

North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES (Revised)  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R1-2016-0033

ISSUED TO  
OLIVE (POLLY) FRANKLIN AS TRUSTEE OF THE CHARLES & JULIA FRANKLIN TRUST AND  
DANIEL FRANKLIN  
WDID #1B13159CNME

17777 EEL RIVER ROAD  
LAKE AND MENDOCINO COUNTIES

SCHEDULED FOR **December 15, 2016**

**Overview**

On July 22, 2016, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Water Board), issued an Administrative Civil Liability (ACL) Complaint No. R1-2016-0033 (“Complaint”) pursuant to Water Code section 13323, to Daniel Franklin and Olive (Polly) Franklin as trustee of the Olive Franklin Trust (hereafter [collectively] “Dischargers”). The Complaint alleges that the Dischargers violated 1) Water Code section 13376 for discharging pollutants to waters of the U.S. without filing a report of waste discharge and 2) Clean Water Act section 301 for discharging pollutants to waters of the United States without an authorized permit. The Complaint proposes that the North Coast Water Board impose an administrative civil liability (“ACL”) in the amount of three hundred eighty-one thousand nine hundred and forty-seven dollars (\$381,947). In response to the Dischargers’ request to delay the hearing, the Prosecution Team proposes to reschedule the hearing during the North Coast Water Board’s December 15, 2016 board meeting. This hearing procedures document shows corresponding revisions to important deadlines.

**Purpose of Hearing**

At the hearing, the North Coast Water Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing will commence as announced in the North Coast Water Board meeting agenda (typically at 8:30 a.m.), or as soon thereafter as practical. The meeting will be held at:

~~To Be Determined~~

North Coast Regional Water Quality Control Board

5550 Skylane Blvd, Suite A

Santa Rosa, CA 95403

An agenda for the meeting will be issued at least ten days before the meeting and posted on the North Coast Water Board’s web page at:

### **Advisory Team**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role (“Prosecution Team”) by presenting evidence for consideration by the North Coast Water Board have been separated from those who will provide advice to the North Coast Water Board (“Advisory Team”) prior to and during the hearing. 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. Other members of the Prosecution Team may act or have acted as advisors to the North Coast Water Board in other, unrelated matters, but they are not advising the North Coast Water Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John,  
Executive Officer  
Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403  
[Matt.St.John@waterboards.ca.gov](mailto:Matt.St.John@waterboards.ca.gov)

Nathan Jacobsen,  
Staff Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> floor  
Sacramento, CA 95814  
(916) 341-5181  
[Nathan.Jacobsen@waterboards.ca.gov](mailto:Nathan.Jacobsen@waterboards.ca.gov)

Any substantive communication to the Advisory Team must also be sent to the parties listed below.

### **Hearing Participation**

Designated parties to the hearing may present evidence (e.g., photographs, eye-witness testimony, monitoring data), cross-examine witnesses and receive all correspondence related to the case. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the North Coast Water Board’s website:

[http://www.waterboards.ca.gov/northcoast/public\\_notices/public\\_hearings/enforcement\\_hearings.shtml](http://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/enforcement_hearings.shtml)

Persons who wish to participate in the hearing as a designated party may submit a request in writing (with copies to already designated parties) so that it is received by the Advisory Team no later than 5 p.m. on August 1, 2016.

The request shall include a brief explanation of how the person will be affected by the

potential action by the North Coast Water Board, the person's need to present evidence and/or cross-examine witnesses, and why an already designated party will not adequately represent the person's interest. Any objection to the request must be received by the Advisory Team, all parties and the person requesting party status by 5 p.m. on October 3, 2016. The parties will be notified by 5 p.m. on October 10, 2016 whether the request has been granted or denied. If no objection is timely received, and/or Advisory Team does not otherwise make any modifications, designated party status is automatically granted. The new designated party shall be added to the list below and subject to all the requirements in this Notice. Additional persons may be designated as parties after the deadline at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

**Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.**

**Parties**

**Prosecution Team:**

Shin-Roei Lee  
Lead Prosecutor  
Assistant Executive Officer  
Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403  
[Shin-Roei.Lee@waterboards.ca.gov](mailto:Shin-Roei.Lee@waterboards.ca.gov)

Joshua Curtis  
Environmental Program Manager  
Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403  
[Joshua.Curtis@Waterboards.ca.gov](mailto:Joshua.Curtis@Waterboards.ca.gov)

Vanessa Young  
Attorney  
SWRCB Office of Enforcement  
1001 I Street  
Sacramento, CA 95814  
[Vanessa.Young@waterboards.ca.gov](mailto:Vanessa.Young@waterboards.ca.gov)

Diana Henrioulle  
Senior Engineer  
Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403  
[Diana.Henrioulle@waterboards.ca.gov](mailto:Diana.Henrioulle@waterboards.ca.gov)

