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7

8 BEFORE THE CALIFORNIA  
9 STATE WATER RESOURCES CONTROL BOARD  
10

11 **In the Matter of**  
12 **GID Investment Advisers LLC,**  
13 **Petitioner,**  
14  
15

**GID INVESTMENT ADVISERS LLC:**  
**(1) PETITION FOR REVIEW; and**  
**(2) DECLARATION OF STEPHEN J.**  
**O'NEIL (attaching Exhibits).**  
**[Water Code § 13320; 23 CCR § 2050]**

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TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

**I. INTRODUCTION**

Petitioner GID Investment Advisers LLC ("GID") respectfully petitions the State Water Resources Control Board ("State Board") to review and vacate the Los Angeles Water Quality Control Board's ("Regional Board") June 7, 2012 Order on Complaint No. R4-2011-0027-M ("Order"). Cal. Water Code § 13320; 23 CCR § 2050. On June 7, 2012, the Regional Board upheld the imposition of the Hearing Panel's proposed administrative civil liability on GID for violations of a National Pollutant Discharge Elimination System ("NPDES") permit and directed GID to pay penalties of \$42,000.

The Regional Board abused its discretion and issued an unlawful order which has aggrieved GID. The Order is unlawful because GID was never the holder of the NPDES permit, and thus GID cannot be penalized for violations of the permit. Additionally, the legal authority relied on by the Regional Board does not allow the Regional Board or the State Board to find a non-permittee liable. GID is aggrieved by the Order because it is ordered to pay penalties in the amount of \$42,000 for violations of a permit that it did not hold.

The Regional Board's action in issuing the Order was improper and inappropriate, and therefore must be vacated and set aside. In accordance with 23 CCR Section 2050(a)(2), a copy of the Regional Board's Order on Complaint No. R4-2011-0027-M is attached as Exhibit B.



1           At the Regional Board Panel Hearing, GID argued that it was not a proper  
2 party to the Complaint because it was not a named permittee to either Order No. R4-2004-  
3 0058 or R4-2009-0047, and it was not involved with the facility until October 1, 2010. (*Id.*  
4 at Exh. B at ¶ 6). The Hearing Panel found that GID was not a proper party for the alleged  
5 violations that occurred on and prior to September 30, 2010, but that GID was a proper  
6 party for violations on and after October 1, 2010. (*Id.* at Exh. B at ¶ 7(a)). The Hearing  
7 Panel recommended that the total mandatory minimum penalties assessed against GID  
8 amount to \$42,000. (*Id.* at Exh. B at ¶ 7). In reaching this decision, the Hearing Panel  
9 relied on *United States v. Cooper*, 173 F.3d 1192 (9th Cir. 1999), which the Panel claimed  
10 held that non-permittees may be liable for violating a permit. (*Id.* at Exh. B at ¶ 7(b)). As  
11 discussed below, this case is easily distinguishable and does not provide the Regional  
12 Board or State Board with authority to assess mandatory minimum penalties against GID.  
13 On June 7, 2012, the Regional Board adopted the findings and conclusions of the Hearing  
14 Panel and upheld the imposition of the Hearing Panel's proposed administrative civil  
15 liability on GID in the amount of \$42,000. (*Id.* at Exh. B at ¶ 8). GID, the aggrieved  
16 party, now petitions the State Board to review the action. Petitioner GID Investment  
17 Advisers LLC is located at 125 High Street Tower, 27<sup>th</sup> Floor, in Boston, Massachusetts,  
18 02110. GID's phone number is (617) 973-9680.

19  
20           **III. BASIS FOR REVIEW (23 CCR § 2050(a)(4)-(7))**

21  
22           California Water Code Section 13320 allows an aggrieved party to petition  
23 the State Board within 30 days to review a Regional Board's action regarding compliance  
24 with the provisions of the Clean Water Act. Cal. Water Code § 13320(a).



1   GID learned of the permit and the violations, it immediately corrected problems associated  
2 with the past reporting of NPDES test data and eliminated the need for an NPDES permit  
3 entirely, through discharge to the publicly owned treatment works. (*Id.* at pp. 69:13-70:7;  
4 80:9-17). It would be unfair, inappropriate, and improper to penalize a party who had no  
5 knowledge of the permit’s existence, no knowledge of the violations of the permit, and  
6 who engaged in immediate remediation once it learned of the problems.

7  
8           Further, California Water Code Section 13385 only covers violations of  
9 NPDES permits, and violations are based on the terms of the permit itself. The goal of the  
10 mandatory minimum penalties legislation “was to ensure prompt, streamlined enforcement  
11 to create a powerful incentive for dischargers to comply with permit requirements.” *City*  
12 *of Brentwood v. Central Valley Regional Water Quality Control Board*, 123 Cal. App. 4th  
13 714, 724 (2004). The terms of the permit do not list GID as the permittee. “Enforcement  
14 of NPDES effluent limitations is based on self-monitoring and reporting; permit holders  
15 must submit regular discharge monitoring reports, which serve as admissions when  
16 dischargers violate the effluent limitations established in the discharger’s permit.” *Id.* at  
17 723. (Emphasis added). Although GID submitted monitoring reports as the agent for the  
18 permit holder, GID was never the permit holder or the discharger. Accordingly, GID  
19 cannot violate a permit where it is not listed as the permittee.

20  
21           **B.    The Legal Authority Relied On By the Regional Board is Easily**  
22 **Distinguishable and Does Not Authorize Penalties Against Non-Permittees.**

23  
24           The Regional Board based its decision solely on *United States v. Cooper*,  
25 173 F.3d 1192 (9th Cir. 1999), which it contends held that non-permittees may be liable  
26 for violating an NPDES permit. (O’Neil Decl., ¶ 3, Exh. B at ¶ 7(b)). No other legal  
27 authority is cited. *Cooper* is easily distinguishable on its facts and cannot be the basis for  
28 imposing penalties on GID.

1           In *United States v. Cooper*, defendant Cooper appealed his criminal  
2 convictions and sentence for conspiracy, aiding and abetting unlawful disposal of sewage  
3 sludge, and mail fraud. *Cooper*, 173 F.3d at 1196. Cooper's convictions stemmed from a  
4 contract that Cooper's company was awarded by the City of San Diego ("the City") to  
5 remove sewage sludge from Fiesta Island. *Id.* at 1197. The City processed its sewage  
6 under an NPDES permit that required the City to give prior written notice of changes in the  
7 City's sludge use or disposal practice. *Id.* at 1196-97. The permit also required the City to  
8 regularly report its disposal of sewage sludge by describing the location, rate of application  
9 in pounds per acre per year, and subsequent uses of the land. *Id.* at 1197. The City's  
10 contract with Cooper did not refer to the City's NPDES permit. *Id.*

11  
12           Cooper's business soon became overwhelmed by the volume of sewage  
13 sludge on Fiesta Island, so Cooper obtained approval from authorities in Mexico, the City,  
14 and the Water Board to haul sludge directly to Mexicali, Mexico. *Id.* Cooper then decided  
15 to apply the sewage sludge directly to agricultural land because he believed that new EPA  
16 regulations allowed him to apply the sludge as fertilizer. *Id.* at 1198. However, Cooper  
17 did not notify or receive approval from the City or the Water Board for this new site. *Id.*  
18 When the City's auditors discovered that Cooper's business had lied about the sludge's  
19 destination, the City canceled its contract and charges were brought against Cooper. *Id.*

20  
21           Cooper argued that he could not be criminally liable for violating the City's  
22 NPDES permit because he was not a party to the permit. *Id.* at 1201. "The Clean Water  
23 Act imposes criminal liability on 'any person who knowingly violates . . . any permit  
24 condition or limitation implementing any of such sections [of the Act] in a permit issued  
25 under section 1342 of this title.'" *Id.* (quoting 33 U.S.C. § 1319(c)(2)(A)). To impose  
26 criminal liability, there must be a valid NPDES permit. *Id.* The government presented  
27 evidence that the Water Board properly issued the City's NPDES permit and that the Water  
28 Board acted under authority delegated by the EPA. *Id.* Next, the court analyzed the

1 statute's phrase "any person who knowingly violates." *Id.* The court reasoned that "[t]he  
2 phrase "any person" is broad enough to cover permittees and non-permittees alike." *Id.*  
3 The court concluded that there was ample evidence that Cooper knew of the NPDES  
4 permit and its application to his conduct because Cooper had transported sewage sludge  
5 for thirty years and he considered himself an expert on the subject. *Id.* The court reasoned  
6 that someone in Cooper's position "could hardly be ignorant of NPDES permits," and that  
7 Cooper's conduct in obtaining legal advice and approval to transport sludge to Mexicali,  
8 but not to transport the sludge to a new site for use as fertilizer, was sufficient to establish  
9 that Cooper knowingly violated the City's NPDES permit. *Id.*

10  
11 *Cooper* is easily distinguished and cannot be relied on as support for the  
12 imposition of penalties against GID. In *Cooper*, the court analyzed whether Cooper was  
13 criminally liable for knowingly violating an NPDES permit, whereas here, liability for  
14 mandatory minimum penalties is being assessed pursuant to California Water Code  
15 Section 13385. The *Cooper* court's analysis regarding whether a non-permittee may be  
16 liable for violating a permit focused *solely* on whether Cooper knew about the conditions  
17 in the NPDES permit. Here, there is no issue regarding whether the permits were  
18 knowingly violated. GID had no knowledge of the permits when it first began to work for  
19 WMF, so it could not have knowingly violated the permits. GID has never been accused  
20 of knowingly violating the permit, and instead, GID sought to immediately correct any  
21 problems once it learned of them.

22  
23 *Cooper* can also be distinguished because Cooper engaged in criminal  
24 behavior and was convicted of conspiracy, aiding and abetting unlawful disposal of  
25 sewage sludge, and mail fraud, while GID is being assessed with a monetary fine simply  
26 because it assisted the permit holder. No criminal liability is being pursued against GID.  
27 A criminal case is vastly different, and therefore easily distinguishable from the  
28 assessment of monetary penalties.



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**DECLARATION OF STEPHEN J. O'NEIL**

I, Stephen J. O'Neil, declare as follows:

1. I am a partner with the law firm of Sheppard, Mullin, Richter & Hampton LLP, counsel for GID Investment Advisers LLC ("GID"). I have personal knowledge of the matters stated herein and, if called upon to testify thereto, I could and would competently do so.

2. Attached hereto as "Exhibit A" is a true and correct copy of the transcript from the March 15, 2012 meeting of the Hearing Panel of the Regional Board.

3. Attached hereto as "Exhibit B" is a true and correct copy of the Order on Complaint No. R4-2011-0027-M for Administrative Civil Liability against GID by the Los Angeles Regional Water Quality Control Board on June 7, 2012.

4. Pursuant to 23 CCR Section 2050(a)(8) a copy of this Petition has been sent to the Los Angeles Regional Board.

5. In conformance with 23 CCR Section 2050(a)(9), I raised the substantive issues and objections set forth in this Petition to the Los Angeles Regional Board before filing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of July, 2012.

  
\_\_\_\_\_  
Stephen J. O'Neil

# EXHIBIT A



1           The alleged violation include both serious and  
2 chronic violations of effluent limitation and serious  
3 violation for filling late -- filing late discharge  
4 monitoring reports.

5           This hearing will be conducted in accordance with  
6 the hearing procedures that were posted on the Regional  
7 Board's website, and circulated to the parties prior to this  
8 proceeding.

9           The hearing panel is being advised by Samuel Unger,  
10 Executive Officer of Regional Board, and Sarah Olinger,  
11 Staff Counsel of Regional Board.

12           The prosecution team includes Mayumi Okamoto, and  
13 Staff Counsel, Paula Rasmussen.

14           Chief Prosecutor (Inaudible), Senior Engineering  
15 Geologist, Augustine Anijielo; Senior Water Resource Control  
16 Engineer, and Andrew Choi; Water Resource Control Engineer.

17           Neither Mr. Unger nor Ms. Olinger have had any  
18 substantive conversations regarding the issues involved in  
19 this proceeding with the prosecution team.

20           In addition, the prosecution team is not advising  
21 the Regional Board in this matter. The prosecution team is  
22 considered a party for the purpose of this proceeding.

23           The official record of the testimony of this Panel  
24 Hearing will be recorded by an audio tape and then  
25 transcribed by a court reporter.

1           At the end of this Panel Hearing, the hearing will  
2 be closed, and the Hearing Panel will discuss and recommend  
3 a decision to the full Board.

4           If anyone in the audience wishes to address the  
5 Hearing Panel today, please promptly fill out a speaker card  
6 and hand it to the clerk, a blue card.

7           There are two designated parties at this hearing,  
8 the Regional Board Prosecution Team and the GID Investment  
9 Advisors. The hearing panel will receive speaker cards and  
10 requests for time for the designated parties. I have  
11 already ruled that each party shall be allowed a total of 90  
12 minutes during this hearing.

13           Each party may choose to divide up this time as it  
14 sees fit between its Direct testimony, Cross-Examination,  
15 Closing Statements, and any other presentation to the  
16 Hearing Panel. The parties will need to communicate how  
17 they wish to use their time, and the Clerk will keep track  
18 of the time used.

