to achieve final compliance with waste
13 discharge requirements by December 31, 2008.

14 On January 26, 2011, Water Board enforcement staff issued a Notice of Violation
15 to the Discharger for failing to fully implement the Interim and Long Term Action Plans
16 the Discharger submitted in response to the 2007 Cease and Desist Order. (Pros.
17 Rebut. Evid. pp. 466-471.) The Prosecution Team alleges that over three years after
18 the 2007 Cease and Desist Order, the Discharger has yet to implement its Interim Action
19 Plan, let alone its Long Term Action Plan. This demonstrates the Discharger's continual
20 failure to make the effort needed to address its capacity and treatment capability issues.

21 **C. Order No. R6V-2008-0012 Administrative Civil Liability**

22 The Discharger was again enforced against for violating the 2007 Cease and
23 Desist Order in the form of the Water Board assessing \$6,500 in administrative civil
24 liabilities. The Discharger failed to submit its quarterly report on time. (Pros. Rebut.
25 Evid. pp. 446-455.) The Discharger's late reporting in violation of the 2007 Cease and
26 Desist Order demonstrates their continual non-compliance with Water Board orders and
27 a lack of effort to comply.
28

1 **D. Order No. R6V-2010-0035 Investigative Order**

2 On August 2, 2010, Water Board enforcement staff issued an investigative order
3 to submit technical reports pursuant to California Water Code §13267. In the order,
4 enforcement staff identified violations of the 2007 Cease and Desist Order. First, the
5 Discharger failed to complete the facility expansion to adequately treat and dispose of
6 the current flows at the facility. Second, the Discharger failed to identify new compliance
7 dates and provide justification for missing compliance dates. (Pros. Evid. pp. 105-111.)
8 The investigative order also cited continued violations of the waste discharge
9 requirements in Order No. R6V-2002-050 (the Discharger was averaging 2.2 MGD), and
10 violations of waste discharge requirements contained in Order No. R6V-2009-0036 for
11 the new and expanded treatment facilities. Note that Order No. R6V-2009-0036
12 authorized the Discharger to construct a fifth percolation pond, but it has yet to be built.
13 The Discharger failed to submit a Groundwater Monitoring Work Plan the year before,
14 but because of some ambiguity in the new order, enforcement staff re-set the deadline
15 for the plan. The investigative order required the Discharger to again submit Interim and
16 Long Term Action Plans to correct its flow and effluent violations. Five years after the
17 first notice of violation, Water Board enforcement staff still sought a solution from the
18 Discharger for its same capacity issues. In its response and evidence, the Discharger
19 fails to demonstrate taking effective corrective measures in addressing its flow rates.

20 **E. Order No. R6V-2010-0054 Cleanup and Abatement Order**

21 On November 1, 2010, Water Board enforcement staff issued a Cleanup and
22 Abatement Order in the wake of the earlier Investigative Order. It cited violations of
23 waste discharge requirements in Order Nos. R6V-2002-050 and R6V-2009-0036, and
24 that the Discharger continued to threaten to violate waste discharge requirements. As
25 the freeboard was decreasing at an alarming rate, the Discharger had continued delays
26 in its plan to dredge and/or scarify its percolation ponds as a stop-gap measure. (Pros.
27 Evid. pp. 117-136.)

28 The Discharger was issued Notices of Violation on November 5 and 19, 2010 for

1 failing to submit an adequate Spill Contingency Management Plan. The Plan submitted
2 failed to recognize the urgency of the threatened discharge(s) from the percolation
3 ponds.

4 On December 23, 2010, the threatened discharge from a pond became a reality.
5 A berm in Pond No. 4-South was breached and approximately 188,500 gallons of
6 undisinfectated secondary-treated wastewater flowed off the Discharger's land into an
7 adjacent parcel. (Discharger's Evidence p. 61 and Pros. Evid. p. 146.)

8 On January 27, 2011, Water Board enforcement staff issued the Discharger a
9 third Notice of Violation of the Cleanup and Abatement Order, addressing the
10 Discharger's failure to implement an adequate Spill Contingency Management Plan
11 before and during the December 23, 2010 spill event. (Pros. Rebut. Evid. pp. 472-479.)
12 This third notice of violation emphasized the Discharger's 1) failure to notify the public to
13 limit its water use to assist in limiting its flow, 2) failure to provide structural integrity and
14 stability to the pond's existing banks, 3) failure to install appropriate relief trenches within
15 designated areas as an emergency measure, 4) failure to cleanup the spill as stated in
16 the Discharger's Final Report for the Cleanup and Abatement Order, and 5) inadequate
17 pond design.

