



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

October 27, 2015

Mr. Paul Philips
City Manager, City of Industry
15625 E. Stafford Street
Industry, California 91774

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7014 2870 0001 4537 5282

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2015-0207, CITY OF INDUSTRY, FOLLOWS CAMP; AZUSA, CALIFORNIA

Dear Mr. Phillips,

Enclosed is Complaint No. R4-2015-0207 (Complaint) issued pursuant to California Water Code (Water Code) section 13323 in the amount of \$5,758,791.57 in administrative civil liability against the City of Industry (City or Discharger). The Los Angeles Regional Water Quality Control Board (Regional Board) Prosecution Team alleges that the City violated Section 301 of the Clean Water act and Water Code section 13376 for its unauthorized discharges of dredge and/or fill material in the Eastern Fork of the San Gabriel River resulting from unpermitted grading activities in waters of the United States in 2012. Also enclosed is a copy of the Regional Board "Hearing Procedures for Administrative Civil Liability Complaint No. R4-2015-0207" (Hearing Procedures) and the Administrative Civil Liability Fact Sheet. The Discharger may waive its right to a hearing and pay the administrative civil liability as indicated on the attached "Waiver Form for Administrative Civil Liability Complaint No. R4-2015-0207."

Unless waived, a hearing before a Regional Board Hearing Panel will be held on this Complaint on January 25, 2016. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2015-0207 and return it with full payment of the proposed administrative civil liability to the Regional Board by 5:00 pm on **November 30, 2015**. If we do not receive the waiver and full payment of the proposed administrative civil liability by **November 30, 2015** this matter will be heard before the Regional Board Hearing Panel.

This hearing will be governed by the attached Hearing Procedures which have been approved by the Regional Board's Executive Officer for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Frances McChesney, whose contact information is listed in the Hearing Procedures, by **5 p.m. on November 9, 2015**.

An agenda containing the date, time, location and specific procedures of the hearing will be mailed to you prior to the hearing date.

If the Discharger chooses to sign the waiver and pay the proposed administrative civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day public 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 Regional Board staff person listed below. Should the Regional Board receive

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

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 Regional 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.

Should you have any questions regarding this matter, please contact Dr. L.B. Nye at (213) 576-6785 // lb.nye@waterboards.ca.gov or Mr. Hugh Marley at (213) 620-6375 // hugh.marley@waterboards.ca.gov.

Sincerely,



Paula Rasmussen
Assistant Executive Officer

Enclosures: Complaint No. R4-2015-0207
Waiver Form
Attachment A
Hearing Procedures
ACL Fact Sheet

cc: [via e-mail only]

Ms. Frances McChesney, Office of Chief Counsel, State Water Resources Control Board
Mr. David Boyers, Office of Enforcement, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Mr. Jamie Casso, Counsel to the City of Industry jcasso@cassosparks.com
Ms. Jacqueline Taylor, Bureau of Environmental Protection, Los Angeles County
Department of Public Health [jactaylor@ph.lacounty.gov]
Ms. Claire Trombadore, Enforcement Division, USEPA [trombadore.claire@epa.gov]
Ms. Alix Hobbs, Heal the Bay [ahobbs@healthebay.org]
Ms. Rachel Stich, Los Angeles Water Keeper [lawaterkeeper.org]
Mr. Seamus Ian Innes, Long Beach Chapter, Surfrider Foundation [chair@lbsurfrider.org]

CALIFORNIA REGIONAL WATER QUALITY CONTRAOL BOARD
LOS ANGELES REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R4-2015-0207

IN THE MATTER OF

CITY OF INDUSTRY
FOLLOWS CAMP

This Complaint is issued to the City of Industry (hereafter the City or Discharger) pursuant to California Water Code (Water Code) 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer. This Complaint is based on evidence that the City violated provisions of the Water Code and the Clean Water Act when it engaged in unpermitted discharges of dredged and fill material within the San Gabriel River at Follows Camp.

The Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board (Regional Board) alleges the following:

Background

1. In October 2011, the City of Industry purchased property known as "Follows Camp" located on the Eastern Fork of the San Gabriel River in Azusa, California (referred to as the site). Specifically, the City is the property owner of Los Angeles County Assessor Parcel Numbers 8678-005-271 (referred to as the Railroad Car Bridge) and 8678-006-273 (referred to as the Arizona Crossing) where unpermitted activities alleged herein took place.
2. On June 14, 2012, Warden Lawrence Stephens of the Department of Fish and Wildlife (DFW) conducted a site inspection at Follows Camp in response to an electronic mail notification sent from DFW biologist John O'Brien regarding turbidity in the East Fork of the San Gabriel River. Warden Stephens observed recent disturbances of the San Gabriel River channel, including its bed and banks, during the site inspection at the Railroad Car Bridge, located at 34° 14' 10.78" N, 117° 48' 33.83" W. Photographs indicate heavy mechanical equipment with bulldozer tracks entered into the river channel and moved earthen material to construct a dirt road along the bank of the river directly south of East Fork Road. During the June 14, 2014 site inspection, Warden Stephens encountered an individual named Mark Radecki who was moving dirt with heavy mechanical equipment in the vicinity of the Railroad Car Bridge. Mr. Radecki stated he worked for the City.