19           The Chair may modify these procedures and time  
20 allocations as needed. The timer will be adjusted to show  
21 the time remaining for the parties speaking.

22           At the discretion of the Chair, the timer may be  
23 stopped for procedural discussions, questions from members  
24 of the Hearing Panel, or other causes, of other parties, or  
25 interested persons -- I'm sorry -- all other parties or

1 interested persons, and shall limit their comments to three  
2 minutes.

3 We will proceed as follows: First, we will address  
4 any procedural issues. First, we will hear testimony from  
5 Prosecution Team. GID Investment Advisors will then have an  
6 opportunity to cross-examine the Prosecution Team.

7 Next, GID Investment Advisors will present its own  
8 testimony, and then the Prosecution Team will have its  
9 opportunity for Cross-Examination.

10 Next, we will hear any Prosecution Team rebuttal,  
11 and then any rebuttal from GID Investment Advisors. We will  
12 then hear comments from any interested persons, and then,  
13 any closing statements.

14 Finally, members of the Hearing Panel and its  
15 advisors may ask questions of the parties at the end of the  
16 presentation.

17 At this time, evidence should be introduced on the  
18 two following issues: Whether GID Investment Advisors is  
19 properly named on the A.C.L. Complaint for all or some of  
20 the alleged violations; whether the Regional Board should  
21 issue, reject, or modify the proposed A.C.L. Order.

22 All persons expecting to testify, please stand at  
23 this time, raise your right hand and take the following  
24 oath:

25 Do you swear or affirm that the testimony you are

1 about to give is the truth, the whole truth, and nothing but  
2 the truth, under the penalty of perjury?

3 If so, answer, "I do."

4 (All participants answered in the affirmative)

5 HEARING OFFICER MEHRANIAN: Please remember the --  
6 please remember to state your name, address, affiliation,  
7 and whether you have taken the oath before testifying.

8 The deadlines for submitting written comments and  
9 documentary evidence were January 17th, 2012 for interested  
10 persons, and February 15, 2012 for GID Investment Advisors.

11 I have already overruled GID Investment Advisors'  
12 objection to the inclusion of this charge, monitoring  
13 reports as evidence of alleged violations.

14 Absent any other objections, the items that were  
15 received by the deadlines are hereby made part of the  
16 record. If you use speaking notes or any visual aides  
17 illustrating previously submitted evidence with your  
18 presentation, please leave a copy with the Hearing Panel, so  
19 that the material can be made a part of the record.

20 No other documentary evidence will be accepted into  
21 the record unless I made a specific ruling to allow it.

22 Before we begin hearing testimony, do any members  
23 of the Hearing Panel have any ex-parte communications to  
24 report about this matter?

25 Okay. We will begin by asking whether any of the

1 designated parties have any procedural issues they would  
2 like to raise?

3 MR. O'NEIL: In your statement, you said that now you  
4 would like answers to the questions that were posed to the  
5 parties through Ms. Olinger (Inaudible).

6 I want to address that first, as part of the issue.

7 HEARING OFFICER MEHRANIAN: It would be my  
8 recommendation to just proceed with regular testimony, the  
9 testimony that you prepared for us today, and we would  
10 recommend that over the course of that testimony, that if  
11 you can address those issues or in response to questions of  
12 the Hearing Panel, and its advisors, when those questions  
13 are raised, when it becomes time for that.

14 But proceed -- my recommendation for you is to  
15 proceed with regular testimony, to the extent you need to  
16 address those issues and then any responses.

17 Okay. So we will proceed to the testimony by the  
18 Prosecution Team.

19 MR. O'NEIL: Thank you. May I make an objection to the  
20 first slide? The first slide was Western Multi Family, LLC,  
21 when Western Multi Family is not a party named on the  
22 complaint.

23 MS. OKAMOTO: I'm going to go through that in my  
24 presentation. It will be part of my presentation.

25 HEARING OFFICER MEHRANIAN: Thank you.

1 BY MS. OKAMOTO:

2 Q Good morning, Madam Chair, and Members of the  
3 Board.

4 My name is Mayumi Okamoto. I am a Staff Counsel  
5 with the Office of Enforcement, and I represent the  
6 Prosecution Team in this matter before you today.

7 First, I want to address two issues to start off  
8 with.

9 We noticed in the Hearing Panel package, at tab  
10 4.28, the Declaration of Ms. Craulovich was inadvertently  
11 left out at the end. There was something that happened with  
12 the printing, so we did bring with us copies to include that  
13 in tab 4.28, so that you have a complete record. So Andrew  
14 Choi will hand those out to you.

15 Second, I'll just save until --

16 UNIDENTIFIED SPEAKER: While we are waiting, for those  
17 being here, I just want to recommend to the Hearing Officer,  
18 that regarding the objection from Mr. O'Neil, that we should  
19 hold off ruling on that objection until we hear an  
20 explanation from prosecution.

21 MS. OKAMOTO: Okay. The second issue I want to start  
22 off with is to address the question that Ms. Olinger raised  
23 in her March 13th E-mail.

24 We put together kind of an interactive slide, to  
25 help summarize; this is a really complicated history behind

1 Sea Castle Apartments, so hopefully as I go through the  
2 slides, some of the questions will be answered, and then we  
3 also do have supporting documentation. I think the E-mail  
4 had asked for if there's any documentation or evidence that  
5 would help with the explanations provided. So you have them  
6 already before you.

7 So as I explained, I'll kind of identify which  
8 documents in the package I'm talking about.

9 So first, let's start with -- let's start with Sea  
10 Castle Apartments. The Sea Castle Apartments is the  
11 facility that is located in Santa Monica.

12 Prior to 2001, the complex -- oh, goodness. I'm  
13 sorry.

14 The complex was owned by Sea Castle Partners, LLC.  
15 The Sea Castle Apartments went through an expensive  
16 redevelopment and remodel in the late 1990's, and early  
17 2000. Province Group was the agent of Sea Castle Partners,  
18 and was brought in to kind of complete the redevelopment  
19 project on the apartment complex.

20 One of their main responsibilities was to obtain  
21 the appropriate permits from the Coastal Commission and  
22 other agencies, prior to the remodel at the apartments  
23 starting.

24 And we've provided you with a little synopsis from  
25 their website about Providence Group's involvement with that

1 redevelopment project.

2 In 2001, Sea Castle Partners sold the building to  
3 Western Multi Family. The second document that you have in  
4 your package is a letter dated June 4th, 2001, which  
5 documents that there's been a change in ownership. That Sea  
6 Castle Partners, in fact, did sell the building to Western  
7 Multi Family, and they're the new owner.

8 And there's also some documentation which I pulled  
9 up on Westlaw, which also demonstrates that there was a  
10 change of ownership at that time, in 2001.

11 At that time in 2001, Black Rock was -- Black Rock  
12 or SSR Realty Advisors was brought in as asset manager, to  
13 kind of handle the day-to-day dealings of the rights and  
14 liabilities of Western Multi Family.

15 Black Rock -- Black Rock brought in Alliance, which  
16 is the kind of the on-the-ground property manager, who is  
17 responsible for the day-to-day, leasing managing  
18 responsibility of the apartment complex, and they also later  
19 brought -- they also later brought in Metric, as well as  
20 Bergstone Residential as property managers.

21 And in 2002, Western Multi Family obtained coverage  
22 under the 1998 permit, as a permitted property owner, and we  
23 included a copy of that fax sheet and cover letter for the  
24 2000 -- I'm sorry, for the 1998 permit, which was issued by  
25 the Board in 2002.

1           On October -- in October of 2010, GID Investment  
2     Advisors comes in and assumed Black Rock's role as asset  
3     manager of Western Multi Family, and takes over the managing  
4     of the responsibilities of Western Multi Family.

5           This created kind of a -- what I think is described  
6     as a equity co-investment; although, I'm not entirely sure  
7     what that means, with GID serving as a General Partner of  
8     Western Multi Family.

9           Also, in October of 2010, a new management company  
10    was brought in by GID to act as the on-the-ground,  
11    day-to-day property manager, and that is Windsor.

12           So as you can see from the slides, it's a pretty  
13    complicated history; but the constant in many of the  
14    transactions in the slide is the property has remained owned  
15    by Western Multi Family since 2001.

16           As you can see, one of the reasons why we did not  
17    name Providence Group in the A.C.L. Complaint is when you  
18    look at the slide here, they have never had an ownership,  
19    nor an operating interest in Sea Castle Apartments, and they  
20    are, when we looked through the file, there was no evidence  
21    in the file that indicated otherwise.

22           Similarly, the 2005 N.O.I. that was submitted,  
23    which is also included in this document -- in this package  
24    of documents, the 2005 N.O.I. is pertinent to coverage under  
25    the 2004 permit; and the owner-operator named on that

1 particular N.O.I. is Western Multi Family.

2 So how does GID get involved in being named in the  
3 complaint?

4 Well, early on in the enforcement process for this  
5 matter, the Prosecution Team had issued a Notice of  
6 Violation and Early Settlement Offer. We actually did issue  
7 it to Western Multi Family, LLC, and that's dated May 17th,  
8 2011. And it's actually at Tab 4.8 in your binder.

9 And we had intended to issue the complaint to  
10 Western Multi Family. In response to that, we got a letter  
11 from Mr. O'Neil, who stated that he represented Western  
12 Multi Family, and that the proper party to contact was GID.

13 So we took that to mean that GID was now going to  
14 be taking over responsible party interest for Western Multi  
15 Family. So prior to -- prior to issuing the A.C.L.  
16 Complaint, we had taken Western Multi Family off and put GID  
17 -- GID's name on the complaint. I think in hindsight, it  
18 probably would have been more appropriate to say something  
19 like Western Multi Family, care of GID, because they are --  
20 GID is kind of responsible for the managerial aspect, and  
21 they're really the contact person for Western Multi Family.

22 So that's kind of our creative interactive  
23 explanation of what has happened.

24 Okay. So before I actually jump into the substance  
25 of our case, I just want to -- I would like to request that

1 the panel move the Prosecution Team's evidence in your  
2 package, which is identified as Exhibit 6 through 27, and 23  
3 through 33, of your package into evidence.

4 And also, I would request that these documents that  
5 I just provided you to help explain the background, also be  
6 included. I realize you just got them today, but  
7 Ms. Olinger did request that if there's any documents, that  
8 they be provided, so if those could also be moved into the  
9 record.

10 MR. O'NEIL: I have not been provided with a copy of  
11 those by (Inaudible). Thank you.

12 I do not have an objection to this documentation,  
13 other than there's one sheet that appears to have been taken  
14 off the Internet, maybe off of a CalPERS site, which we have  
15 never seen before, and which, I'm not sure, accurately  
16 describes investment in GID, and to Western Multi Family.

17 So we would object that -- for the record, it's  
18 entitled, on the top it says, "Responsible Contractor  
19 (Inaudible)." That statement, we would object to that,  
20 because we don't know the source. We don't know the extent  
21 to which it characterizes these investments into  
22 (Inaudible).

23 HEARING OFFICER MEHRANIAN: Before we address that, I  
24 have a question for Mayumi. You talk about other exhibit,  
25 Exhibit 6. We're not clear on what that is.

1 MS. OKAMOTO: Oh, I'm sorry. I just had asked in my  
2 request that the Prosecution Team's evidence, item  
3 numbers -- numbers 6 through 27, which is at Tab 4.6 through  
4 Tab 4.27.

5 I mentioned Exhibit 6 when I was requesting that  
6 these documents be entered into evidence. And it's at Tab  
7 -- I am asking that Tabs -- the documents in Tabs 4.6  
8 through 4.27, and 4.29 through 4.33, be entered as the  
9 Prosecution Team's evidence for this matter.

10 HEARING OFFICER MEHRANIAN: Mr. O'Neil, I'll sustain the  
11 objection, and allow the new evidence to get into the  
12 record, and the record will show your objection.

13 (Inaudible).

14 MR. O'NEIL: Thank you. It was my understanding that  
15 the entirety of the book is Department record at this point.  
16 I don't have an objection to the Prosecution Team's portion  
17 coming in, but I assume they don't have an objection to ours  
18 coming in, they may just get this --

19 MS. OKAMOTO: The reason why I didn't enter yours -- I  
20 think you enter your own evidence into the record.

21 MR. O'NEIL: I know. But since this is kind of less  
22 than evidentiary, the Rules of Evidence don't apply strictly  
23 here, I thought we should just agree that the whole thing be  
24 entered.

25 HEARING OFFICER MEHRANIAN: Yes.

1 MR. O'NEIL: Thank you.

2 MS. OKAMOTO: Okay. So getting into, I guess, more of  
3 the substance of our presentation, I wanted to spend just a  
4 few minutes going over the legal framework for M.M.Q.'s,  
5 because it says this particular sections of the Water Code  
6 do play a very critical role in the matter before you today.

7 The imposition of M.M.Q.'s is dictated by statute  
8 when certain violations are determined to have occurred.  
9 These penalties differ from the discretionary penalty  
10 context, in that the legislature has already kind of  
11 predetermined a monetary floor of \$3,000 dollars per  
12 violation, when the Regional Board finds that a certain type  
13 of violation has occurred.