18 In its response to the Prosecution Team's evidence, the Discharger continues to
19 disregard the threat of additional discharges by proposing as its short term corrective
20 measures in-situ scarification (dredging) and exploring irrigating a new parcel (pp. 4-5).
21 The Discharger asserts that in-situ scarification has successfully been implemented by
22 other wastewater treatment facilities in California, but the Discharger fails to name such
23 facilities. According to a representative from the Los Angeles County Sanitation District,
24 the standard industry practice is to annually take a pond out of service and discs the
25 bottom when the ponds are dry. (Pros. Rebut. Evid. pp. 495-496.) The Discharger knew
26 as early as May, 2010 that the ponds were not properly percolating. (*Id.*, pp. 486-490.)
27 In its September 13, 2010 letter to Water Board staff, the Discharger acknowledges the
28 need to develop a pond rotation program for implementing an effective maintenance

1 program. (*Id.*, pp. 491-494.)

2 The two short term corrective measures contained in the Discharger's response
3 are woefully inadequate and do not begin to address engineering design and public
4 health concerns contained in the Cleanup and Abatement Order and its following
5 Notices of Violation.

6 Reviewing the numerous orders and notices of violation issued to the Discharger,
7 a pattern is observed where Water Board enforcement staff continually requires the
8 Discharger to decrease its flows to meet its capacity limitation, and the Discharger
9 continually violates the Water Board's Orders. The Discharger evidence fails to provide
10 assurance how it can reduce its flows without implementing a connection ban.

11 **IV. THE DISCHARGER IS NOT ABLE TO MAINTAIN COMPLIANCE WITH THE**
12 **WASTE DISCHARGE REQUIREMENTS ORDER WITH NO REASONABLY**
13 **RELIABLE PLAN TO COME INTO COMPLIANCE**

14 The Discharger has been consistently out of compliance with its waste discharge
15 requirements orders with 2,418 violations for flow, BOD, and freeboard limitations from
16 February 2004 through December 10, 2010. After diligently working with the Discharger
17 employees, the Prosecution Team finds that the Discharger is not capable of adequately
18 complying with the waste discharge requirements in the foreseeable future with the
19 plans the Discharger has proffered.

20 **A. The Discharger is Not Able to Maintain Compliance with Flow Limitations**

21 As the Discharger has stated in its response, the total volume of flow to the facility
22 during a 24-hour period is to not exceed 1.5 MGD, even though its Chief Plan Operator
23 considers the plant was designed for 1.4 MGD. (Dis. Resp. p. 2; Dis. Evid. p. 283.) The
24 Discharger continuously violated its flow limit from 2005 through August of 2010. The
25 only way the Discharger was able to reduce its flow intake was by diverting up to
26 800,000 gallons per day (gpd) to the Victor Valley Wastewater Reclamation Authority
27 (VWVRA) in September 2010, after the § 13267 Investigative Order was issued. Prior to
28 September 2010, the Discharger was averaging 2.2 MGD influent flow. (Pros. Evid. p.

1 108, citing the Discharger's self-monitoring report, and Dis. Evid. p. 17.) The
2 Discharger itself referred to this diversion as a temporary fix in its June 9, 2010 report to
3 the Adelanto City Council seeking to enter into a contract with VVWRA. (Dis. Evid. pp.
4 24-25.) The contract itself enables VVWRA to reduce the amount the Discharger may
5 divert if necessary, and the nature of the agreement is described as, "[t]he parties
6 acknowledge that the *sole purpose* of this Agreement is to provide *standby* treatment
7 capacity for Raw Influent from the Adelanto Facility . . ." (*Id.*, p. 32; emphasis added.)
8 The contract is for a term of 15 months. The Discharger has since increased its
9 diversions to VVWRA up to 1.3 MGD, adding undisinfected secondary-treated
10 wastewater to the raw influent diversion. (*Id.*, pp. 18-19.)