3. On June 17, 2012, Warden Stephens conducted a second site inspection at Follows Camp at the Arizona Crossing and noted that additional work in the East Fork of the San Gabriel River had taken place at an approximate location of 34° 14' 0.37" N, 117° 48' 10.0" W. It should be noted, and will be explained further in Attachment A to this Complaint, that the East Fork of the San Gabriel River is designated as "critical habitat" for the federally threatened Santa Ana sucker.
4. On June 21, 2012, Warden Stephens met with CNC Engineering Consultant and former City employee, Jack Foye. Mr. Foye confirmed that the City purchased the Follows Camp property in October 2011. He stated he acted as a liaison between the City and other agencies and that the work in the river was to counteract high water flow during floods in order to reduce erosion and to complete some basic bridge repair.
5. Regional Board staff, in a joint site inspection with DFW, visited the site on August 13, 2012 to observe the site conditions and determine if activities at the site complied with Regional Board regulatory requirements. City consultants including Ms. Alissa Cope (Sage Environmental), Mr. Dale Masl (CNC Engineering), and Mr. Michael Kolbensschlag (AEI CASC Consulting) joined staff and Warden Stephens during the site inspection. At the Railroad Car Bridge, staff noted that grading occurred and fill discharges took place approximately 1,000 linear feet along both banks of the San Gabriel River creating levees approximately eight to ten feet high below the ordinary high water mark. Site inspection participants noted that the City wanted to protect the banks upstream of the bridge by constructing the levees and flattening and widening the river bed. At the Arizona Crossing, Regional Board staff again observed gravel and earthen levees approximately five to seven feet high constructed within the banks of the San Gabriel River approximately 1,000 linear feet upstream of the Arizona Crossing. The riverbed appeared enlarged and flattened by grading in several areas. At the eastern-most section of the graded area, the terminus of the grading within the ordinary high water mark of the river was distinguished by the immediate appearance of natural meanders, riffle-pools, and step pools located upstream.
6. Regional Board staff confirmed that the City failed to obtain the required A) dredge and fill permit from the United States Army Corps of Engineers, B) Clean Water Act section 401 water quality certification from the Regional Board, and C) Streambed Alteration Agreement from the DFW.
7. As a result of the observations made on the August 13, 2012 site inspection, the Regional Board issued the City Investigative Order No. R4-2012-0169 (Investigative Order) on December 19, 2012, requiring the City to submit a technical report addressing specific issues related to the unpermitted activities at Follows Camp observed by Regional Board and DFW staff.

8. City Manager, Kevin Radecki, responded to the Investigative Order in a document dated April 4, 2013.¹ The response indicates that maintenance and flood control were impetus for the activities observed in the San Gabriel River, specifically, “[i]n May 2012, the City performed maintenance within the riverbed to ensure flows would utilize the Railroad Car Bridge and the Arizona Crossing during the 2012-13 rainy season.” The City’s response to the Investigative Order included calculations by the City’s consultant, CNC Engineering, on the total volume of material graded or discharged and approximate number of acres disturbed by the unpermitted activities. Mr. Radecki stated that the City of Industry, CNC Engineering, and Municipal Maintenance were responsible for the project activities at Follows Camp.

Special Interrogatories

9. On December 1, 2014, the State Water Resources Control Board’s (State Water Board) Office of Enforcement propounded Special Interrogatories (interrogatories) to the City seeking pertinent information related to the investigations of the unpermitted activities at Follows Camp. In response, the City lodged several general objections to the interrogatories, including an objection to the use of the term “project” stating that the term connotes approval by a legislative body, whereas construction activities that occurred in May 2012 at the City’s Follows Camp property were not approved by the City Council or City Manager. The City further responded that the agendas and minutes for the City Council meetings between September 2011 and June 2012 lack any reference to construction activities at Follows Camp further supporting the City’s contention that neither the City Council nor the City Manager approved the construction. The City maintains that the former City Mayor, David Perez, was responsible for the construction activities and that Mr. Perez acted alone, without the authorization, consent, or direction of the full five-member City Council.

Agency Theory of Liability

10. In its response to the interrogatories, the City attempts to shirk responsibility for the unpermitted activities at Follows Camp by stating that Mr. Perez acted outside of the scope of his authority in overseeing the project while he held the position of City Mayor.
11. The City first entered into a Contract for General Maintenance and Miscellaneous Services with Zerep Management Corporation (Zerep) on September 25, 1980.² This contract was subsequently renewed in 1981, 1982, and was last amended in 2001 extending the contract to 2025.³ Under this contract, Zerep provided special services only when specifically requested by the City Manager or City Engineer.

¹ The date on the City’s response states “April 4, 2012” however the response was received by the Regional Board on April 10, 2013.

² Municipal Maintenance, one of the City’s contractors identified by City Manager Kevin Radecki in the City’s April 4, 2013 response to the Regional Board’s Investigative Order, is a subsidiary of Zerep Management Corporation, which is owned and operated by former Mayor David Perez.