14 And these violations can be broken down into three  
15 different categories. The first is serious effluent limit  
16 violations; the second is chronic effluent violations; and  
17 the third is a late reporting violation.

18 So where an effluent limit in an NPF permit is  
19 violated, a \$3,000 dollar minimum penalty shall be assessed,  
20 if that violation is determined to be quote, unquote  
21 serious.

22 So whether that violation is determined to be  
23 serious will depend on the -- if the effluent limit is for a  
24 conventional pollutant, which is known as a Group I  
25 Pollutant, or a toxic pollutant, which is known as a Group

1 II Pollutant; and what percent the reported value exceeds  
2 the effluent limit in the NPF permit.

3 If a (Inaudible) self-reported value for a Group I  
4 conventional pollutant exceeds that limit in the permit by  
5 40 percent or more, that is determined to be a serious  
6 violation. And similarly, if a self-reported violation  
7 exceeds a Group II toxic pollutant by 20 percent or more,  
8 that excedent is also determined to be a serious violation.

9 And M.M.Q.'s, once that characterization of a  
10 serious violation is made, a \$3,000 dollar MMP must apply to  
11 that particular violation.

12 The only way for an MMP to not apply after a  
13 violation has been determined is if the permittee can prove  
14 that the violation was caused for one of these four reasons:  
15 An act of war, an act of God, an intentional act of a third  
16 party, or if there was a biological treatment issue, that is  
17 a result of a biological facility starting up its process  
18 use for the first time.

19 These four defenses are the only statutorily  
20 recognized affirmative defenses in the Water Code, and the  
21 burden to prove that these defenses applies, rests with the  
22 permittee; and the applicability of these defenses is  
23 extremely narrow, just based on the requirements that are  
24 expressed in the Water Code Provisions.

25 So this next slide, I've kind of created a summary

1 of the specifics questions that we as the Prosecution Team  
2 could have asked ourselves when we determine whether a  
3 violation is serious, and then subject to an MMP.

4 So we asked: Did the permittee violate its effluent limit  
5 in its permit?

6 Are the constituent Group I conventionals or Group  
7 II Toxic pollutants?

8 Are the effluent limits exceeded by 20 or  
9 40 percent, depending the corresponding pollutant group; and  
10 then do any of those statutorily defenses or exceptions  
11 apply?

12 So if the Board find that the serious violation did  
13 occur, and that no statutory exceptions or defense applies,  
14 then an MMP must be assessed.

15 So the second category we refer to as the "chronic  
16 effluent limit violation category" where an effluent limit  
17 and a permit is violated four or more times in a period of  
18 six consecutive months, an MMP of \$3,000 dollars shall be  
19 assessed for the violation, unless it is the first, second,  
20 or third violation, within a period of six consecutive  
21 months.

22 So it's the fourth violation that triggers the  
23 first chronic violation. So again, this is a list of  
24 questions that we ask ourselves pertaining to chronic  
25 violations.

1           Did the permittee violate the effluent limits in  
2 the permit?

3           Is that violation the fourth violation or more in  
4 any period of six consecutive months?

5           And do any of these statutory defenses or  
6 exceptions apply?

7           And if there is -- if it is a fourth or more  
8 violation, and if there is no exception, then an MMP does  
9 apply.

10          So I do want to point out, though, that an effluent  
11 limit violation, it's possible for it to qualify as both a  
12 serious and a chronic violation; however, we don't penalize  
13 that violation twice. It's only given one \$3,000 dollar  
14 MMP.

15          The third category is the late reporting violation  
16 category. So a serious violation could also mean the  
17 failure to file a discharge monitoring report required per  
18 Section 13383 in the Water Code for each complete period of  
19 30 days, following the deadline for submitting the report,  
20 if that report is designed to insure compliance with  
21 effluent limits in permit.

22          So, to put it kind of another way: Every 30 days  
23 after that deadline to submit the report equates to a  
24 serious violation, which receives a \$3,000 dollar MMP.

25          So like the serious and chronic effluent

1 violations, once the late reporting violations has been  
2 established, the only way for the MMP's to not be assessed,  
3 is again, if there's a statutory exception or defense that  
4 applies.

5 And the same ones that would potentially be  
6 applicable to effluent limits could also apply to late  
7 reporting. And there's also, then, new statutory defenses  
8 that have become effective, starting on January 1st, 2011.

9 The first modifies the definition of a serious  
10 violation, where there's no discharge to waters in the  
11 United States, which occurred during that particular  
12 monitoring period. The second modifies the manner that the  
13 MMP is assessed. So rather than \$3,000 dollars every  
14 complete period of 30 days, only one \$3,000 dollar MMP is  
15 assessed per report, if specific requirements are met.

16 So for the purposes of this case, I'm going to  
17 focus just on the the second exception, which we'll refer to  
18 as the modified MMP assessment exception.

19 So in order for this new defense or exception to  
20 apply, four specific statutory requirements must be met.

21 First, the discharger did not, on any occasion  
22 previously receive a complaint, a notice of violation, or a  
23 notice of obligation to file monitoring reports. So they  
24 never heard from the Regional Board that they had this  
25 requirement.

1           The discharge -- the discharges covered by the  
2 subject reports do not violate effluent limitation.

3           Third, the discharger files that subject report  
4 30 days after it does receive written notice, either in the  
5 form of a complaint, a notice of violation, or a notice of  
6 obligation to file the report.

7           And then, finally, the discharger pays that  
8 modified penalty amount, but it's ultimately assessed within  
9 30 days of a Regional Board or a State Board order.

10           So as I mentioned earlier, this exception came into  
11 effect January 1st, 2011; but it applies to late reporting  
12 violations, regardless of when those violations occurred.

13           If a complaint to actually assess the MMP's has not  
14 been issued prior to July 1st, 2010. So in a way, it is a  
15 retroactive -- it is a retroactive provision in the Water  
16 Code.

17           So again, this is another checklist of questions  
18 that we go through for late reports.

19           Did the permittee submit the required report by the  
20 date that is listed in their monitoring and reporting  
21 program?

22           How many complete periods of 30 days is the report  
23 late?

24           And do any of these statutory defenses, including  
25 the new statutory provisions, apply?

1           And if the Board finds that serious violations have  
2 occurred, and no defenses or exceptions were applied, then  
3 the MMP must be assessed.

4           So in fact presentation this morning, we will  
5 demonstrate that the permittee committed 18 effluent  
6 violations; and that 17 out of those 18 violations are  
7 subject to \$51,000 dollars in MMP's.

8           Second, that the permittee submitted 15  
9 self-monitoring reports after the required deadlines; 11 out  
10 of the 15 reports are subject to the modified MMP assessment  
11 exception, while the last four reports are not. And they  
12 are subject to the normal late reporting rule, which is one  
13 \$3,000 MMP every 30 days.

14           In total, the Prosecution Team will recommend that  
15 the \$267,000 dollars in MMP's be assessed against the  
16 permittee for its NPS violations.

17           So I'll now turn it over to Hugh Marley, who will  
18 present specific facts and evidence.

19           MR. O'NEIL: I would like ask a question in in  
20 cross-examination on this issue, to (Inaudible) at this  
21 time.

22           HEARING OFFICER MEHRANIAN: They're not through with  
23 their direct testimony; as soon as he's completed  
24 (Inaudible) Direct testimony is when you'll be able  
25 cross-examine them.

1 MR. O'NEIL: So the way it works is I can recall anyone  
2 back to the stand for cross-examination?

3 HEARING OFFICER MEHRANIAN: Yes.

4 MR. O'NEIL: All right. That's fine.

5

6 HUGH MARLEY,

7 Called as a witness, having been first duly sworn  
8 by the Hearing Officer, was examined and testified as  
9 follows:

10

11 DIRECT EXAMINATION

12 THE WITNESS: Good morning, Madam Chair and Members  
13 of the Panel. My name is Hugh Marley. And I am a Senior  
14 Engineer Geologist with the Regional Board's Enforcement  
15 Team.

16 I'm presenting the specific facts which will  
17 support the prosecution team's complaint for MMP's issued to  
18 Western Multi Family, LLC, care of GID Investment Advisors,  
19 who I will refer to as the "permittee" for violating the  
20 waste discharge requirements, described in Board Order  
21 Numbers R4-2004-0058, and R4-2009-0047.

22 We serve as NPDS permits for the facility.

23 The purpose of this presentation is to brief you on  
24 the basis of this MMP, and to present the steps of the  
25 recommendation.

1           Western Multi Family, LLC, owns Sea Castle  
2 Apartments, marked as a red area on this slide.

3           This slide shows Sea Castle Apartments; it's  
4 located at 1275 Oceanfront Walk in Santa Monica, California.

5           On the first of April, 2004, the Regional Board  
6 adopted the 2004 permit to regulate non-processed waste  
7 water discharges to surface waters.

8           The Executive Officer of the Regional Board  
9 determined that the discharge from the permittee's facility  
10 met the conditions to be regulated by this permit, and the  
11 permittee was enrolled on February 16th, 2006.

12           On the second of April, 2009, the Regional Board  
13 adopted the 2009 permit, and rescinded the 2004 permit,  
14 except for enforcement purposes.

15           On the 19th of January, 2010, the Executive Officer  
16 of the Regional Board determined that the discharge from the  
17 permittee's facility continued to meet the conditions for  
18 continued enrollment under the 2009 permit.

19           Both the 2004 and 2009 permits allowed the  
20 permittee to discharge up to 20,000 gallons per day of  
21 cooling tower blow-down water and ground water to the Pico  
22 Kenter storm drain, which then flows into Santa Monica Bay,  
23 which is a water of the United States.

24           Both the 2004 and 2009 permits include daily  
25 maximum and monthly average effluent limits for total

1 suspended solids, settleable solids, total residual chlorine  
2 and copper. We use these limits as a baseline to determine  
3 whether a violation is considered serious.

4 This chart shows the effluent violations reported  
5 to us by the discharger. For your reference, the table is  
6 on Tab 4.2 on page 4.10, of your hearing package.

7 The permittee reported 18 effluent limit violations  
8 of the 2004 and 2009 permits in its self-monitoring reports.

9 These violations were for chlorine, settleable  
10 solids, and total suspended solids, which are considered  
11 Group I for conventional pollutants, and for copper, which  
12 is considered a Group II or toxic pollutant.

13 Fifteen of these eighteen violations are  
14 categorized as serious violations. These include nine  
15 copper limit violations, which are over 20 percent of the  
16 permit limit, and six total suspended solids, settleable  
17 solids, and chlorine limit violations, which are over  
18 40 percent of the limit.

19 The other three exceedents are the chronic  
20 violations; only two of these, which were subject to MMP's.  
21 So of the 18 effluent limit violations reported to us, 17  
22 are subject to MMP's.

23 The total amount of MMP's for the corresponding  
24 effluent limit violations is \$51,000 dollars.

25 The 2004 permits, monitoring and reporting program,

1 requires the permittees submit quarterly self-monitoring  
2 reports, by the dates listed in the table shown.

3 The 2009 permits, monitoring reporting program also  
4 requires the permittee to submit quarterly self-monitoring  
5 reports by the dates shown in the table. These quarterly  
6 monitoring reports are designed to insure that the  
7 permittee's discharged and in compliance with the effluent  
8 limits in the NPDES permit.

9 The permittee failed to timely submit 15  
10 self-monitoring reports by the required deadlines in the  
11 monitoring and reporting program, for the 2004 and 2009  
12 permits.

13 However, prior to issuing the ACL Complaints for  
14 this matter, the Prosecution Team determined that 11 of the  
15 15 rate reports qualified for the modified MMP assessment  
16 exception for late reporting.

17 Therefore, each of these 11 reports was subject to  
18 one \$3,000 dollar penalty only, and not \$3,000 dollars for  
19 every 30 days that the reports were late.

20 If you refer to Tab 4.2 on page 4.11, you will find  
21 the summary of the late reporting violations.

22 You will note that there are 195 complete 30-day  
23 periods, which constitute 195 serious reporting violations  
24 under the late reporting rule.

25 However, as I mentioned on the previous slide, 11

1 of the late reports qualified for the modified MMP  
2 assessment exception, and are therefore assessed one \$3,000  
3 dollar MMP per report.

4 You will notice that the fourth quarter, 2006  
5 report did not qualify for the modified MMP assessment  
6 exception; and the 52 complete 30-day periods are still  
7 subject to MMP's in the amount of \$156,000 dollars.

8 In total, there are 72 serious late reporting  
9 violations.

10 This slide lists the conditions that must be met in  
11 order for the modified MMP assessment exception to apply.  
12 The committee first received the notice of violation  
13 regarding the fourth quarter 2006 report on May 17th, 2011,  
14 this NOV is located at Tab 4.8, beginning on page 4.171.

15 In response to this NOV, the permittees submitted  
16 the subject report to the Regional Board on June the 8th,  
17 2011, within the 30-day period. However, upon review of the  
18 report, an effluent limit violation for copper was observed  
19 during the fourth quarter of 2006.