Stormer Feiler  
Environmental Scientist  
Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A  
Santa Rosa, CA 95403  
[Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov)

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**Discharger:**

Mr. Daniel Franklin & Ms. Olive (Polly)  
Franklin  
27860 Poppy Drive  
Willits, CA 95460  
[brawlertrawler@gmail.com](mailto:brawlertrawler@gmail.com)

Muckle Hill Farm,  
Spa Common, North Walsham  
Norfolk, UK  
mucklehill@yahoo.com

## **Important Deadlines**

All required submissions must be received by the Advisory Team by 5:00 p.m. on the due date listed. Parties shall provide all submissions to the Advisory Team electronically, unless otherwise specified below. Parties shall send electronic copies of all submittals to each other unless a party specifically requests paper copies.

The Advisory Team has discretion to modify the deadlines below and may schedule additional pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically.

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|-----------------------------|---|
| <del>July 22, 2016</del>    | Prosecution Team issues paper copy of ACL Complaint to Discharger(s) and sends an electronic copy to Advisory Team; Prosecution Team posts Hearing Notice and Procedures with copies to Discharger(s) and Advisory Team.  |
| <del>August 1, 2016</del>   | Parties Submit any Objections to Hearing Notice. Deadline to Request Designated Party Status.   |
| October 3, 2016             | Parties Submit any Objections to Requests for Designated Party Status.  |
| October 10, 2016            | Advisory Team issues decision on request for Designated Party Status, Hearing Notice Objections, if any.  |
| <del>October 17, 2016</del> | <del>Deadline for Discharger to Submit Signed Form Waiving Right to Hearing within 90 Days.</del>   |
| November 4, 2016            | Prosecution Team Submits Case in Chief electronically to all parties plus (10)] hard copies to Advisory Team. The ACLC shall be included in the Case in Chief.  |
| November 15, 2016           | Remaining Designated Parties, including the Discharger(s), submit Case in Chief electronically to all parties plus (10) hard copies to Advisory Team). Deadline to submit request for additional time. Deadline for Interested Persons to submit written statements.  |
| November 23, 2016           | Parties Submit Any Rebuttal Evidence and Written Rebuttal to Legal Argument, and all Evidentiary Objections electronically to all parties plus (10) hard copies to Advisory Team. Any evidentiary objections are due.   |
| November 29, 2016           | Prosecution Team will provide the Advisory Team a proposed order in electronic format and circulate it to all Parties. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments. Designated Parties may submit responses to written statements submitted by Interested Persons. |

## December 15, 2016 Adjudicatory Hearing Commences

In the event that Parties agree to postpone the hearing to engage in settlement discussions, the Prosecution Team may withdraw the Hearing Notice. The hearing officer may request that Parties appear before the North Coast Water Board and provide an update on the status of the case. The Prosecution Team may reissue the Hearing Notice if a hearing is still necessary. In that event, the Prosecution Team shall calculate due dates as if the ACL Complaint was issued 90 days from the new hearing date. Due dates that Parties previously have met need not be extended.

### **General Hearing Procedures**

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of enforcement matters. The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site:

[http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The North Coast Water Board encourages parties with common interests to work together to make the hearing process more efficient. In addition, parties are encouraged to stipulate to facts not in dispute, if appropriate. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

### **Hearing Time Limits**

Each party shall have a combined 40 minutes to present evidence (including evidence presented by witnesses called by the party), cross-examine witnesses (if warranted), and provide an opening and/or closing statement. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the hearing officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Party could not adequately provide the testimony, comments or legal argument in the time provided. The hearing officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the parties if appropriate.

## **Submission of Evidence**

In accordance with California Code of Regulations, title 23, section 648.4, the North Coast Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the North Coast Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

**Case in Chief:** Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis (limited to 15 pages, double spaced).
2. All documentary evidence (except rebuttal documents) proposed to be offered at the hearing.
3. The name of each fact and/or expert witness, if any, whom the party intends to call at the hearing, a brief summary of the subject of each witness's proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. Include the qualifications of any expert witness.

Advisory Team may request all testimony in writing in advance of the hearing as necessary to conduct the hearing in a reasonable time period.

**Rebuttal:** "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded. Rebuttals are due on November 23, 2016. Prosecution Team will provide the Advisory Team a proposed order in electronic format to all Parties on November 29, 2016. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments.

## **Ex Parte Contacts**

There shall be no *ex parte* communications with North Coast Water Board members or Advisory Team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.**

Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the Advisory Team, not North Coast Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from the State Water Board website at:  
[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

### **Rules of Evidence**

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the North Coast Water Board office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file by the Prosecution Team and will become a part of the administrative record absent a contrary ruling by the North Coast Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/northcoast/boarddecisions/>. Although the web page is updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

### **Questions**

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