³ The City terminated this contract on September 2, 2014.

12. The Prosecution Team maintains that the City remains liable for the actions of Mr. Perez based on the parties' agency relationship whereby the actions of the agent, Mr. Perez, make the City, the principal, liable for injuries proximately caused by Mr. Perez's actions within the scope of his authority. An agent represents his principal for all purposes within the scope of his actual or ostensible authority and all rights and liabilities that accrue to the agent, accrue to the principal. (Cal. Civ. Code, § 2330.) The Charter of the City of Industry and the City's Municipal Code and ordinances vest broad authority in the mayor⁴ to act on behalf of the City⁵ and the Prosecution Team asserts that the actions of Mr. Perez in relation to the unpermitted activities at Follows Camp were within the scope of his recognized authority as City Mayor.
13. The Prosecution Team maintains that the actions of Mr. Perez, in relation to the unpermitted activities at Follows Camp, were not *ultra vires* and did, in fact, constitute an official action of the City under the agency theory of liability. Under the *ultra vires* doctrine, when an officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions.⁶ In this context, a principal is not responsible for wrongs committed by an agent outside the scope of their authority unless they authorized or ratified the action.⁷
14. If the actions of Mr. Perez, in relation to the unpermitted activities at Follows Camp, are determined to be *ultra vires*, the Prosecution Team maintains that the City remains responsible for those acts through ratification. The City has a long history of ratifying Mr. Perez's behavior and consistently paid \$714,799 in invoices from Zerep for work at Follows Camp over the course of three years; in 2012, the year the unpermitted work was conducted and it continued to pay invoices in 2013 and 2014.

Alleged Violations

15. Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code Section 13376 prohibit the discharge of pollutants to surface water except in compliance with a permit for dredged and fill material.

⁴ California Government Code section 34903 states, "The mayor is a member of the city council and has all of the powers and duties of a member of the city council."

⁵ See City of Industry Charter, article III, section 304, "All powers of the City shall be vested in the Council except as provided in this Charter." See also City of Industry Charter, article VII, section 700, "The Council may contract with and employ any persons for the furnishing to the City of special services."

⁶ *Larson v. Domestic & Foreign Commerce Corp.* (1949) 337 U.S. 682, 694.

⁷ Cal. Civ. Code, § 2339; *Dunlap v. Dean* (3d Dist. 1930) 109 Cal. App. 300 (Payment by the principal of bill's for merchandise purchased by agents rendered signified authority on the part of the agent to make purchases); *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal. App. 4th 1094 (the failure to discharge an agent or employee who has committed unauthorized misconduct may be evidence of ratification, thus supporting holding the principal or employer liable for the originally unauthorized tort); *Fretland v. County of Humboldt* (1d Dist. 1999) 69 Cal. App. 4th. 1478 (agent's act may be adopted by implication based on conduct of the principal from which an intention to consent may be inferred, including conduct which is inconsistent with any reasonable intention on his part other than that he intended approving and adopting it).

16. The Prosecution Team alleges that the Discharger violated Section 301 of the Clean Water Act and Water Code section 13376 for a period of 5 days for grading in waters of the United States and discharging dredge and fill material without a permit or Clean Water Act section 401 water quality certification; 3 active work days from May 7, 2012 through May 9, 2012 for the unpermitted work at the Railroad Car Bridge and 2 active work days, from May 10, 2012 to May 11, 2012 for the unpermitted work associated with the Arizona Crossing. The unauthorized activity resulted in the discharge of approximately 880,607 gallons (or 4,360 cubic yards) of river cobbles and sediment to waters of the United States resulting from grading 2.38 acres of river bed.

Calculation of Penalties Under Water Code Section 13385

17. Water Code section 13385 states, in relevant part:

- (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

- (2) A waste discharge requirement ... issued pursuant to this chapter... (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

18. Water Code section 13385 states, in relevant part:

- (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

- (e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

19. Pursuant to Water Code section 13385 subdivision (c), the maximum administrative civil liability amount, including a per gallon assessment, for the alleged violation of Section 301 of the Clean Water Act and Water Code section 13376 is \$8,846,070. The minimum amount of administrative civil liability pursuant to Water Code section 13385 subdivision (e) and the State Water Board's Water Quality Enforcement Policy (Enforcement Policy) equates to an amount that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the Clean Water Act were due to the failure

to obtain the appropriate permits and state water quality certification. The Prosecution Team estimates the cost-savings experienced by avoiding fees based on California Code of Regulations, Title 23, section 2200(a)(3) for 1,220 linear feet of impacts and 2.41 acres (2.36 acres of river bed + 0.05 acres of access road) was approximately \$12,461.

Proposed Administrative Civil Liability

20. Pursuant to Water Code section 13385(e), in determining the amount of any civil liability imposed under Water Code section 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
21. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e).
22. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the City's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
23. As described above, the maximum penalty for the violations is \$8,846,070. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the estimated economic benefit of \$12,461, so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$13,707.10. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Assistant Executive Officer of the Regional Board proposes that civil liability be imposed administratively on the City in the amount of **\$5,758,791.57**. The specific factors considered in this penalty are detailed in Attachment A.