20 Therefore, the Prosecution Team determined that the  
21 modified MMP assessment exception is inapplicable to the  
22 fourth quarter 2006 report, and that the late reporting  
23 group applies.

24 On the 15th of December, 2011, the Chief Prosecutor  
25 issued Complaint Number R4-2011-0027-M to the permittee for

1 mandatory minimum penalties in the amount of \$267,00 dollars  
2 for the 17 effluent limit violations and 72 late reporting  
3 violations of the 2004 and 2009 permits identified in  
4 Exhibit 8 on Tab 4.2 on page 410 through 411 of your report.

5 Other than the modified MMP assessment exception,  
6 that the Prosecution Team previously determined applied to  
7 11 of the 15 late reports, no other statutory defenses or  
8 exceptions apply; therefore, the Regional Board must assess  
9 the MMP in the amount of \$267,000 dollars.

10 In conclusion, the permittee violated California  
11 Water Code Sections 33776, and 2004 and 2009 permits;  
12 therefore, a mandatory minimum penalty of \$267,000 dollars  
13 must be assessed for these violations.

14 The Prosecution Team recommends that the Regional  
15 Board impose the mandatory minimum penalty of \$267,000  
16 dollars. A Draft Hearing Panel -- a Draft Hearing Panel  
17 Report and Proposed Order are included as Exhibit 5 of your  
18 hearing package. This concludes our presentation.

19 HEARING OFFICER MEHRANIAN: Thank you. At this time, we  
20 will proceed with the cross-examination.

21

22 CROSS-EXAMINATION

23 BY MR. O'NEIL:

24 Q Okay. Mr. Marley, I would like to ask you --

25 HEARING OFFICER MEHRANIAN: Would you please sit here?

1 THE WITNESS: Sure. Last time I sat here, and the  
2 witness sat there, so I just wanted to do it --

3 HEARING OFFICER MEHRANIAN: Thank you. Just so --  
4 because there's an audio recording. Would you do so for the  
5 tape, because we don't have a court reporter.

6 MR. O'NEIL: Sure.

7 MS. CAMACHO: I did not even notice that microphone.  
8 Sure.

9 MR. O'NEIL: Is that yours?

10 BY MR. O'NEIL:

11 Q My name is Steve O'Neil, I'm an attorney with the  
12 law firm of Sheppard, Mullen, Richter, and Hampton.

13 For this hearing, I represent GID Investments --  
14 Investment Advisors, LLC. And with me is my witness who  
15 flew down from the Bay area today, is Sarah Postyn, who is  
16 with GID Investment Advisors, LLC.

17 Mr. Marley, I have some questions for you on  
18 cross-examination.

19 First, I would like to ask you a few questions  
20 about the parties, here.

21 Now, the permittee here, the actual legal permittee  
22 is Western Multi Family, LLC; correct?

23 A Yes.

24 Q All right. GID Investment Advisors is not the  
25 permittee; correct?

1 A GID is -- is associated.

2 Q Right. But that's -- that's not my question.

3 The question is: Who is the legal permittee? And  
4 you answered that it's Western Multi Family, LLC?

5 A Yes.

6 Q GID Investment Advisors does not appear as a  
7 permittee on the permit, does it?

8 A Correct.

9 Q And yet, GID Investment Advisors is the only  
10 Respondent here today; correct?

11 A Yes.

12 Q The complaint did not name Western Multi Family,  
13 LLC; correct?

14 A Correct.

15 Q All right. For a little context here, Mr. Marley,  
16 I would like to ask you a few questions about the type of  
17 discharges that are occurring at the Sea Castle Apartments.

18 The discharges here are essentially made up of two  
19 components; correct?

20 A Yes.

21 Q The first component is that there is ground water  
22 that is being pumped out of the ground to prevent flooding  
23 of the garage at the apartments; correct?

24 A Correct.

25 Q And that water was one of the two components of the

1 water that was being discharged to the storm drain when this  
2 permit was in effect; correct?

3 A Yes.

4 Q The other component was that there was an air  
5 conditioning unit on top of the building, and there was some  
6 condensate water that came off the air conditioning cooling  
7 system; correct?

8 A The cooling tower blow-down water.

9 Q Right. That's correct, right?

10 A Yes.

11 Q The permit characterizes this type of discharge as  
12 a minor threat to water quality; correct?

13 A I would have to look at the permit to say.

14 Q It's called a Category III threat; is that right?

15 A I -- I would have to look at the permit to see  
16 that.

17 Q Do you have it in front of you?

18 Can you look at it?

19 A If you are looking at it, maybe you could just tell  
20 me what page it's on.

21 Q Well, actually, I pulled that up off of the State's  
22 website, the Mutual Water Board Website, that this was a  
23 Category III type of threat to ground water, which is  
24 classified as a minor threat.

25 MS. OKAMOTO: If it's not -- I mean, if it's not in the

1 penalty document, I'm not sure that this (Inaudible).

2 BY MR. O'NEIL:

3 Q Well, he has said that it's in the permit, so I'm  
4 giving him an opportunity to a look at it and the Board can  
5 too.

6 Let me ask you this way, Mr. Marley, maybe I can  
7 short circuit this a little bit.

8 Are you aware of the distinction between a  
9 Category I threat, a Category II threat, and a Category III  
10 threat?

11 A I understand there are distinctions, yes, based on  
12 how serious the discharges.

13 Q And --

14 MS. OKAMOTO: The permit writer is one of our listed  
15 witnesses, so these questions as to what the contents of the  
16 permit, may be more appropriate for permit writing group,  
17 rather than the Enforcement group. And he is listed on our  
18 witness list. Those questions are better directed to him.

19 BY MR. O'NEIL:

20 Q I was under the impression that the Prosecution  
21 case had been completed, and that now it was my turn to  
22 cross-examine.

23 However, if the permit writer has more familiarity  
24 with this than Mr. Marley does, I'm happy to ask the permit  
25 writer.

1 MS. RASMUSSEN: You are correct, that the Prosecution  
2 Team Direct testimony has concluded at this time.

3 What happens in this proceeding is that on the list  
4 of witnesses provided, they don't all provide initial  
5 testimony, but they are available for examination for these  
6 types of purposes for Cross-Examination.

7 So I want to thank Ms. Okamoto for bringing this to  
8 the Panel Hearing's in-house attention. And if you could  
9 please identify which witness that is available to answer  
10 these questions, that would be great, and then the Hearing  
11 Panel, Ms. Mehranian, could call that witness to the stand  
12 and answer the questions.

13 MS. OKAMOTO: Those obviously (Inaudible)are in the  
14 audience today, they obviously may be the appropriate person  
15 that can answer the questions.

16 HEARING OFFICER MEHRANIAN: Yes. Let's invite Augustine  
17 to the witness bench.

18 AUGUSTIN ANIJILO,

19 Called as a witness, having been first duly sworn  
20 by the Hearing Officer, was examined and testified as  
21 follows:

22 THE WITNESS: My name is Augustin Anijielo. I'm the  
23 Chief of the Generating Unit.

24

25

1 DIRECT EXAMINATION

2 BY MR. O'NEIL:

3 Q Hello, Mr. Anijielo?

4 A Yes.

5 Q Did I say that right?

6 A Yes.

7 Q Thank you for coming up.

8 This permit that was issued to Western Multi  
9 Family, LLC, is actually a Category III type threat; is it  
10 not?

11 A This permit actually covers the range, different  
12 range of permits, as you know, cooling water. Sometimes it  
13 doesn't look right, depending on the quality, that  
14 determines how we issue this permit. It is really based on  
15 the quality of the water.

16 Q Okay. Sorry. Go ahead.

17 What I'm asking you is: Is the threat level to  
18 water quality posed by the discharge here at Sea Castle  
19 Apartments categorized as a Category or Level III threat?

20 A The correct level here is, it looks like -- but  
21 it's actually a Level up in III-I threat, which is a high  
22 level, (Inaudible).

23 Q A Level III, what? I couldn't understand you.

24 A It is III-1. I don't have the --

25 Q III-1?

1 A Yes, I don't have it here.

2 Q But it is -- that's within Category III, correct?

3 A Without having the paperwork in front of me, I  
4 think I may, you know, confuse between Category I and  
5 Category III.

6 Q Okay. Are you saying that you're confused as to  
7 what is Category I versus what is Category III?

8 A I want to tell you how we issue the permit.

9 We issue the permit based on the quality of the  
10 source water. So if the source water contains toxic  
11 pollutants, then it falls at a higher level, and that's how  
12 this permit is issued. This permit is issued, it is  
13 significant.

14 Q On your website, are you saying that the website  
15 does not identify this as a minor threat, a Category III  
16 threat?

17 A Our website doesn't identify this permit as, you  
18 know, Category III. This particular non-processed water  
19 apparently -- our website doesn't identify.

20 Q Are you sure about that?

21 A I'm sure about it, yeah.

22 Q Because I looked at it last night, and it said  
23 Level III, Category III.

24 MS. OKAMOTO: It would be helpful if we had a -- what the  
25 website says, without him being able to see it, he's trying

1 to explain what the categories are. So without him being  
2 able to see it, I don't know how you can expect him to  
3 answer it.

4 HEARING OFFICER MEHRANIAN: Do you have a copy of that?

5 MR. O'NEIL: I don't, but I could ask my office to ship  
6 one over.

7 BY MR. O'NEIL:

8 Q Let me ask you this, let me try it a different way,  
9 and move on after this.

10 A top-level threat is an industrial threat;  
11 correct, there's industrial waste discharge?

12 A Well, you know, when you're talking about, you  
13 know, categories and threats, it's really depends on how we  
14 issue a general permit, or how we assess. We're looking at  
15 how do we determine how much is going to determine the  
16 pollutant. Ask if anything to pay. So the way we  
17 determine, there are -- one, if there's toxic pollutants,  
18 the permit not from the highest fee, okay, if there is no  
19 toxic pollutants, and those things like conventional  
20 pollutants, and frequently is requiring a threat II.

21 And if there is not any, then it is a "one," so  
22 that's really how we determine this as to -- or how we  
23 determine how to assess fees.

24 Q So there was no treatment required here; correct?

25 A Of course, if there is treatment required in this

1 particular case, because either there is a potential  
2 occurrence of copper and other things.

3 Q Sir, are you saying that you -- do you know what  
4 level threat this water was classified as by the Regional  
5 Board?

6 MS. OKAMOTO: Madam Chair, I am going to object to this  
7 line of questioning. I mean, I'm not entirely sure where  
8 Mr. O'Neil is going with this line of questioning.

9 If the purpose is to get a better understanding of  
10 the background of the permit, that's one thing. If the  
11 purpose of the line of questioning is to challenge the  
12 validity of the permit, why the permit was categorized as a  
13 Category I or Category III, that's inappropriate at an  
14 Enforcement hearing, when this -- that issue has already  
15 been decided when the permit was issued. So I'm not  
16 entirely sure what the purpose of his questioning is.

17 HEARING OFFICER MEHRANIAN: Well, I think my position is  
18 that if website is the best source for defining the  
19 definitions of every permit, every level. So there's two  
20 ways they are going about it.

21 Would you please, Mr. O'Neil, respond to where you  
22 are going with this line of questioning?

23 MR. O'NEIL: Your Honor, I'm -- all I'm trying to do  
24 with this line of questioning is establish that,  
25 essentially, this is a very low level threat, that the Board

1 classifies it as such; that what we are doing, for the most  
2 part, is moving ground water from one spot to another, but  
3 we don't have any industrial operations on the property, and  
4 the only addition of any water here is from condensate from  
5 air conditioning units; and therefore, we're not talking  
6 about a serious threat, here, to the State's water.

7 And if the Board classifies it as a minor threat.

8 MS. RASMUSSEN: If I could just respond. If that is the  
9 purpose of the testimony, that testimony would be relevant  
10 if this were a pleading for discretionary penalty, in which  
11 we take into account the toxicity of discharge, that is  
12 discharged to waters of the United States. In an MMP  
13 hearing, we do not look at factors such as toxicity to apply  
14 (Inaudible), economic benefit considerations, ability to pay  
15 considerations. Those are not relevant considerations in an  
16 MMP hearing. So in fact, if that is the basis for this line  
17 of questioning, I would object as to relevance.

18 HEARING OFFICER MEHRANIAN: So in other words, I  
19 understand that this is not about the questioning the  
20 validity of the permit, and the definition of the permit, so  
21 we're not --

22 MS. RASMUSSEN: That's correct.

23 HEARING OFFICER MEHRANIAN: Then yes, we will sustain  
24 the objection. And I will allow you to move on.

25 MR. O'NEIL: All right. Moving on, then.

1           Mr. Marley, could you come back to the stand,  
2 please?

3                                   HUGH MARLEY,

4 Recalled as a witness, having been previously sworn by the  
5 Hearing Officer, testified as follows:

6

7                                   CROSS-EXAMINATION (Continued)

8 BY MR. O'NEIL:

9           Q     Mr. Marley, the Water Board has, what is called a  
10 Water Quality Enforcement Policy; correct?

11           A     That's correct. The State Board does.

12           Q     All right. I would like to show you a copy of the  
13 Water Quality Enforcement Policy, dated February 19, 2002.

