



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

December 17, 2010

Ms. Kay Swikart  
Casden Properties, LLC  
Wilshire Doheny Building  
9090 Wilshire Boulevard, 3<sup>rd</sup> Floor  
Beverly Hills, California 90211

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
CLAIM NO. 7008 1830 0004 3360 0243

**COMPLAINT NO. R4-2008-0199-M FOR MANDATORY MINIMUM PENALTY AGAINST CASDEN PROPERTIES, LLC, WILSHIRE DOHENY BUILDING, 9090 WILSHIRE BOULEVARD, LOS ANGELES COUNTY, CA (ORDER NOS. R4-2003-0111 & R4-2008-0032, NPDES PERMIT NO. CAG994004, CI-6733)**

Dear Ms. Swikart:

Enclosed is Complaint No. R4-2008-0199-M for Mandatory Minimum Penalty in the amount of \$675,000 against Casden Properties, LLC (hereinafter Permittee) for violating waste discharge requirements contained in Regional Board Order Nos. R4-2003-0111 and R4-2008-0032. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0199-M and return it to the Regional Board by 5:00 pm on **January 18, 2011**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **January 18, 2011**, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Ms. Kristie Kao at (213) 620-6368.

Sincerely,

Paula Rasmussen, Chief  
Compliance and Enforcement Section

Enclosures: Complaint No. R4-2008-0199-M  
Exhibit "A"  
Notice of Public Hearing

cc: Ms. Julie Mácado, Office of Enforcement, State Water Resources Control Board  
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board

**California Environmental Protection Agency**



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R4-2008-0199-M</b>
	)	<b>Mandatory Minimum Penalty for</b>
<b>Casden Properties, LLC</b>	)	<b>Violation of California Water Code § 13376</b>
<b>Wilshire Doheny Building</b>	)	<b>and</b>
<b>9090 Wilshire Boulevard</b>	)	<b>Order Nos. R4-2003-0111 &amp; R4-2008-0032</b>
<b>Beverly Hills, CA 90211</b>	)	<b>(NPDES No. CAG994004)</b>

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385(h) and § 13385.1 is issued to Casden Properties, LLC (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order Nos. R4-2003-0111 and R4-2008-0032 (NPDES No. CAG994004, CI No. 6733).

**The Chief Prosecutor of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:**

1. The Permittee operates the Wilshire Doheny Building (facility) located at 9090 Wilshire Boulevard, Beverly Hills, California. The Permittee can discharge up to 7,200 gallons per day (gpd) of wastewater from a dewatering system into a nearby storm drain (Latitude 34° 04' 01", Longitude 118° 23' 22"). The wastewater is susceptible of containing copper and other pollutants that can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The wastewater flows through the storm drain system into Ballona Creek, a navigable water of the United States.
2. On August 5, 2004, the Executive Officer of the Regional Board determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2003-0111 adopted by the Regional Board on August 7, 2003. The facility was so enrolled effective on August 5, 2004. Order No. R4-2003-0111 serves as General National Pollutant Discharge Elimination System (NPDES) Permit No. CAG994004 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties).
3. Order No. R4-2003-0111 was subsequently rescinded and replaced by Order No. R4-2008-0032, which was adopted on June 5, 2008. On, November 18, 2009, the Executive Officer of the Regional Board determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2008-0032, and the facility was so enrolled effective November 18, 2009. Order No. R4-2008-0032 serves as General NPDES permit No. CAG994004 (Waste Discharge Requirements for Discharges of Groundwater From Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties).