Regulatory Considerations

24. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for unpermitted discharge violations which have not yet been assessed or for violations that may subsequently occur.
25. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
26. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Board proposes an administrative civil liability in the amount of **five million seven hundred fifty eight thousand seven hundred ninety one dollars and fifty seven cents (\$5,758,791.57)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted by a Hearing Panel of the Regional Board at a hearing scheduled on January 25, 2016, unless the City waives the hearing by completing the attached Waiver Form and returning it to the Regional Board, along with payment for the proposed civil liability of five million seven hundred fifty eight thousand seven hundred ninety one dollars and fifty seven cents (\$5,758,791.57) by **November 30, 2015**.
3. If a hearing is held, the Hearing Panel of the Regional Board will hear testimony and arguments and make a Hearing Panel recommendation 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.


Paula Rasmussen
Assistant Executive Officer

10-27-2015
Date

Waiver Form
Attachment A: 10-Step Penalty Calculation Methodology

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2015-0207

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

I am duly authorized to represent the City of Industry (hereinafter "City" or "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2015-0207 (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 City 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 Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$5,758,791.57** by check that references "ACL Complaint No. R4-2015-0207" made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by **November 30, 2015** or this matter will be placed on the 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 Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional 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 Board, and that the Regional 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.

(Signed Name)

(Date)

(Printed or typed name)

(Title)

ATTACHMENT A to ACL Complaint No. R4-2015-0207

10-STEP PENALTY CALCULATION METHODOLOGY

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (Water Code) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Summary of alleged violation: Unauthorized discharge of dredge and fill material to waters of the United States

Discharging dredge and fill material to waters of the United States without a permit under Clean Water Act section 404 and without obtaining state water quality certification pursuant to Clean Water Act section 401 constitutes a violation of Clean Water Act section 301. Violations of Clean Water Act section 301 subject the City to administrative civil liability pursuant to Water Code section 13385 subdivision (a)(5).

Step 1 - Potential for Harm for Discharge Violations

The "potential harm to beneficial uses" factor considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential to harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses (The beneficial uses of San Gabriel River):

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5). In this case, the potential harm to beneficial uses was determined to be **Major** (i.e. a score of 5), which is defined as a "high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health)."

The City graded approximately 2.36 acres of riverbed using heavy machinery including 1) activities at the Railroad Car Bridge where berms extended approximately 260 linear feet downstream of the bridge to create a 45-foot wide channel bottom by relocating river cobble in this area; 2) activities upstream of the Railroad Car Bridge where berms extended approximately 360 linear feet upstream of the bridge to create a 45-foot wide channel bottom at the bridge expanding to a 110 foot wide channel bottom in this area; and 3) activities upstream of the Arizona Crossing where the riverbed was narrowed from an active 120-foot wide channel to a 30-foot wide channel for low flows by creating a 300-foot long southern berm extending upstream and a 600-foot long northern berm extending upstream. Activities at the Railroad Car Bridge resulted in gravel river cobble levees approximately eight to ten feet high on both sides of the San Gabriel River and flattening and widening of the river bed in this area. Activities at the Arizona Crossing resulted in gravel levees approximately five to seven feet high constructed approximately 1,000 feet upstream on both sides and clearly within the banks of the San Gabriel River.

In total, the City discharged approximately 4,360 cubic yards or 880,607 gallons of dredge and

ATTACHMENT A to ACL Complaint No. R4-2015-0207

fill material, including river cobbles and sediment, to the East Fork of the San Gabriel River while engaging in these unauthorized dredge and fill activities within waters of the United States.

The Water Quality Control Plan for the Los Angeles Region (Basin Plan) is designed to preserve and enhance water quality and protect the beneficial uses of all surface and ground waters in the Los Angeles Region. The Basin Plan includes the following beneficial uses for the East Fork of the San Gabriel River (405.43):

- 1) **Municipal and Domestic Supply (MUN)**
- 2) **Ground Water Recharge (GWR)**
- 3) **Water Contact Recreation (REC-1)**
- 4) **Non-Contact Water Recreation (REC-2)**
- 5) **Warm Freshwater Habitat (WARM)**
- 6) **Cold Freshwater Habitat (COLD)**
- 7) **Wildlife Habitat (WILD)**
- 8) **Rare, Threatened, or Endangered Species (RARE)**
- 9) **Spawning, Reproduction, and/or Early Development (SPWN)**
- 10) **Wetland Habitat (WET)**

Three native species of fish occupy the East Fork of the San Gabriel River: the Santa Ana speckled dace, designated by the California Department of Fish and Wildlife (Department) as a Species of Special Concern; the Arroyo chub, designated by the Department as a Species of Special Concern; and the Santa Ana sucker, designated by the Department as a Species of Special Concern and the United States Fish and Wildlife Service as a threatened species. In 2011, the Department published a study titled "Status of fishes in the Upper San Gabriel River Basin, Los Angeles County, California" (Department's 2011 study) which studied the distribution and relative abundance of fishes in the Upper San Gabriel River during the spring and summer of 2007 and 2008.¹ The Upper San Gabriel River populations of these species represent some of the last remaining populations in the Los Angeles Region.