14           A     Do you have the most recent version of this or is  
15 this the outdated one?

16           Q     Was this the version that was in effect in 2006?

17           A     It was.

18           Q     All right. That's what I am going to be talking  
19 about.

20                                The Water Board's Enforcement Policy -- I will ask  
21 you to turn to page 28.

22           MS. RASMUSSEN: I'm going to object to this line of  
23 questioning as well. This is outside the scope of Mr.  
24 Marley's direct testimony; so therefore, it's not  
25 appropriate to ask this type of question.

1           He did not testify about the enforcement policy in  
2 our investigation, so it's not appropriate talking outside  
3 the scope of Direct.

4           MR. O'NEIL: This is not -- I've been advised in a  
5 ruling on the best evidence objection, that this is not a  
6 strict evidentiary hearing. This is the kind of issue where  
7 even if Mr. Marley didn't address this in his Direct  
8 Examination, I would be able to call him as a witness in our  
9 case, as a rebuttal witness.

10          HEARING OFFICER MEHRANIAN: Well, I will allow you to  
11 continue, but it's a more appropriate question getting to  
12 rebuttal; but we'll allow you to continue.

13 BY MR. O'NEIL:

14          Q     All right. Thank you.

15                 Mr. Marley, can you turn to page 28, please, of the  
16 Water Enforcement Policy?

17          A     I'm on page 28.

18          Q     Okay. At the bottom of page 28, there is a  
19 subtitle that says, "Mandatory minimum penalties for MPDES  
20 violations;" correct?

21          A     Correct.

22          Q     And that's what we are talking about here, isn't  
23 it?

24          A     Yes.

25          Q     Okay. And this policy was in effect in 2006;

1 correct?

2 A Yes.

3 Q I'll ask you to turn to page 29, the next page in  
4 the Enforcement Policy?

5 A I'm on page 29.

6 Q This, in general, is speaking about the policy that  
7 the Water Board follows, or was supposed to follow in 2006  
8 for the assessment of mandatory minimum penalties; correct?

9 A Yes, it was our guidance, yes.

10 Q Okay. And this guidance, this policy that was in  
11 effect from the Board, the Board's own policy, stated that  
12 the intent of these portions of the California Water Code is  
13 to assist in bringing the State's permitted facilities into  
14 compliance with the Waste Discharge requirements; correct?

15 I'm looking at about three quarters the way down  
16 the page?

17 A I see it.

18 Q All right. It says, "RWQCB," or Regional Boards,  
19 should issue mandatory minimum penalties within seven months  
20 of the time that the violations qualify as mandatory minimum  
21 penalties; correct?

22 A It does.

23 Q And it says they should do that sooner if the total  
24 mandatory penalty amount is \$30,000 or more; correct?

25 A Correct.

1 Q Now, the Board did not follow that policy here, did  
2 they?

3 A It's guidance, it says it should.

4 Q This is a policy document; is it not?

5 MS. RASMUSSEN: Madam Chairman, if I could, excuse me  
6 for objecting so much, but the bulk of Mr. O'Neil's argument  
7 that he submitted, for case-in-chief purposes is to argue  
8 issues, like that argue issues of delay, and it seems more  
9 appropriate that this kind of information come in on their  
10 case-in-chief presentation, rather than in cross-examination  
11 of our particular witness, where we've not mentioned any  
12 issues pertaining to the enforcement policy, statute of  
13 limitations issues, or last issues.

14 This is their defense that he's trying to prove in  
15 cross-examination of the prosecution's key witness, and it  
16 seems more appropriate that it be done in their  
17 case-in-chief.

18 MR. O'NEIL: Actually, if I may address that. It's the  
19 Board's failure to follow its own policy that's at issue,  
20 here. My witnesses wouldn't know anything about that.

21 This is Regional Board policy that they were  
22 supposed to follow; as Mr. Marley has testified, they didn't  
23 follow it. They waited until 2011 to identify these late  
24 payment penalties. They waited until the person  
25 responsible, the party responsible for this Black Rock

1 Realty was no longer even associated with the property, and  
2 GID Investments was.

3 So how would my witnesses know about the Board  
4 policy?

5 This is the kind of testimony that can only come in  
6 through the Board's witnesses.

7 HEARING OFFICER MEHRANIAN: Okay. Yes, please continue  
8 with your Cross-Examination, but try to, because we think  
9 this is mostly your case-in-chief, so try to have that in  
10 your (Inaudible).

11 MR. O'NEIL: I do think that this is the kind of  
12 testimony that only a Board person would know about. My  
13 client is an asset manager of the property. The issue right  
14 now is did the Board follow its own policy?

15 And Mr. Marley has just said that they did not.  
16 And he is the most appropriate witness for this.

17 How would one of my asset manager clients know  
18 anything about that?

19 HEARING OFFICER MEHRANIAN: Could you reserve this for  
20 your questioning?

21 MR. O'NEIL: I have just a few more follow-up questions  
22 on that, if you don't mind; I'd like to finish it.

23 HEARING OFFICER MEHRANIAN: Yes.

24 BY MR. O'NEIL:

25 Q Okay. I'll ask you to turn to the complaint, Item

1 4.2.

2 You can see, looking at page 4-11, the fourth  
3 quarter of 2006 -- are you there yet?

4 A No.

5 Q I'll wait.

6 A Yes.

7 Q If you can turn to page 4.11, I'll turn your  
8 attention, please, to the fourth quarter of 2006 Monitoring  
9 Report.

10 There is a late reporting penalty assessed for  
11 \$156,000 dollars for this one report; correct?

12 A That's correct.

13 Q If the Board had followed its own policy that was  
14 in place at the time, the Board would have notified the  
15 discharger, the permittee, that they hadn't received their  
16 fourth quarter report until -- had not received the fourth  
17 quarter report in a timely fashion, within 70 days; isn't  
18 that right?

19 A The permittee is supposed to submit that report.

20 Q That's not my question, Mr. Marley. The question  
21 is about the policy. If the board had followed its policy,  
22 they would have notified the permittee of the missing report  
23 within 70 days of it being late; correct?

24 A I have not done the 70 day; can you explain how you  
25 get to 70 days?

1 Q Let's turn back to the Water Quality Enforcement  
2 Policy.

3 Excuse me. Seven months is what I meant. They  
4 would have notified the permittee within seven months of the  
5 failure to receive the fourth quarter 2006 Monitoring  
6 Report, correct? If they had followed their policy, would  
7 have issued --

8 A If -- policy says issue an MMP within seven months.

9 Q Right. And that would have put the permittee on  
10 notice that they hadn't filed this report; correct?

11 A Yes.

12 Q And with the seven months time period, there would  
13 have been at most seven months of late penalties; correct?

14 A Perhaps.

15 Q If the permittee had been given notice and the  
16 permittee had turned in the report; right?

17 A Okay.

18 Q All right. Now, the Board knew about the fact  
19 that -- or did the Board know about the fact that the fourth  
20 quarter 2006 report had not been turned in in a timely  
21 fashion in 2007?

22 A Eventually we did know, yes.

23 Q What kind of -- what kind of filing and tracking  
24 system was in place in 2007 for the Board to determine  
25 whether a quarterly report came in or not?

1           A     Would you like me to walk you through the process?

2   Is that what you --

3           Q     Was there a standard process in effect?

4           A     There was a standard process, yes.

5           Q     And did the standard process involve notifying  
6   parties who had not submitted their reports by the deadline?

7           A     No.

8           Q     Excuse me?

9           A     No.

10          Q     No, it did not?

11          A     No.

12          Q     Did the standard process include analyzing the  
13   reports for effluent limit violations when they first came  
14   in?

15          A     Yes.

16          Q     And what was done in the standard process about an  
17   effluent limit violation that was noted in a quarterly  
18   report in 2007?

19          A     When a report is reviewed and an effluent violation  
20   is noticed, or a late report is noticed, the discharger is  
21   typically given a courtesy call by our staff, and the  
22   reports are asked for, and then after a notice of violation  
23   or an early settlement offer letter, an MMP is issued to the  
24   discharger.

25          Q     And that wasn't done here, correct, until 2011?

1           A     Yes.  There was a courtesy call made on the earlier  
2 date, though.

3           Q     When was that, and who made it, please?

4           A     That could be as a record of communication on --  
5 it's on Tab 4-30, there's a record of communication from  
6 staff about voicemails that were left to Mr. Nakaoka  
7 regarding two issues, missing -- both these issues were  
8 missing reports.

9           Q     Let's turn to that, since you've brought it up.  
10                Item 30 references a voicemail that was left to  
11 Leland Nakaoka on April 11th, 2011; correct?

12          A     Yeah.

13          Q     Was this, to your knowledge, the first time that  
14 anyone had tried to contact any person associated with the  
15 Sea Castle Apartments about the fourth quarter 2006 report?

16          A     Yes.

17          Q     Now, on two prior occasions, Mr. Nakaoka was  
18 contacted by the Water Board; are you aware of that?

19          A     No.  Are you referring to the staff visit to the  
20 facility?

21          Q     No.  By the way, are you aware that Mr. Nakaoka was  
22 associated with Black Rock Realty?

23          A     I believe you had mentioned that before.

24          Q     And that by this time, April 11th, 2011, Black Rock  
25 Realty was no longer even associated with Sea Castle

1 Apartments in any way; are you aware of that?

2 A Yes.

3 Q Now, other than this voicemail -- first of all, are  
4 you aware of whether the phone call was returned by  
5 Mr. Nakaoka?

6 A No.

7 MS. OKAMOTO: The person who wrote this record of  
8 communication is on the prosecution team, and will have  
9 direct knowledge about any contact or interaction with  
10 Nakaoka.

11 Mr. Marley was not the person who created this  
12 record of communication. This record was created by Andrew  
13 Choi. So if there's questions pertaining to this specific  
14 document, Mr. Choi is the preferred person to answer that.

15 MR. O'NEIL: The reason I'm asking Mr. Marley is because  
16 in direct -- or excuse me, without any questioning about it,  
17 he referenced this document himself. He's the one who  
18 brought up this document.

19 HEARING OFFICER MEHRANIAN: Because you're getting into  
20 the details, it's better if you let Mr. Choi answer.

21 MR. O'NEIL: That's fine.

22 HEARING OFFICER MEHRANIAN: Could you come up to the  
23 witness stand?

24

25

1 ANDREW Choi,

2 Called as a witness, having been first duly sworn  
3 by the Hearing Officer, was examined and testified as  
4 follows:

5 DIRECT EXAMINATION

6

7 BY MR. O'NEIL:

8 Q Hi, Mr. Choi. I was asking about this voicemail  
9 record that you left for Leland Nakaoka.

10 And was this the first time that you had ever  
11 brought the fourth quarter 2006 report being missing, to the  
12 attention of Black Rock?

13 A As the record of communication states, I was  
14 following up to the missing fourth quarter 2006 report.

15 Q Now, Mr. Nakaoka (sic), were you aware at this time  
16 that Black Rock was no longer associated with the property?

17 A Yes.

18 Q You were aware?

19 A Not at this time; but now I know.

20 Q And did Mr. Nakioka ever return your phone call?

21 A I believe he didn't.

22 Q All of these prior requests that you've referenced,  
23 the third quarter of '10, and the fourth quarter '10  
24 reports, and the fourth quarter 2006 reports, all of those  
25 requests had been made to Black Rock, hadn't they?

1 A Yes. I made the requests to Mr. Nakaoka.

2 Q And prior to that, Mr. Nakaoka had been -- had  
3 received several calls from the Regional Board; correct?

4 A I believe he did.

5 Q And he was with Black Rock; correct?

6 A Yes.

7 Q He was never associated with GID Investments;  
8 correct?

9 A Yes.

10 MR. O'NEIL: Thank you, Mr. Choi. I appreciate it.

11 HEARING OFFICER MEHRANIAN: Thank you.

12 Mr. Marley, you might want to come back?

13 MR. O'NEIL: Yes, Mr. Marley. Thank you.

14

15 HUGH MARLEY,

16 Recalled as a witness, having been first duly sworn by the  
17 Hearing Officer, was examined and testified as follows:

18

19 CROSS-EXAMINATION (Continued)

20 BY MR. O'NEIL:

21 Q Mr. Marley, you're aware that GID Investments was  
22 contacted by the Regional Board after we advised the  
23 Regional Board that Black Rock was no longer associated with  
24 this property?

25 A Correct, yes.

1 Q In fact, we advised the Regional Board that GID was  
2 now the asset manager and communications should be sent to  
3 GID, correct?

4 A Yes.

5 Q And GID submitted that missing fourth quarter 2006  
6 report immediately, didn't they?

7 A It was submitted, yes.

8 Q Okay. Now, in talking about the fourth quarter,  
9 2006, during your presentation, you talked about the ability  
10 for someone who submits a late report to get the late  
11 reporting penalty nullified if they submit it within  
12 30 days, was one of the requirements; correct?