December 17, 2010

4. Order No. R4-2008-0032 (Part V.1.c.ii, page 20) includes the following effluent limitations for copper:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Copper	µg/L	24	12.5

µg/L = micrograms/liter

5. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
6. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board pursuant to the authority of CWC § 13383.
7. On December 22, 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Settlement Offer No. R4-2008-0199-M to participate in the Expedited Payment Program (Settlement Offer). The Settlement Offer included a Notice of Violation notifying the Permittee of two hundred ten (210) reporting violations that occurred between October 2005 and September 2008 that are subject to mandatory minimum penalties.
8. Since issuance of the Settlement Offer, eleven (11) reporting violations of Order No. R4-2003-0111 and four (4) effluent violations of Order No. R4-2008-0032 were reported by the Permittee in its self-monitoring reports. The violations occurred between October 2005 and June 2010.
9. Two hundred twenty-five (225) violations of Order Nos. R4-2003-0111 and R4-2008-0032 were noted in the Permittee's self-monitoring reports during the period October 2005 through June 2010. These violations include two hundred and twenty-one (221) reporting violations and four (4) effluent violations of copper. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
10. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.
11. CWC § 13385.1(a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13323 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance limitations contained in waste discharge requirements that contain effluent limitations. This section applies to violations occurring on or after January 2004.

12. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385(c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

**YOU ARE HEREBY GIVEN NOTICE THAT:**

13. The Chief Prosecutor proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$675,000 for the violations cited in Exhibit "A". This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "A" as subject to a mandatory minimum penalty. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
14. The Permittee may waive the right to a hearing and pay the recommended civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on **January 18, 2011**. If the hearing is waived, a check in the amount of \$675,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on **January 18, 2011**.
15. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **January 18, 2011**, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
16. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
17. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
18. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
19. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.

20. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.



Paula Rasmussen, Chief  
Compliance and Enforcement Section  
Los Angeles Regional Water Quality Control Board

December 17, 2010

**WAIVER FORM**

**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2008-0199-M**

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

I am duly authorized to represent Casden Properties, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0199-M (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

*(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.*

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$675,000** by check that references "ACL Complaint No. R4-2008-0199-M" made payable to the "Cleanup and Abatement Account". Payment must be received by the Regional Water Board by **January 18, 2011** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- 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 the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Chief Prosecutor may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee 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 Permittee to further enforcement, including additional civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**WAIVER FORM**

**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2008-0199-M**

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

I am duly authorized to represent Casden Properties, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0199-M (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

*(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.*

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$675,000** by check that references "ACL Complaint No. R4-2008-0199-M" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **January 18, 2011** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- 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 the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Chief Prosecutor may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee 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 Permittee to further enforcement, including additional civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**EXHIBIT "A"**  
Violation Summary

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
03/25/10	1st Quarter 2010	Daily Maximum	Copper	44.6	24	ug/L	2	86%	Serious	(h)1	\$3,000
03/31/10	1st Quarter 2010	Monthly Average	Copper	44.6	12.5	ug/L	2	257%	Serious	(h)1	\$3,000
06/24/10	2nd Quarter 2010	Daily Maximum	Copper	32.5	24	ug/L	2	35%	Serious	(h)1	\$3,000
06/30/10	2nd Quarter 2010	Monthly Average	Copper	32.5	12.5	ug/L	2	160%	Serious	(h)1	\$3,000
										<b>Total</b>	<b>\$12,000</b>