The East Fork of the San Gabriel River is designated as critical habitat for the federally threatened Santa Ana sucker. The Santa Ana sucker favors cool (< 22 degrees Celsius), clear, flowing water where gravel, rubble, and boulder substrates are present. Spawning typically occurs from mid-March until early June in riffle habitats possessing gravel substrates. The grading project took place from May 5, 2012 through May 11, 2012, during the typical spawning period of the Santa Ana sucker. Sufficiently high turbidity may harm suckers and other fish by causing reduction in feeding, reducing resistance to disease, lowering growth rates, and affecting egg and larval development. Grading the riverbed flattens the riffles and removes a combination of gravel and rubble boulders used by the Santa Ana sucker as part of their spawning habitat. The Department's 2011 study indicated that the Santa Ana sucker were detected in riffles, runs, and pools, including deep (>2 meter) pools where they were often abundant.² The extensive area graded resulted in the removal of habitat, altered substrate, and potentially increased turbidity in the East Fork of the San Gabriel River. For the foregoing reasons, the threat to beneficial uses was high resulting in significant impacts to aquatic habitat and long term restrictions on beneficial uses lasting more than 5 days.

¹ John O'Brien et al, California Department of Fish and Wildlife, Status of fishes in the Upper San Gabriel River Basin, Los Angeles County, California (2011) <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46490> (as of October 20, 2015).

² *Id.*

ATTACHMENT A to ACL Complaint No. R4-2015-0207

Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material to potential receptors. In this case, a score of **2** was assigned. A score of 2 means the chemical and/or physical characteristics of the “*discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection)*”. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. The grading operation and vegetation removal exposed, loosened, and mobilized sediment, including 880,607 gallons of river cobbles and sediment, creating a discharge which could or did at a minimum result in a moderate risk to increased turbidity, reduced light, reduced clarity and increased temperature in the stream flow. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat. Therefore, a score of 2 is appropriate.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. More than 50% of the discharge could have been cleaned up or abated; therefore a factor of **0** is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of **7** was calculated. The total score of 7 is then used in Step 2 below.

Step 2 – Assessment for Discharge Violations

This step addresses penalties based on both a per-gallon and a per-day basis.

Per Gallon Assessments for Discharge Violations

When there is a discharge, the Regional Board is to determine the initial liability amount on a per gallon basis using the same Potential Harm score from Step 1 and the Extent of Deviation from Requirements of the violation. The Potential for Harm score from Step 1 is **7** and the extent of Deviation from Requirements³ is considered **Major** because the requirement was rendered ineffective based on the failure to obtain the appropriate dredge and fill permit and state water quality certification resulting in an unauthorized discharge of 880,607 gallons (or 4,360 cubic yards) of river cobbles and sediment to waters of the United States resulting from grading 2.38 acres of river bed. Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is **0.31**. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below. The maximum civil liability allowed under Water Code section 13385 is \$10 per gallon discharged.

³ The “Deviation from Requirement” reflects the extent to which the violation deviates from the specific requirement. In this case, the requirement (i.e. Clean Water Act sections 404 and 401) was to obtain the appropriate dredge and fill permit and associated state water quality certification prior to the initiation of the project activities in the East Fork of the San Gabriel River.

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Initial Liability Amount

A. The initial liability amount for the violations calculated on a per gallon basis is as follows:

$$\$10 \times 0.31 \times (880,607 - 1,000) \text{ gallons} = \$2,726,781.70$$

$$\text{Total Initial Liability A} = \$2,726,781.70$$

Per Day Assessments for Discharge Violations

When there is a discharge, the Regional Board is to determine the initial liability amount on a per day basis using the same Potential Harm score from Step 1 and the Extent of Deviation from Requirements used in the per-gallon analysis. The Potential for Harm score from Step 1 is **7** and the Extent of Deviation from Requirements is considered to be **Major**. Therefore the "per day" factor is **0.31** (as determined from Table 2 in the Enforcement Policy). The Per Day Assessment is calculated as $(0.31) \times (\text{number of days}) \times \$10,000$ per day. For this matter, the number of days of violation totals 5 days; 3 active work days, from May 7, 2012 through May 9, 2012, for the work associated with the Railroad Car Bridge and 2 active work days, from May 10, 2012 to May 11, 2012, for the work associated with the Arizona Crossing.