13 A Yes.

14 Q And that was done; correct?

15 A Yes.

16 Q That was done even though the original notice was  
17 sent on May 17th to Ms. Kralovec, who was associated with  
18 Black Rock; right?

19 A Yes, I believe it was sent to Ms. Kralovec.

20 Q Right. So it got sent to Ms. Kralovec. GID  
21 Investments got ahold of it, and even though there was this  
22 delay because it was submitted to a party that was no longer  
23 with Sea Castle, still it was submitted within 30 days,  
24 correct?

25 A It was submitted, yes.

1 Q Now the fourth quarter 2006 report, I'd like to  
2 talk to you a little bit about that, focus on that, because  
3 it is by itself approximately 60 percent of the entire  
4 penalty that the Regional Board is -- staff is asking this  
5 Hearing Board to have the Regional Board to assess; correct?

6 A It's about \$156,000.

7 Q \$156,000 out of about \$260,000.

8 So we are talking roughly 60 percent; right?

9 A I don't have a calculator.

10 Q We'll let the math speak for itself.

11 Then getting to the fourth quarter of 2006 report,  
12 you've already said that it was submitted right away, as  
13 soon as GID knew about it, right?

14 A Yes.

15 Q Okay. But the reason you say that affirmative  
16 defense doesn't apply is because there was an exceedance; is  
17 that right?

18 A Yes.

19 Q So looking at the fourth quarter 2006 monitoring  
20 period report, which is on page 410, this is the charge of  
21 effluent limit violations?

22 A Yes.

23 Q You can see the second row down is for the fourth  
24 quarter 2006; correct?

25 A Yes.

1 Q Now, the permit limit referenced there is 2.9  
2 milligrams per liter; correct?

3 A Yes.

4 Q And the milligrams per liter translates roughly  
5 into parts per million; is that right?

6 A Roughly.

7 Q Okay. And the actual reported value here was three  
8 parts per billion; correct?

9 A Reported value was three milligrams per liter.

10 Q Have you looked at the actual 2006 report?

11 A I don't have the 2006 report in front of me.

12 Q I will ask you to turn to -- I'm trying to find the  
13 right tab here.

14 MS. OKAMOTO: 4.13

15 MR. O'NEIL: 4.23?

16 MS. RASMUSSEN: 4.13.

17 MR. O'NEIL: I think we've got it in our submittal as  
18 well.

19 MS OKAMOTO: I believe it is the last page on Tab 4.13.

20 BY MR. O'NEIL:

21 Q All right. So we've got, on page 4.193 and 4.194;  
22 4.194, the copper detection limit, or the copper detection  
23 here is three micrograms per liter; correct?

24 A Yes.

25 Q And that's three parts per billion; correct?

1 A It's three parts per billion.

2 Q And your Notice of Violation, which is the official  
3 notice by which you provide people with Notice of  
4 Exceedance, says that the limit, the permit limit is  
5 three -- or it's 2.9 parts per million; correct?

6 A Milligrams per liter.

7 Q That's right, it's parts per million; right?

8 A Yes.

9 Q So turning back to page 4.10 and 4.11?

10 A Yes.

11 Q Turning to the second quarter of 2006, now I'm  
12 talking about the late reporting violations.

13 I will object to the attorney sitting next to the  
14 witness. I don't think it's appropriate at a hearing.

15 MS. RASMUSSEN: I'm just trying to help him find the --

16 HEARING OFFICER MEHRANIAN: You know, she's the counsel  
17 for the Prosecution. She's allowed.

18 BY MR. O'NEIL:

19 Q The \$156,000 penalty, which was the late reporting  
20 penalty for the fourth quarter of 2006, is based on the  
21 supposed exceedance of 3.0 parts per million; correct?

22 A That's correct.

23 Q And yet, the test shows that the test report result  
24 was actually 3.0 parts per billion, or one one-thousandth of  
25 the limit that is set forth on your Notice of Violation; is

1 that right?

2 A Yes.

3 Q Now, turning to the fourth quarter, 2006 report,  
4 the Board wants to assess a \$156,000 dollar penalty for 52  
5 late months, for 52 late periods; correct?

6 A Yes.

7 Q And you're attempting to assess that against the  
8 Respondent in this case, which is GID Investments; correct?

9 A Yes.

10 Q But GID Investments had no control over reporting  
11 or submitting quarterly reports in 2006; isn't that right?

12 A Yes.

13 Q There was no way for GID Investments to get this  
14 report in on time, because someone else was responsible for  
15 it for those four years; it was Black Rock Realty, correct?

16 A Correct.

17 Q Turning back to the November 15, 2006, date, on  
18 page 4-10, the copper limit here, the effluent violation set  
19 forth there for the fourth quarter report of 2006 identified  
20 this as a three percent exceedance of the standard; correct?

21 A It did.

22 Q And that was not sufficient, was it, to issue an  
23 effluent limitation penalty?

24 A You mean, if it was three percent, would that be  
25 sufficient? Could you restate your question, please?

1 Q What I'm asking is: You did not -- the Board is  
2 not attempting to assess a penalty for that supposed  
3 exceedance; correct?

4 A No.

5 Q And that's because it's not at a high enough  
6 exceedance level to issue such a penalty; is that right?

7 A Correct.

8 Q And yet, the Board wants to take that supposed  
9 exceedance and bootstrap it into a \$156,000 dollar fine  
10 against GID, which had no ability to control the late report  
11 submittal; correct?

12 A Correct.

13 Q Now, copper was tested every quarter; correct?

14 A Copper is one of the constituents being tested  
15 every quarter.

16 Q And the Board has gone back and combed through all  
17 the quarterly reports; right?

18 A We've reviewed the quarterly reports.

19 Q And I notice that there's no copper exceedance  
20 identified here for the first quarter of 2007; correct?

21 A That's correct.

22 Q So within three months of the quarterly report that  
23 was missing, the Board had a report, actually within --  
24 within approximately eight months, because Black Rock  
25 apparently got a late -- late reporting, had a late

1 reporting problem for the first quarter of 2007.

2 But the Board received the first quarter 2007  
3 report that showed no copper exceedance; correct?

4 A There's no copper exceedance, yes.

5 Q And even with all that information, you still want  
6 to assess a \$156,000 dollar late reporting penalty for the  
7 fourth quarter of 2006, against a party who wasn't even  
8 involved with the property at the time; is that right?

9 A Against the permittee, yes.

10 Q GID is not the permittee, are they?

11 A Is that a question?

12 Q Yes. GID is not the permittee, are they?

13 A GID is not listed on the permit, correct.

14 Q And that's how you determine who the permittee is,  
15 correct, through who's listed on the permit?

16 A Yes.

17 MR. O'NEIL: I have no further questions for Mr. Marley.

18 I do have a couple for Ms. Okamoto on the identity  
19 issue.

20 HEARING OFFICER MEHRANIAN: Can I just get a time check  
21 from the Clerk, as to how much time is remaining in both  
22 parties cases so far, the time used being clocked for direct  
23 testimony for the prosecution team, and then time remaining  
24 that has been clocked for cross-examination by GID?

25 THE CLERK: Prosecution Team has 55 minutes left, and

1 Mr. O'Neil has 45 minutes left.

2 MR. O'NEIL: I have 45?

3 THE CLERK: Yes.

4 HEARING OFFICER MEHRANIAN: So 45 minutes left to -- for  
5 finishing Cross-Examination, presenting Direct testimony,  
6 and any Rebuttal.

7 MR. O'NEIL: That will be definitely be sufficient.

8 HEARING OFFICER MEHRANIAN: Okay.

9

10 MYUMI OKAMOTO,

11 Called as a witness, having been first duly sworn by the  
12 Hearing Officer, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. O'NEIL:

16 Q I just have a few questions for Ms. Okamoto.

17 Ms. Okamoto, you testified regarding the role of  
18 GID Investments Investment Advisors; correct?

19 A Yes.

20 Q And based on your records, GID Investment Advisors  
21 first became involved with this property on October 1st,  
22 2010, correct?

23 A That's my understanding, yes.

24 Q And before that, Black Rock was the party that was  
25 the asset manager for this property; correct?

1           A       Yes. My understanding is from 2001 until October  
2 1st, 2010, Black Rock was asset manager of the named  
3 permittees at that, which was the building, yes.

4           Q       The permittee is identified as Western Multi  
5 Family, LLC; correct?

6           A       That is correct.

7           Q       And one of the things you talked about when you  
8 were standing up here was, you put up a slide that said that  
9 Black Rock is the General Partner -- or excuse me, that GID  
10 is the General Partner in Western Multi Family?

11          A       That's my understanding, yes.

12          Q       What is that understanding based upon?

13          A       On independent research that I did, because the  
14 relationship between GID and Black Rock was never explained  
15 to the Prosecution Team, so we had to come up with our own  
16 explanation of what we thought the relationship was.

17          Q       Did anyone at GID ever refuse to answer any  
18 questions by the Prosecution Team about the relationship?

19          A       There was no refusal. We never received one. We  
20 were never notified that Black Rock -- that the change from  
21 Black Rock to GID happened until we got a letter from you  
22 saying that GID is now the proper party, for contact  
23 purposes.

24          Q       For contact purposes; correct?

25          A       Of Western Multi Family.

1           So when we sent notices and contacted people at  
2 Black Rock, it's because it was our -- the staff's  
3 understanding, that they were the appropriate people,  
4 because when the change from Black Rock to GID occurred, we  
5 did not know, and it's the responsibility of the operator to  
6 notify the Regional Board when such a change happens,  
7 otherwise, how are we ever supposed to know that parties  
8 have changed?

9           Q     Western -- excuse me -- GID did notify the Regional  
10 Board on June 15th, 2011; is that correct?

11          A     That is correct, in response to the notice of  
12 violation we sent to Western Multi Family, where you  
13 responded that you represent Western Multi Family, and that  
14 GID is the proper party for contact purposes. So we took  
15 that to mean, okay, GID is now responsible for Western Multi  
16 Family.

17          Q     You took it to mean that?

18          A     It was never explained to us otherwise.

19          Q     But you didn't ask?

20          A     We had a meeting with you, and it was never  
21 explained to us otherwise.

22          Q     All right, Ms. Okamoto. You have testified that  
23 the permittee here is Western Multi Family, LLC; correct?

24          A     That is correct.

25          Q     And the permittee has not changed, has it?

1           A       Since 2001, Western Multi Family has been the  
2 property owner of the building; that's correct.

3                    What has changed is this -- the confusing  
4 relationship of who is an asset manager, what they are, what  
5 their relation -- their legal relationship to Western Multi  
6 Family is, what your legal -- what GID's legal relationship  
7 to Western Multi Family is, and to Black Rock.

8                    So we did the best that we could, piecing this  
9 information together without any help from you, or Black  
10 Rock, or anyone, to provide an explanation otherwise.

11           Q       We actually notified you on June 15th, 2011, that  
12 the proper contact person was now GID Investment Advisors,  
13 correct?

14           A       That is correct.

15           Q       And we never said that the permittee had changed,  
16 correct?

17           A       No. But you also, at the time, never said that it  
18 was inappropriate or incorrect for us to have named you in a  
19 complaint.

20                    The complaint was already out on the street, and  
21 GID was named. Not once was it ever brought to our  
22 attention after the complaint was issued, that GID was not  
23 the properly-named party.

24                    Had we been notified of that, yeah, we probably  
25 would have changed it back to Western Multi Family.

1 Q We put it in footnote one of our brief, didn't we?

2 A I assume you did. If that's what you did, then,  
3 yes.

4 MR. O'NEIL: I have no further questions. Thank you.

5 HEARING OFFICER MEHRANIAN: Do you want to proceed with  
6 your Direct testimony?

7 MR. O'NEIL: Yes, thank you.

8 I would like to introduce Ms. Sarah Postyn.

9 Ms. Postyn is with GID Investment Advisors.

10 SARAH POSTYN,

11 Called as a witness, having been duly sworn by the  
12 Hearing Officer, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 MS. POSTYN: My name is Sarah Postyn, I'm with GIS  
16 Investment Advisors.

17 BY MR. O'NEIL:

18 Q And what is GID Investment Advisors?

19 A We are the investment advisor to Western Multi  
20 Family.

21 Q And what does an investment advisor do, such as  
22 GID?

23 A We're responsible for strategic property decisions;  
24 and we will issue operational decisions, operating the park,  
25 overseeing operations of the property.

1 Q Okay. And does GID Investment Advisors respond to  
2 legal issues that are raised with respect to the properties  
3 that they manage?

4 A Yes.

5 Q And does GID play a role in what investment  
6 decisions are made on behalf of the client?

7 A Yes.

8 Q All right. What is your job title with GID  
9 Investment Advisors?

10 A Vice President of Portfolio Management.

11 Q And how long has GID Investment Advisors been  
12 acting as advisor to Western Multi Family, LLC, the owner of  
13 Sea Castle Apartments?

14 A We took over that role in October of 2010.

15 Q Can you describe for us what the circumstances were  
16 when GID took over the role of asset manager for Western  
17 Multi Family?

18 A Sure. Black Rock was removed as asset manager for  
19 the property, and GID was named asset manager. And we  
20 bought out Black Rock's position in Western Multi Family.