**EXHIBIT "A"**  
Violation Summary

Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day Periods	Serious/Chronic	Water Code Section 13385	Amount Per 30-Day Period	Penalty
4 <sup>th</sup> Quarter 2005	Late Report	02/15/2006	01/23/2009	1,073	35	Serious	(h)(1)	\$3,000	\$105,000
1 <sup>st</sup> Quarter 2006	Late Report	05/15/2006	01/23/2009	984	32	Serious	(h)(1)	\$3,000	\$96,000
2 <sup>nd</sup> Quarter 2006	Late Report	08/15/2006	01/23/2009	892	29	Serious	(h)(1)	\$3,000	\$87,000
3 <sup>rd</sup> Quarter 2006	Late Report	11/15/2006	01/23/2009	800	26	Serious	(h)(1)	\$3,000	\$78,000
4 <sup>th</sup> Quarter 2006	Late Report	02/15/2007	01/23/2009	708	23	Serious	(h)(1)	\$3,000	\$69,000
1 <sup>st</sup> Quarter 2007	Late Report	05/15/2007	01/23/2009	619	20	Serious	(h)(1)	\$3,000	\$60,000
2 <sup>nd</sup> Quarter 2007	Late Report	08/15/2007	01/23/2009	527	17	Serious	(h)(1)	\$3,000	\$51,000
3 <sup>rd</sup> Quarter 2007	Late Report	11/15/2007	01/23/2009	435	14	Serious	(h)(1)	\$3,000	\$42,000
4 <sup>th</sup> Quarter 2007	Late Report	02/15/2008	01/23/2009	343	11	Serious	(h)(1)	\$3,000	\$33,000
1 <sup>st</sup> Quarter 2008	Late Report	05/15/2008	01/23/2009	253	8	Serious	(h)(1)	\$3,000	\$24,000
2 <sup>nd</sup> Quarter 2008	Late Report	08/15/2008	01/23/2009	161	5	Serious	(h)(1)	\$3,000	\$15,000
3 <sup>rd</sup> Quarter 2008	Late Report	11/15/2008	01/14/2009	60	1	Serious	(h)(1)	\$3,000	\$3,000
							<b>Total</b>		<b>\$663,000</b>
							<b>Settlement Total</b>		<b>\$675,000</b>

**HEARING PANEL OF THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
(213) 576-6600

ACLC No. R4-2008-0199-M

**NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES**

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND  
PROPOSE RECOMMENDATIONS**

DISCHARGER

Casden Properties, LLC

DISCHARGE LOCATION

Wilshire Doheny Building  
9090 Wilshire Boulevard  
Beverly Hills, CA

RECEIVING WATER

Ballona Creek

Administrative Civil Liability Complaint (“ACLC”) No. R4-2008-0199-M alleges that Casden Properties, LLC violated Order Nos. R4-2003-0111 & R4-2008-0032 by failing to comply with reporting and effluent limits during the period October 2005 through June 2010. During this time, two hundred twenty-five violations of Order Nos. R4-2003-0111 and R4-2008-0032 were noted in the Permittee’s self-monitoring reports, all of which are subject to mandatory minimum penalties. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$675,000 be assessed against Casden Properties, LLC for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

**I. HEARING DATE AND LOCATION**

Date: March 17, 2011  
Time: 9:00 A.M.  
Place: TBD

## II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on February 25, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

## III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

## IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Casden Properties, LLC
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on January 31, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

## **V. COMMUNICATIONS WITH THE PROSECUTION TEAM**

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Ms. Kristie Kao, Water Resource Control Engineer. Ms. Julie Macedo, Senior Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Julie Macedo nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Ms. Kristie Kao  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 620-6368  
[kkao@waterboards.ca.gov](mailto:kkao@waterboards.ca.gov)

## **VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE**

### **A. Submittals By Parties.**

Not later than January 26, 2011, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Casden Properties, LLC is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any legal and technical arguments and testimony the Party intends to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on February 16, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than March 7, 2011.

**B. Submittals By Interested Persons.**

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on January 18, 2011**. If possible, please submit written comments in Word format electronically to [kkao@waterboards.ca.gov](mailto:kkao@waterboards.ca.gov). Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

**VII. HEARING PROCEDURES**

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the

extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on February 16, 2011** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

## **VIII. COMMUNICATIONS WITH THE HEARING PANEL**

### **A. Ex Parte Communications Prohibited.**

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

### **B. Hearing Panel Advisors.**

The Hearing Panel will be advised before and during the hearing by Mr. Samuel Unger, and a Legal Advisor, Ms. Jennifer Fordyce, Staff Counsel for the Regional Board. Neither Mr. Samuel Unger nor Ms. Jennifer Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

### **C. Objections to manner of hearing and resolution of any other issues.**

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on February 16, 2011.**

Ms. Jennifer Fordyce  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814  
(916) 324-6682  
[jfordyce@waterboards.ca.gov](mailto:jfordyce@waterboards.ca.gov)

**Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.**

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on February 16, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

#### **IX. QUESTIONS**

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 17, 2010