Initial Liability Amount

B. The initial liability amount for the violations calculated on a per day basis is as follows:

$$\$10,000 \times 0.31 \times 5 \text{ days of violation} = \$15,500$$

$$\text{Total Initial Liability B} = \$15,500$$

$$\text{Total Combined Initial Liability A+B} = \$2,742,281.70$$

Step 3 – Per Day Assessments for Non-Discharge Violations

This factor does not apply because the violations are related to the discharge of waste and the liability was determined in Step 2.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.4** because the City commenced work without obtaining the appropriate dredge and fill permit from the United States Army Corps of Engineers and without obtaining state water quality certification from the Regional Board despite being made aware that such projects require permitting from State agencies. Specifically, in January 2011, the Department informed the City about the requirement to

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provide written notification to the Department prior to commencing activities that substantially change or use any material from the bed, channel, or bank of any river, stream, or lake. This specific reference pertains to the City's work in a separate watershed known as Tonner Canyon Creek. Furthermore, the City instituted these activities during the typical spawning period of the Santa Ana sucker. There is no indication in the record that these activities were required to be done during this time period to, for example, respond to an emergency condition or abate an immediate public safety issue. These failures resulted in an unauthorized discharge of waste to waters of the United States, violations which could have been avoided had the City taken the appropriate steps and made reasonable inquiries regarding these requirements. The City did not anticipate what a reasonable person would have and did not take the appropriate action to avoid the violations.

Cleanup and Cooperation

The Discharger met with Regional Board staff in the field August 13, 2012 to discuss the grading violations but there has been no further contact on this matter. While the City may have a need for a long-term river channel and crossing maintenance plan, no plan has been shared with the Regional Board nor any application for Section 401 certification submitted for continued maintenance of the area. Therefore, a factor of **1.5** was selected.

History of Violations

The City does not have a history of similar violations for unauthorized discharges of waste to waters of the United States resulting from the failure to obtain the appropriate dredge and fill permit and associated state water quality certification. Therefore, Staff selected a neutral factor of 1, which is below the minimum multiplier where there is a history of violations.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Adjusted Initial Liability Amount determined in Step 2. After considering the Adjustment Factors, Staff calculated the Total Base Liability Amount as **\$5,758,791.57**.

<u>Total Base Liability Amount</u> Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability <u>Per Day Liability:</u> Total base liability (\$2,742,281.70) x C (1.4) x C&C (1.5) x HOV (1) = \$5,758,791.57 Total Base Liability = \$5,758,791.57
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Step 6 – Ability to Pay and Ability to Continue in Business

- a) Total Base Liability: **\$5,758,791.57**
- b) Discussion: The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. As of 2014, the City has a population of approximately 208 residents, as estimated by the U.S. Census Bureau. At the end of Fiscal Year, 2014, the General Fund which is the operating fund of the City, had a total

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fund balance of \$237.5 million. This amount represents a \$3.9 million increase from the previous fiscal year. Based on the above, the City has the ability to pay the proposed liability amount; therefore, the Total Base Liability Amount was not adjusted for the City's ability to pay.

Step 7 – Other Factors as Justice May Require

- a) Total Base Liability: **\$5,758,791.57** + 0 (staff costs) = **\$5,758,791.57**
- b) Discussion: The costs of investigation and enforcement are "other factor as justice may require" and may be considered by the Board as an increase to the Total Base Liability Amount in a manner that serves as a sufficient general and specific deterrent against future violations. Staff costs incurred by the Regional Board to date are \$7,500. This represents approximately 50 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. The Prosecution Team, in its discretion, has decided not to increase the Total Base Liability Amount by \$7500 as it asserts that the final proposed liability amount of **5,758,791.57** creates a sufficient general and specific deterrent against future violation of this type.

Step 8 – Economic Benefit

- a) Total Estimated Economic Benefit: \$12,461
- b) Discussion: Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the Clean Water Act were due to the failure to obtain the appropriate permits and state water quality certification. Staff estimates the cost-savings experienced by avoiding fees based on California Code of Regulations, Title 23, section 2200(a)(3) for 1,220 linear feet of impacts and 2.41 acres (2.36 acres of river bed + 0.05 acres of access road) was \$12,461.

Step 9 – Maximum and Minimum Liability Amounts

- a) Minimum Liability Amount: Economic Benefit + 10% or \$13,707.

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Staff estimate of the City's economic benefit obtained from the alleged violation is \$12,461. Therefore the minimum liability amount pursuant to the Enforcement Policy is \$13,707.

- b) Maximum Liability Amount: \$8,846,070

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code 13385. The City could be assessed up to \$8,846,070 in administrative civil liabilities for the alleged violation.

Step 10 – Final Liability Amount

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In accordance with the above methodology, Staff recommends a Final Liability Amount **\$5,758,791.57**. Staff has determined that this Final Liability Amount is within the statutory minimum and maximum amounts.

California Regional Water Quality Control Board, Los Angeles Region

HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2015-0207

ISSUED TO
THE CITY OF INDUSTRY
FOLLOWS CAMP

SCHEDULED FOR JANUARY 25, 2016

PLEASE READ THESE HEARING PROCEDURES 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 of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") has issued an Administrative Civil Liability (ACL) Complaint to the City of Industry (hereafter Discharger), alleging violations of the Clean Water Act section 301 and Water Code section 13376 for grading in waters of the United States and discharging dredge and fill material without a permit or Clean Water Act section 401 water quality certification. Regional Board staff, represented by the Regional Board Staff Prosecution Team ("Prosecution Team") propose in the ACL Complaint that the Regional Board impose administrative civil liability on the Discharger in the amount of \$5,758,791.57.