21 Q Okay. Is GID a general partner in Western Multi  
22 Family?

23 A No. It's an LLC.

24 Q All right. Is GID -- what kind of ownership stake  
25 does GID hold in Western Multi Family?

1           A       We have a two percent interest in Western Multi  
2 Family.

3           Q       Okay. You said earlier that Black Rock had been  
4 removed as the asset manager; correct?

5           A       Correct.

6           Q       What was Black Rock's role before GID took over the  
7 asset management of Western Multi Family?

8           A       They acted as investment manager to Western Multi  
9 Family.

10          Q       Did Black Rock also handle the legal issues?

11          A       Yes. Legal and operational.

12          Q       So Black Rock was responsible for responding to  
13 agency issues, such as the one that's been posed here;  
14 correct?

15          A       Correct.

16          Q       All right. Were you involved at all in the  
17 transaction by which GID replaced Black Rock as the  
18 investment advisor for the property owner?

19          A       No, but I've come to learn about the discussions  
20 and transactions as part of my job.

21          Q       Okay. When did you get assigned the Western Multi  
22 Family portfolio?

23          A       I joined GID in January of 2011, and I took on that  
24 responsibility at that time.

25          Q       During the transaction, and I understand you've had

1 since this whole issue broke open, you've had discussions  
2 within the company and with Black Rock about this issue;  
3 correct?

4 A I have.

5 Q Do you know -- did GID Investment Advisors engage  
6 in discussions with Black Rock when GID was looking to buy  
7 out Black Rock's ownership interest in Western Multi Family?

8 A Yes.

9 Q An did GID ask Black Rock to expose any potential  
10 specific liabilities during those negotiations?

11 A Yes.

12 Q And did Black Rock disclose any legal risks  
13 associated with the Regional Water Control Board?

14 A No.

15 Q GID was conducting these discussions when?

16 A During 2010.

17 Q So there were discussions with Black Rock leading  
18 up to GID's purchase of the two percent interest?

19 A Correct.

20 Q And GID also stepped in as the investment advisor;  
21 right?

22 A Correct.

23 Q And when did you become aware of the possibility  
24 that the Regional Board was attempting to fine the permittee  
25 in this matter?

1           A       Late May or early June of 2011, Miss Crolov --  
2           Angela Kralovec, who worked at Black Rock, she was the asset  
3           manager there, forwarded the letter that had been sent to  
4           Black Rock from the Regional Water Board.

5           Q       And by this time, January of 2011, the purchase of  
6           the two percent interest in Western Multi Family had taken  
7           place, and now GID was running the show; right?

8           A       Correct.

9           Q       You said that you had a conversation with Angela  
10          Kralovec?

11          A       Correct.

12          Q       And she was, essentially, the person who held your  
13          job at Black Rock?

14          A       That's my understanding, yes.

15          Q       You said she sent you --

16          A       She forwarded the letter from the Water Board, and  
17          when I received it, I called her to get more information,  
18          because needless to say, I was a little bit surprised to see  
19          a letter with such offensive fines, and she put me in touch  
20          with Leland Nakaoka.

21          Q       Was this -- I'm sorry. Were you done?

22          A       Yes.

23          Q       Was this the very first time you ever heard of a  
24          problem between the permittee and the Regional Board over  
25          exceedances and late reporting issues?

1 A Yes.

2 Q So what did you do then, after you found out about  
3 the problem?

4 A After calling Angela, when she put me in touch with  
5 Leland, I called him to understand. But she had told me on  
6 the phone that he was the person responsible for the  
7 reporting process, and I called him to find out more about  
8 Black Rock's process, and why these reports had not been  
9 submitted, and why the fines hadn't been paid.

10 Q And are you certain after those conversations, that  
11 the reports actually were not submitted?

12 A He had told me that he had had discussions with the  
13 Water Board in, I believe, July or August of 2010, and was  
14 told about missing reports, but not of any fines, and they  
15 had submitted a list of reports that were late.

16 He was not told about the missing fourth quarter  
17 2006 report, per his conversation with me.

18 Q All right. So what did you do then?

19 Did you gather the reports that were supposedly  
20 missing?

21 A I did. Leland had given me the name of the  
22 contractor/consultant who does monitoring, and I got in  
23 touch with him, and they tracked down the reports, and we  
24 submitted them in early June.

25 Q And all those reports were conducted in the quarter

1 they were supposed to be conducted in?

2 A Correct.

3 Q And the name of the consultant that you spoke to --  
4 what was the name of the person --

5 A Tom Fukumon.

6 Q Thomas Fukumon?

7 A Yes.

8 Q He was with Chem Pro Laboratories?

9 A Correct.

10 Q And your understanding is that he acted as the  
11 tester for Black Rock, when Black Rock was the asset  
12 manager; correct?

13 A Correct.

14 Q And how long did it take you, once you got  
15 notification of the supposedly missing reports, to gather  
16 all the reports, and send them in?

17 A I think tops, it took a week or two. He had to go  
18 back into the files and to the report to track it down. And  
19 we asked him for -- to expedite the process.

20 Q We've been talking a little bit about the fourth  
21 quarter of 2006 report during the prosecution's case and the  
22 cross-examination.

23 Is that one of the reports that you tracked down?

24 A The fourth quarter of 2006?

25 Q Yes, per Mr. Fukumon?

1 A Yes.

2 Q Now, did you ever discuss the fourth quarter 2006  
3 report with Leland Nakaoka of Black Rock?

4 A I asked him why it hadn't been submitted, when they  
5 had submitted the late reports previously, in August or July  
6 of 2010, and he told me that he wasn't aware that -- he  
7 wasn't told by the Regional Water Board that it was a  
8 missing report.

9 Q So did Mr. Nakaoka tell you that the Water Board  
10 had called him and told him, given him a list of missing  
11 reports?

12 A Yes.

13 Q And he told you that he had submitted that list;  
14 correct?

15 A Yes.

16 Q And then, at some subsequent date, did he -- in  
17 that same conversation, did he tell you that at some  
18 subsequent date, the Regional Board had called him again?

19 A He had not mentioned that.

20 Q Well, did he say he had submitted it twice to, and  
21 had made two submittals to the Regional Board?

22 A Earlier in 2010?

23 Q Yes?

24 A I believe so.

25 Q And that on both occasions, he gave the Regional

1 Board every report they asked for?

2 A Correct.

3 Q And that in neither of those conversations had the  
4 Regional Board asked for the fourth quarter 2006 report?

5 A Correct.

6 Q And that is what Mr. Nakaoka told you?

7 A Yes.

8 Q Was Mr. Nakaoka in charge of legal compliance for  
9 the Black Rock people?

10 A I believe he was in charge of the Architectural  
11 Engineering Group, and he would be in charge of this type of  
12 legal compliance, as it related to monitoring.

13 Q Now, Ms. Postyn, do you feel that GID Investment  
14 Advisors has been prejudiced by the way that the  
15 notification and failure to follow Board policy has affected  
16 GID Investment Advisors here?

17 A Yes. I think the penalties that have been given to  
18 us are excessive, given the fact that we weren't made aware  
19 of them. As soon as we were made aware of them, we did  
20 submit the reports; and frankly, as soon as Black Rock was  
21 made aware of missing reports, they submitted them as well.

22 In addition, had we known about these violations  
23 prior to our takeover as asset manager, and Black Rock would  
24 have had to notify us of them; and they weren't made aware  
25 of them either. So as part of that -- had we been made

1 aware at the appropriate time, or had Black Rock been made  
2 aware at the appropriate time, the onus would have been on  
3 Black Rock, not on GID.

4 Q All right. So during the discussions with Black  
5 Rock to take over their two percent interest, you would have  
6 asked for disclosures of any legal problems; right?

7 A We did ask for disclosures.

8 Q And they didn't reveal this legal problem?

9 A No.

10 Q And you later became aware that they didn't reveal  
11 this legal problem because they didn't know about it; right?

12 A Correct.

13 Q Ms. Postyn, did you take steps to try to solve this  
14 problem, the problem of quarterly reporting and exceedances?

15 A Yes, the quarterly reporting, we had submitted the  
16 reports as soon as we were made aware, and we had submitted  
17 them -- missing ones in a timely fashion, as soon as we knew  
18 about it.

19 Thereafter, we submitted them in a timely fashion,  
20 and then we had to solve the problem of the excess effluent  
21 emissions. We had the permit changed to discharge incentive  
22 to the storm drain to the sewer, and it's now processed by  
23 the Sanitation District.

24 Q So you made sure that there were no more  
25 discharges; correct?

1 A Correct.

2 Q Under the storm -- under the permit, N.P.D.E.S.  
3 permit?

4 A Correct.

5 Q By hooking up to the publicly-owned treatment works  
6 and the sewer discharge, right?

7 A Correct.

8 Q Why did you take that step?

9 A It seems more efficient and more economical to take  
10 that.

11 MR. O'NEIL: I have no further questions for you. Thank  
12 you, Ms. Postyn.

13 HEARING OFFICER MEHRANIAN: Are you -- do you have more  
14 witnesses? Are you done with your --

15 MR. O'NEIL: We had submitted three declarations with  
16 our papers. They are from Black Rock people who we do not  
17 have the power to bring to this hearing. And they are part  
18 of the record, I believe Ms. Okamoto supplemented the  
19 missing Kralovec declaration this morning. So with both of  
20 those witness statements, our witness and the  
21 Cross-examination, we are done with our witnesses.

22 HEARING OFFICER MEHRANIAN: Thank you.

23 MS. RASMUSSEN: I'd actually like to address the issue  
24 of the three submitted written testimonies. We did not,  
25 until this morning, realize that witnesses two through

1 four on their witness list, were not going to be present  
2 today.

3 And given that the Prosecution Team is -- has the  
4 right to cross-examine witnesses and question their Direct  
5 testimony, because they're not here to verify their  
6 declarations, and they are not present for us to  
7 cross-examine, I would ask that their written testimony be  
8 stricken from the record, because they're not here, and  
9 we're not able to ask them any questions about their --  
10 about their statements; particularly, as you heard in some  
11 of the testimony just now, there's been, in the written  
12 statement by Mr. Nakaoka, he had said that he had never  
13 received notice about the fourth quarter 2006 report.

14 But as you heard earlier from Mr. Choi, in his  
15 record of communication, when he spoke to Mr. Nakaoka, he  
16 did, in fact, follow-up on that late fourth quarter 2006  
17 report.

18 So the fact that he's not here for me to be able to  
19 ask questions really inhibits our ability on  
20 cross-examination, based on the pre-submitted written  
21 testimony.

22 MR. O'NEIL: I'm going to object to that  
23 characterization, first of all. Mr. Choi did not testify  
24 that he spoke with Mr. Nakaoka. He testified that he left a  
25 voicemail message. That voicemail message came in seven

1 months after Black Rock was no longer involved, and that was  
2 the first time the fourth quarter report was ever mentioned.

3 As for the witnesses not being here, we do not have  
4 subpoena power. I have brought my witness down from  
5 Northern California, because she is associated with GID  
6 Investments, and we can bring her down.

7 However, we do not have the ability to drag Black  
8 Rock people here, and that's why the declarations were  
9 submitted. There's nothing in those declarations that is  
10 other than -- backed up by documents, or already been  
11 verified by this hearing.

12 So it would be completely inappropriate to knock  
13 those declarations out; I think they have already been  
14 accepted into the record, so I would object very strenuously  
15 to any attempt to not accept the declarations.

16 HEARING OFFICER MEHRANIAN: So since these declarations  
17 were submitted under penalty of perjury, I will overrule  
18 your objection.

19

20 CROSS-EXAMINATION

21 BY MS. RASMUSSEN:

22 Q Ms. Postyn, I have a few questions for you, so if  
23 you wouldn't mind sitting at the microphone?

24 In October 2010, when GID took over Western Multi  
25 Family, was the Regional Board ever notified at that time of

1 the change between Black Rock and GID?

2 MR. O'NEIL: I'll object. Lacks foundation. It has not  
3 been established yet that GID took over Western Multi  
4 Family.

5 BY MS. RASMUSSEN:

6 Q I'll rephrase the question.

7 In October 2010 when GID bought a two percent  
8 interest in Western Multi Family, at that time, was the  
9 Regional Board contacted or notified that a change had  
10 occurred?

11 A Not to my knowledge.

12 Q You had testified earlier that GID had bought out a  
13 two percent interest in Western Multi Family; correct?

14 A Correct.

15 Q And to your knowledge, does that purchase of the  
16 two percent interest also include buying out the rights and  
17 liabilities that are associated with that two percent  
18 interest in Western Multi Family?

19 MR. O'NEIL: Object. Calls for legal conclusion and  
20 lacks foundation.

21 BY MS. RASMUSSEN:

22 Q I'll strike it.

23 You testified that in May of 2011 was the first  
24 time that you had heard that there were alleged violations  
25 associated with the Sea Castle Apartments; is that correct?

1 A Correct.

2 Q But neither Black Rock nor GID had informed the  
3 Regional Board until June of 2011 of the change of  
4 ownership?