11 Relying on diverting up to 1.3 MGD to meet their 1.5 MGD flow limit is not a
12 sustainable or a reliable method to reduce the Discharger's influent flow to their plant.
13 The unreliability is evidenced by the December 23, 2010 spill from Pond 4 of close to
14 200,000 gallons of undisinfected secondary-treatment wastewater effluent onto private
15 adjoining property. (*Id.*, p. 263.) VVWRA could not accept an increase in diversions and
16 the Discharger was stuck with the flow they allow into their plant. (Dis. Resp. p. 4.)
17 Under such dire circumstances, it is irresponsible of the Discharger to accept any
18 additional flow amounts until the plant can handle the capacity the Discharger is
19 accepting. The connection ban is necessary to stop the Discharger from exacerbating
20 its influent flow limitation violations.

21 **B. The Discharger is Not Able to Maintain BOD Compliance**

22 In its response, the Discharger again acknowledges that it has been able to come
23 into compliance with its BOD effluent limitations because it is diverting flows to VVWRA.
24 (Dis. Resp. p. 2.) The same argument applies here that relying on VVWRA to accept a
25 diversion almost the same amount as the plant's capacity is not a sustainable or reliable
26 method of compliance. Adding additional flows to the Discharger's facilities when they
27 already are not able to treat all their influent flows is a reckless plan. A connection ban
28 would contribute to limiting, and possibly decreasing, influent flows until the Discharger

1 has facilities in place that can treat a larger capacity.

2 **C. The Discharger Remains Out of Compliance with its Freeboard**

3 The Discharger continues to struggle with meeting its two feet freeboard limitation
4 for its four percolation ponds, demonstrated in the Discharger's weekly reports for
5 December 27, 2010 and January 3, 2011. (Pros. Evid. pp. 268, 274.) The freeboard
6 violations became significant in August, 2010 and continue to be of concern, even after
7 the diversions to VVWRA begun, portions of the dredging and scarification were
8 completed, and unauthorized and authorized trenches were installed. The freeboard
9 issues are not based on weather systems. Contrary to its statements in its response,
10 the measures that the Discharger have taken have not been effective in bringing its
11 freeboard into compliance, especially in the emergency situation on December 23, 2010.

12 The Water Board enforcement staff in all three of its Notices of Violation of
13 Cleanup and Abatement Order No. R6V-2010-0054 explained in depth the inadequacies
14 of the Discharger's Spill Contingency Management Plan, including the Discharger's
15 failure to notify the public to limit its water use. (*Id.*, pp. 117-150, Pros. Rebut. Evid. pp.
16 472-479.)

17 The Water Board enforcement staff identified in detail how the Discharger failed
18 to prepare and implement an adequate Interim Action Plan in its Notice of Violation of
19 Cease and Desist Order No. R6V-2007-24 describing the Discharger's failure to
20 implement its Clean-Screen Facility, its failure to effectively run auxiliary aeration, and
21 its failure to effectively use flow equalization. (Pros. Rebut. Evid. pp. 466-471.)

22 The measures that the Discharger have taken to reduce its freeboard limit
23 violations and to prevent unauthorized discharges have proven to be insufficient.

24 **V. THE DISCHARGER'S PROPOSED SHORT-TERM MEASURES DO NOT**
25 **SATISFY A DELAY IN IMPLEMENTING THE CONNECTION BAN**

26 The Prosecution Team agrees that dredging and scarifying the percolation ponds
27 will assist in promoting their productivity. (Dis. Resp. p. 5.) However, the Prosecution
28 Team emphasizes that these kinds of measures are most effective when ponds are

1 rotated in use, and are able to dry out before routine maintenance. The Discharger is
2 using what is considered a maintenance measure as an emergency measure. See
3 Section III.A. above for further analysis.

4 The Discharger's second short-term measure it describes in its response is that it
5 will explore irrigating a portion of its new parcel for pasture or Bermuda grass. (*Id.*, p. 5.)
6 At this point in time, the Prosecution Team views that any new option that needs
7 exploring as not a viable short-term measure to assist with compliance in the immediate
8 future. This proposal for the new parcel in particular would likely required reclamation
9 permits, which could take over a year since no Californion Environmental Quality Act
10 (CEQA) analysis has yet been performed. The Prosecution Team, however, does want
11 to encourage the Discharger to continue exploring these ideas to aid in achieving long-
12 term goals.