A hearing on this matter is currently scheduled to be conducted before a Hearing Panel on January 25, 2016. Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the Regional Board will convene a hearing to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Hearing Panel will hear evidence, determine facts, make conclusions of law and propose a recommendation to the Regional Board about resolution of the ACL Complaint. The Hearing Panel may recommend that the Regional Board issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Hearing Panel may also recommend that the Regional Board decline to assess any liability, or may continue the hearing to a later date. After the hearing, the Hearing Panel will report its recommendation and proposed ACL Order to the full Regional Board at a future meeting. The public hearing will commence at 9:30 AM or as soon thereafter as practical, or as announced in the Hearing Panel's meeting agenda. The hearing will be held at:

320 West Fourth Street, 5th Floor
Public Utilities Commission Hearing Room
Los Angeles, California 90013

An agenda for the hearing will be issued at least ten days before the hearing and posted on the Regional Board's website at <http://www.waterboards.ca.gov/losangeles/>.

Hearing Procedures

The hearing will be a formal adjudicative proceeding and will be conducted in accordance with these Hearing Procedures. The Executive Officer has directed the use of these standardized hearing procedures for the adjudication of such matters. The procedures governing adjudicatory hearings before the Regional 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 these Hearing Procedures are deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

Objections to these hearing procedures must be in writing and must be received by the Advisory Team no later than the deadline listed under "Important Deadlines" below, or they will be waived. Objections about the matters contained in these Hearing Procedures will not be entertained at the hearing. Failure to comply with the deadline and requirements contained herein may result in the exclusion of documents and/or testimony. The Discharger shall attempt to resolve objections to these Hearing Procedures with the Prosecution Team BEFORE submitting objections to the Advisory Team.

The procedures and deadlines herein may be amended by the Hearing Panel Chair or by the Advisory Team.

Separation of Prosecutorial and Advisory Functions

The Regional Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. To ensure the fairness and impartiality of this proceeding, those who will act in a prosecutorial role by presenting evidence for consideration by the Hearing Panel (the "Prosecution Team") are separate from those who will provide legal and technical advice to the Hearing Panel (the "Advisory Team"). Members of the Advisory Team are: Samuel Unger, Executive Officer and Frances McChesney, Attorney IV. Members of the Prosecution Team are: Paula Rasmussen, Assistant Executive Officer; Hugh Marley, Supervising Engineering Geologist; Dr. LB Nye, Senior Environmental Scientist; Dana Cole, Environmental Scientist; David Boyers, Assistant Chief Counsel, and Mayumi Okamoto, Attorney III.

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. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. Ms. Rasmussen regularly advises the Regional Board in other, unrelated matters, but is not advising the Regional Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any substantive ex parte communications with the members of the Regional 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 are those subject to the ACL Complaint and other persons or organizations anticipated to have a substantial interest in the outcome of the hearing. Designated Parties may present written evidence, summarize their evidence orally at the hearing and cross-examine other parties' witnesses (if they are called). "Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceedings. Designated Parties are subject to cross-examination about any evidence they present.

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

1. Regional Board Prosecution Team
2. City of Industry

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Hearing Panel, Advisory Team, or others, at the discretion of the Hearing Panel Chair.

Requesting Designated Party Status

Persons or organizations 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, etc.), along with a statement explaining why the Designated Parties listed above do not adequately represent the person's or organization'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. All participants will be notified before the hearing whether the request for designated party status is granted.

Primary Contacts

Advisory Team:

Samuel Unger, Executive Officer
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 576-6605
Email: samuel.unger@waterboards.ca.gov

Frances McChesney, Attorney IV
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5174
Email: frances.mcchesney@waterboards.ca.gov

Prosecution Team:

Hugh Marley, Supervising Engineering Geologist
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 620-6375

Email: hugh.marley@waterboards.ca.gov

Mayumi Okamoto, Attorney III
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) 341-5674
Email: mayumi.okamoto@waterboards.ca.gov

Discharger:

Jamie Casso
Casso & Sparks, LLP
Mailing Address: P.O. Box 4131
West Covina, CA 91791
Phone: (213) 841-9751
Email: jcasso@cassosparks.com

Ex Parte Communications

While this adjudicative proceeding is pending, the California Government Code forbids Designated Parties and Interested Persons from engaging in ex parte communications regarding this matter with Regional Board members and the Advisory Team, except during the public hearing itself. An ex parte communication is a written or verbal communication, either direct or indirect, that relates to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Regional Board member or a member of the Advisory Team that occurs in the absence of other parties and without notice and opportunity for all parties to participate in the communication (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. Therefore, any written communication to Regional Board members or the Advisory Team before the hearing must also be copied to all other Designated Parties. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all Designated Parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, arguments, or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

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 total of **60** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide opening and/or closing statements. 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 Hearing Panel Chair (at the hearing) upon a showing that additional time is necessary. Such

showing shall explain what testimony, comments, or legal or technical argument requires extra time, and why it could not have been provided in writing by the applicable deadline. Decisions will be based upon the complexity and the number of issues under consideration, the extent to which the Designated Parties have coordinated and/or have similar interests, and the time available for the hearing.