13 **VI. THE DISCHARGER'S PROPOSED LONG-TERM MEASURES DO NOT**
14 **SATISFY A DELAY IN IMPLEMENTING THE CONNECTION BAN**

15 As stated immediately above, the Prosecution Team does not wish to discourage
16 the Discharger from achieving its long-term goals of achieving compliance. However,
17 the Discharger has not put forth in its response any reasonable assurances that it has a
18 set date for when its facilities will be able to treat the influent flows it receives. In fact,
19 the Discharger's record of non-compliance and delays referenced above in Section III
20 above suggests any future completion dates are speculative and unreliable in nature.

21 **VII. THE PROPOSED CONNECTION BAN IS NECESSARY AND MEETS LEGAL**
22 **REQUIREMENTS**

23 The proposed prohibition and restrictions on additional discharges to the
24 Discharger's influent flows contained in the proposed Cease and Desist Order are legally
25 warranted under Title 23 of the California Code of Regulations, sections 2244 and
26 2244.3.
27
28

1 **A. 23 CCR 2244**

2 For subsection 2244(a), the purpose of the connection ban is to limit the amount
3 of influent flow the Discharger is receiving. The plant simply does not have the capacity
4 to treat the amount of wastewater it receives, and the Discharger has resisted taking
5 measures to self-limit its influent amount. For example, it has not notified the public of
6 its continued threatened discharges, seeking a volunteer reduction in water use from its
7 customers. The Discharger is overly relying on VVWRA's temporary agreement to
8 receive 1.3 MGD of its influent flows when it can only process 1.5 MGD itself, with no
9 adequate Spill Contingency Plan in place. Every day the Discharger continues to
10 discharge into its unauthorized trenches off of Pond 4 is a violation of its waste
11 discharge requirements, an increase in violations with no end in sight. Every day the
12 Discharger continues to violate its freeboard limit is a violation of its waste discharge
13 requirements. Every day during the rainy season presents a likelihood that the
14 Discharger and VVWRA will not be able to process all of the Discharger's influent flows,
15 causing another berm breach and discharge similar to December 23, 2010. These
16 circumstances presented to the Water Board describe actual and threatened violations
17 causing an increase in impairment of water quality via the Discharger's effluent limits,
18 and an increase in nuisance via undisinfected secondary treated wastewater spills.

19 The Proposed Cease and Desist Order satisfies subsection 2244(b) because the
20 connection ban would limit further additions to the influent flow the Discharger receives,
21 with potential to decrease flows. Any increase in its influent flow will likely increase the
22 Discharger's influent flow violations because they are already diverting the maximum
23 amount possible to VVWRA and struggle to meet their 1.5 MGD limit. The Discharger
24 has already informed Water Board staff that VVWRA cannot take any more flows from
25 the Discharger; they have topped out their line to VVWRA by pumping 1.3 MGD per day.
26 (Dis. Evid. p. 286.) Any increase in influent flow will cause additional waste discharge
27 requirement violations.

28 In regards to subsection 2244(c), the Discharger has not provided any viable plan

1 to immediately correct their waste discharge requirements violations, particularly their
2 freeboard limitations. The measures they have installed include unauthorized trenches
3 off of Pond 4 that violate their requirements and the 2010 Cleanup and Abatement Order
4 every day. See Sections III.A., III.B., and IV, above.

5 The Proposed Cease and Desist Order meets the final subsection, 2244(d),
6 because the prohibitions and restrictions proposed are not being used as a punitive
7 measure for past failure to comply. The chronology described in Section III. emphasizes
8 that the Discharger has a chronic influent flow capacity problem that it has been unable
9 to correct with the measures the Discharger have implemented. Most of the
10 Discharger's corrective measures have been in critical need since September, 2010.
11 The evidence submitted by both Parties shows that the Discharger and the Water Board
12 staff have been working together in attempts to address the influent flow capacity
13 concerns. The three Notices of Violation for the Cleanup and Abatement Order provide
14 detailed descriptions to guide the Discharger towards compliance after the Parties
15 exchanged numerous electronic mails and had several meetings. However, the influent
16 capacity, and thus the freeboard limitations, remains a critical issue. Therefore, it has
17 come to the point where the Prosecution Team is recommending to the Water Board
18 that they exercise their authority to limit influent flow to the Discharger's facilities as a
19 means of last resort to prevent the increase in violations. The only other alternative
20 available is to refer this matter to the Attorney General to seek injunctive relief similar to
21 a connection ban.

22 **B. 23 CCR 2244.3**

23 Title 23 of the California Code of Regulations, section 2244.3 discusses when to
24 remove prohibitions or restrictions to discharges. The Discharger does not meet the
25 requirements at this point in time because the Discharger has not demonstrated
26 consistent compliance with its waste discharge requirements as discussed in Section IV.
27 The Discharger is not exempted from the connection ban at this point in time because it
28 has failed to submit substantial evidence that it will complete its Micromedia/M2R

1 upgrade to the facility. The upgrade was originally due to be completed in August, 2008.
2 (Dis. Evid. p. 97.) No reliable assurances have been submitted as evidence for what
3 time in the future the Micromedia/M2R upgrade will be up and running. Similarly, no
4 reliable assurances have been submitted as evidence for when Pond 5 will be
5 constructed.

6 Without any reliable date for completing a facility upgrade or adding a percolation
7 pond, the Discharger fails to meet the requirements for the exception to the connection
8 ban.

9 **VIII. IMPOSING THE CONNECTION BAN IS NECESSARY TO REDUCE INFLUENT**
10 **FLOW TO THE DISCHARGER'S FACILITY**

11 As discussed in Section VII.A., the connection ban is the last available option to
12 the Water Board before asking the Attorney General to seek injunctive relief to
13 immediately limit the influent flows to the Discharger's facility. The Prosecution Team is
14 aware of potential economic impacts on the City of Adelanto as an affect of the
15 proposed connection ban. However, the Prosecution Team requests the Water Board to
16 weigh the affects to water quality and public health from continued discharges of
17 wastewater from the Discharger's facility and conclude that the connection ban is
18 necessary to protect the community of Adelanto.

19 In regards to the Discharger's response, the evidence is insufficient to support
20 their arguments about an economic impact. The following is in regards to the
21 Discharger's response on pages seven and eight.

- 22 1. The evidence the Discharger submitted from D.R. Horton indicates that 83
23 homes are to be developed, not 100. (Dis. Evid. p. 455.)
- 24 2. No evidence was submitted regarding the Target store or a schedule for
25 when it is to be constructed and occupied.
- 26 3. No evidence was submitted regarding the Geo Prison.
- 27 4. No evidence was submitted regarding a county prison expansion.

1 At this point in time, three of the Discharger's four examples assume facts not in
2 evidence and are thus not to be considered by the Water Board.

3 **IX. THE PROSECUTION TEAM SUBMITS THE FOLLOWING EVIDENCE IN**
4 **REBUTTAL TO THE DISCHARGER'S EVIDENCE, LETTER, AND REPORT**
5 **AND RESPONSE.**

- 6 • August 16, 2005 Notice of Violation of Waste Discharge Requirements Order No.
7 R6V-2002-050
- 8 • Administrative Civil Liability Order No. R6V-2008-0035
- 9 • January 10, 2007 Notice of Violation of Waste Discharge Requirements Order No.
10 R6V-2002-050
- 11 • January 26, 2011 Notice of Violation of Cleanup and Abatement Order No. R6V-
12 2007-0024
- 13 • January 27, 2011 Notice of Violation of Cease and Desist Order No. R6V-2007-
14 024
- 15 • December 23, 2010 Field Inspection Report
- 16 • May 18, 2010 Notes from Meeting between the Discharger and Water Board Staff
- 17 • September 13, 2010 Letter from the Discharger to Water Board Staff
- 18 • February 9, 2011 Email from Erika Holland, LACSD, to Eric Taxer, Water Board

19 **X. CONCLUSION**

20 Having sufficiently demonstrated the Discharger's inability to comply with waste
21 discharge requirements and the Discharger's threatened future non-compliance, the
22 Prosecution Team respectfully recommends that the Water Board adopt Order No. R6V-
23 2011-(Proposed) (January 11, 2011).

24 Respectfully Submitted,

25
26 2/9/2011

27 Date

28 Laura J. Drabandt

Laura J. Drabandt, Staff Counsel
State Water Board, Office of Enforcement
Attorney for the Prosecution Team