A timer will be used, but will not run during questions from the Hearing Panel and the Advisory Team or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence, Argument and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing, which must be received no later than the deadline listed under "Important Deadlines" below:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Hearing Panel to consider. Evidence and exhibits already in the public files of the Regional 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. Hearing Panel members will not generally receive copies of materials incorporated by reference unless copies are provided by the Designated Party proffering the evidence as part of the Designated Party's evidentiary submission. Referenced materials are generally not posted on the Regional 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 or other material submitted by the Prosecution Team); and the witness information required under items 3-4 for all witnesses, including Regional Board staff. The Prosecution Team shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Designated Parties (including the Discharger): All Designated Parties shall submit comments, arguments or analysis regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Regional Board staff. Designated Parties shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party who would like to submit evidence, legal or technical arguments, or policy statements to rebut information 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.

Final Hearing Package and Proposed Hearing Panel Report and Order: The Prosecution Team will submit the Final Hearing Package and a proposed Hearing Panel Report and Order so that it is submitted no later than the deadline listed under "Important Deadlines" below.

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

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" below to be included in the Hearing Panel's hearing package. Interested persons should be aware that this matter may settle without further notice, and therefore timely submittal by the deadline may be the only opportunity for an Interested Person to comment on the subject of the ACL Complaint. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from Interested Persons during the hearing. 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 Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Hearing Panel Chair may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will *not* be considered by the Hearing Panel and will *not* be included in the administrative record for this proceeding.

Presentations: PowerPoint 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 in electronic format, and hard copy if requested by the Advisory Team, 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 by Designated Parties.

Administrative Record and Availability of Documents

The ACL Complaint and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submittals received for this proceeding will be added to the administrative record absent a contrary ruling by the Hearing Panel Chair. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

These documents may be inspected and copied between the hours of 8:00 a.m. and 5:00 p.m. at the Regional Board's office located at 320 West Fourth Street, Suite 200 Los Angeles, California 90013. Arrangements for document review and/or obtaining copies of the documents may be made by contacting the Prosecution Team Primary Contact above. Appointments are encouraged so the documents can be readily available upon arrival.

Questions

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

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date below.^{1,2} Where both electronic and hard copy formats are required to be submitted to the Prosecution Team, a complete electronic copy must be received by 5:00 p.m. on the respective due date below, and a complete hard copy may follow via overnight delivery so that it is received by the Prosecution Team the next day.

October 27, 2015	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedures and other related materials. <p><u>Hard Copies to:</u> All other Designated Parties (by certified mail) <u>Electronic or Hard Copies to:</u> All known Interested Persons, Advisory Team</p>
November 6, 2015	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedures. ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
November 12, 2015	<ul style="list-style-type: none"> ▪ Deadline to submit objections to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>
November 30, 2015	<ul style="list-style-type: none"> ▪ Discharger's deadline to submit <i>Hearing Waiver Form</i>.³ <p><u>Electronic or Hard Copy to:</u> Prosecution Team</p> <ul style="list-style-type: none"> ▪ Interested Persons' written comments are due. <p><u>Electronic or Hard copies to:</u> All Designated Parties, Advisory Team</p>
December 2, 2015*	<ul style="list-style-type: none"> ▪ Advisory Team transmits decision on requests for designated party status. ▪ Advisory Team transmits decision on objections to Hearing Procedures. <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
December 7, 2015*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence, Argument and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
December 28, 2015*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence, Argument, and Policy Statements" above. This includes all written comments regarding the ACL Complaint. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team <u>Electronic and Hard Copies to:</u> Prosecution Team</p>

¹ With the exception of the deadline to submit the Final Hearing Package and proposed Hearing Panel Report and Order.

² Where a deadline falls on a weekend or holiday, the deadline is extended to the next business day.

³ Pursuant to California Water Code section 13323(b), persons subject to an ACL Complaint have the right to a hearing before the Regional Board within 90 days of receiving the ACL 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 administrative civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

<p>January 11, 2016*</p>	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections. ▪ Deadline to request Prehearing Conference. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team</p>
<p>January 12, 2016*</p>	<ul style="list-style-type: none"> ▪ Deadline to submit requests for additional time at the hearing. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Advisory Team</p>
<p>January 15, 2016*</p>	<ul style="list-style-type: none"> ▪ Prosecution Team sends Final Hearing Package and proposed Hearing Panel Report and Order. <p><u>Electronic or Hard Copies to:</u> Hearing Panel members, Advisory Team, All other Designated Parties</p>
<p>January 19, 2016*</p>	<ul style="list-style-type: none"> ▪ Advisory Team transmits hearing time limits <p><u>Electronic or Hard Copies to:</u> All Designated Parties, All known Interested Persons</p>
<p>January 25, 2016*</p>	<ul style="list-style-type: none"> ▪ Hearing

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing. Each of these options is described below:

Withdrawal: May result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: May result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: May result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: Results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that Must be Considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations,

whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:

- Audited Financial Statements for last three years;
- A list of major accounts receivable with names and amounts;
- A list of major accounts payable with names and amounts;
- A list of equipment acquisition cost and year purchased;
- Ownership in other companies and percent of ownership for the last three years;
- Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.