5 MR. O'NEIL: Objection. Assumes facts not in evidence,  
6 and lacks foundation.

7 HEARING OFFICER MEHRANIAN: I will overrule. Please  
8 continue. Please answer the question.

9 THE WITNESS: Could you rephrase the question or repeat  
10 the question?

11 BY MS. RASMUSSEN:

12 Q Sure. You had testified that May of 2011 was the  
13 first time you had heard about any issues relating to  
14 alleged violations; correct?

15 A Correct.

16 Q But it was not until June 2011 that the Regional  
17 Board was contacted and informed about the change between  
18 GID and Black Rock?

19 A Correct.

20 MS. RASMUSSEN: I have no further questions.

21 HEARING OFFICER MEHRANIAN: Prosecution Team to proceed  
22 with the rebuttal?

23 MS. RASMUSSEN: We don't have any rebuttal. We are JUST  
24 going to submit.

25 HEARING OFFICER MEHRANIAN: Does GID have any rebuttal?

1 MR. O'NEIL: No. No, Ma'am. We are also ready to do  
2 our closing. Can we take a short break, a five-minute water  
3 break?

4 THE COURT: Yes, please. We will give you five minutes.

5 It is 10:00 now. Be back here at 10:10.

6 MS. RASMUSSEN: It's 11:00.

7 HEARING OFFICER MEHRANIAN: Oh, it's 11:00, you're  
8 right. That's wrong.

9 MR. O'NEIL: I was going to say, it seemed longer than  
10 that.

11 (Recess)

12 HEARING OFFICER MEHRANIAN: We're back on the record.

13 Are there any individuals that would like to  
14 provide -- interested parties, that would like to provide  
15 comments?

16 If not, the hearing will proceed with the closing  
17 statements. And prosecution first.

18 MS. RASMUSSEN: Thank you, Madame Chairman.

19 You heard today that with respect to the party  
20 issue, that in October of 2010, there was a change between  
21 Black Rock and GID. That at that time, GID bought out Black  
22 Rock's two percent interest in Western Multi Family, which  
23 includes the rights and liabilities associated with that  
24 interest in Western Multi Family, or at least, that was our  
25 understanding from the testimony today.

1           At the time, in October of 2010, neither Black Rock  
2 nor GID, when it came in as new asset manager, notified the  
3 Regional Board that a change had occurred; even though that  
4 they are required to do so, whether as a change of operator  
5 or a change of owner, or change of entity, who controls the  
6 facility that is permitted.

7           Staff who contacted the various parties thought  
8 that the people they were contacting were the appropriate  
9 people, because we were never notified otherwise; and we did  
10 not received such notification of this change occurring  
11 until June of 2011.

12           You heard Mr. O'Neil talk a little bit about the  
13 2002 and 2009 enforcement policies.

14           The 2002 enforcement policy that was in effect at  
15 the time the violations occurred does state that there is a  
16 seven-month recommended -- a recommended seven-month period  
17 to bring enforcement for violations.

18           Similarly, in the current version, 2009 version of  
19 the policy, there is a 18-month time period that is  
20 recommended to bring enforcement. I think it's important to  
21 point out that both of these policies do not trump statutory  
22 obligations that are dictated by the legislature, nor do  
23 they create an artificial Statute of Limitations to override  
24 legislative mandates.

25           They are policies; they're not statutes.

1           Lastly, with respect to the fourth quarter 2006 reports,  
2 the reason why the fourth quarter 2006 report does not  
3 receive special treatment under the MMP exemption exception  
4 is because of the fact that there was an exceedance in the  
5 fourth quarter 2006 monitoring report.

6           If you look at the permit, effluent limitation in  
7 the permit, it states that the limit is 2.9 micrograms per  
8 liter for copper.

9           The self-monitoring reports, the evidence that  
10 there was, in fact, an exceedance of the 2.9 limit in the  
11 lab monitoring sheets indicates that there was a  
12 three-microgram per liter exceedance. Because of that  
13 exceedance, and because the way the statute is worded,  
14 because an effluent violation occurred in the fourth quarter  
15 2006 monitoring report, that's the reason why the exemption  
16 does not apply.

17           Regardless of whether that effluent limit  
18 exceedance would receive MMP treatment or not, it's an  
19 effluent limit violation, and the plain language of the  
20 statute of the exemption statute says that one of the  
21 conditions for qualifying for the exemption is that the  
22 reporting period has no effluent limit violations.

23           It does not specify whether that effluent violation  
24 should be an appealable or not. It just states that there  
25 should not be any effluent violations in that report.

1           Which, if you think about it, it is consistent with  
2 the purpose of why we need that report in the first place.  
3 The reports ensure -- it's our only way to ensure that to  
4 ensure compliance with effluent limitations, in the  
5 particular period, regardless of whether there are MMP  
6 penalties associated with exceedances or not.

7           So with that, the Prosecution Team continues to  
8 recommend that the \$267,000 dollars in MMP's be assessed.  
9 And that aside from the statutory exceptions that we've  
10 already recognized apply to some of the violations, that it  
11 does not apply to the fourth quarter of 2006 report.

12           Thank you.

13           HEARING OFFICER MEHRANIAN: Thank you.

14           MR. O'NEIL: First of all, I would like to thank the  
15 Hearing Board to allowing Ms. Postyn and I to come in today,  
16 and to present our testimony and our declaration testimony,  
17 and make our arguments, and introduce ourselves, and to  
18 explain our sides of the case.

19           We appreciate that opportunity, and we appreciate  
20 that the Board has taken this very seriously. And so, thank  
21 you very much. A very sincere thank you for that.

22           The permitted issue here is for an M.P.D.E.S.  
23 permit to discharge waste water that is primarily ground  
24 water in Santa Monica to a storm water drain, and there is  
25 some condensate water water off of an air conditioning

1 system.

2 This is not an industrial property; it's an  
3 apartment property.

4 The issue here, that you asked questions about this  
5 week before the hearing, and that we've been addressing  
6 here, today, is the identity issue. That's one of the main  
7 issues before this Board.

8 It has been completely admitted here today by the  
9 Prosecution Team, that the permittee here is Western Multi  
10 Family, LLC. Western Multi Family, LLC has been the  
11 permittee since 2000, and they are not a party to this  
12 complaint. They were not named in this complaint.

13 Instead, GID Investments was named in this  
14 complaint. And one of the first things I want to address is  
15 whether that means we assume the liability. It does not.  
16 We do not assume the liability.

17 If GID Investment Advisors, here, had merged with  
18 Black Rock, up and to then, that would be legally an  
19 assumption of liability. That's not what happened here.

20 What happened here was that GID Investments  
21 replaced Black Rock as the party responsible for ensuring  
22 compliance and investment strategy, and they bought out  
23 Black Rock's two percent interest in Western Multi Family.  
24 They did not buy stock in Black Rock. They bought a two  
25 percent interest. In that sense, they're much like a

1 shareholder in a public company.

2 The responsible party is the company, not the  
3 people who own shares in it. That's the law, and what  
4 Ms. Okamoto says about us assuming liability, well, there  
5 was no testimony on that, and there is no law supporting  
6 that.

7 What happened here is GID Investment Advisors came  
8 in in 2010, and took over for Black Rock.

9 As soon as they knew, as soon as GID Investment  
10 Advisors knew about this problem, it was solved. It was  
11 solved in three weeks, and it was solved by submitting all  
12 of these supposedly late reports. And it was solved -- the  
13 exceedance issue was completely solved for good.

14 That water was now piped to a sewer, where it's  
15 taken through the treatment system, and it's treated and  
16 that is permitted and it's been accepted by the  
17 publicly-owned treatment works.

18 So the party that solved the problem is sitting  
19 here today. The party that solved the problem is the party  
20 that's being sued, and they're the only party that's being  
21 sued, and there is no proof or evidence at all that we have  
22 assumed the legal liabilities of Western Multi Family. We  
23 have not.

24 They remain the permittee. That's never changed.  
25 They remain the legally responsible party, and they are not

1 named in the complaint.

2 As said, GID Investment Advisors took over the  
3 management of the Western Multi Family portfolio on  
4 October 1, 2010.

5 Almost all of the penalties before you here today,  
6 were -- are being assessed for conduct before that, almost  
7 all of them. I think there was maybe one or two late  
8 reporting violations after that, and there may have been a  
9 couple of exceedances after that, before we recognized that  
10 we had to solve the problem in some way.

11 Once we knew about the M.P.D.E.S. desk permit and  
12 the issues that were with the Regional Board, we solved  
13 those problems.

14 While I think it's of paramount importance for this  
15 Board to recognize that GID Investment Advisors did not  
16 create these problems, but instead solved them, I also want  
17 to talk about the penalties themselves, and I believe and  
18 have made this argument to the Board before, that the Board  
19 has -- the Regional Board Staff has not been timely in the  
20 filing and the notification of people, for these types of  
21 violations.

22 The testimony by Mr. Marley here today, and the  
23 Board's own enforcement policy says that they should notify  
24 parties within seven months of either an exceedance  
25 violation, or a late reporting violation.

1           The reason that policy exists is two-fold.

2           One, it lets people know if they're not doing it  
3 right, so they can go out and fix it, and eliminate the  
4 environmental problem.

5           Two, it provides them with notice and the financial  
6 incentive to do this. And yet, instead of doing this within  
7 seven months, which would have been two periods of late  
8 reporting, the Board waited 52 periods to notify us. And  
9 they notified us only after we took over the property  
10 management, and then we solved it.

11           So they violated their own policy. Almost every  
12 single late reporting violation is at least partly because  
13 the policy was not followed. And if the policy's there, and  
14 it's there for a reason, the Board just can't act like it's  
15 just a mere suggestion.

16           It's not a mere suggestion. It's there for a  
17 reason. The Board has said today, with respect to the  
18 proper party issue, well, how were we supposed to know?

19           Couldn't that same logic be applied to us?

20           How is Black Rock supposed to know that the Board  
21 thought they were missing these reports?

22           If they had followed their policy, they would have  
23 notified Black Rock, and Black Rock would have responded,  
24 hopefully, the way GID responded. But what we do know is  
25 that GID did respond, and they responded right away, and got

1 it done. They were responsible -- they were the responsible  
2 actor. And they sit here as the party being accused.

3 In addition to the prejudice that I talked about  
4 from the late reporting, from the late notification of the  
5 permittee, due to the buildup of penalties, there's another  
6 very real prejudice to my client.

7 When they came in and they bought the two percent  
8 shares in Western Multi Family and took over the management  
9 responsibilities, they engaged in discussions with Black  
10 Rock, and that's all part of standard due diligence in a  
11 transaction; you engage in discussions with the other side,  
12 and you say, "What's out there? What's lurking out there  
13 that we will either have to take care of, or that we'll want  
14 you to take care of before we conduct this transaction?"

15 If the Board had notified Black Rock, that fault  
16 could have been appropriately assigned to Black Rock. They  
17 would have -- GID would have been able to say, "Well, we're  
18 not going to have to deal with that. That's your problem.  
19 We had nothing to do with that."

20 And Black Rock would have either had to take care  
21 of the problem and solve their issues with the Regional  
22 Board themselves, or they would have had to do it since that  
23 time, or there would have been some kind of steps taken to  
24 make sure that that risk was allocated to Black Rock instead  
25 of to GID Investments, because they didn't know -- because

1 Black Rock didn't know, GID couldn't know, and they couldn't  
2 appropriately deal with that problem, and make Black Rock  
3 the party that should pay it.

4 So that's another reason why we are prejudiced by  
5 the 52-month delay in notifying us of these problems.

6 The single largest penalty that the Board staff is  
7 asking you to assess is a \$156,000 dollar penalty for the  
8 fourth quarter 2006 monitoring report, which the Regional  
9 Board findings was not submitted.

10 I think there's a very real issue as to whether  
11 that's correct. And the reason I say that, if you study the  
12 declarations of Mr. Nakaoka, Leland Nakaoka of Black Rock,  
13 he states in his declaration, that there were two times when  
14 the Regional Board called him, and said, "we're missing  
15 reports," and gave him verbally, over the phone, not in  
16 writing, gave him a list of the quarterly reports that they  
17 were missing.

18 Both times Mr. Nakaoka collected these supposedly  
19 missing reports, and sent them in to the Regional Board.  
20 And Mr. Nakaoka's declaration goes over that, and there is a  
21 cover sheet.

22 The second time he was called, the Regional Board  
23 told him that they were missing some of the reports that he  
24 had sent them the first time they had called. So first of  
25 all, there's evidence that the Board wasn't keeping good

1 track of what reports were coming in.

2 There's also evidence that they weren't missing the  
3 fourth quarter 2006 report, because on both of those  
4 occasions, when the Regional Board called Mr. Nakaoka, they  
5 did not identify the fourth quarter 2006 report as being  
6 missing.

7 That only happened by voicemail to Mr. Nakaoka, on  
8 April -- in April of 2011, which was six months after Black  
9 Rock and Mr. Nakaoka were no longer involved with the  
10 property.

11 So you've got, apparently, problems keeping track  
12 of what's come in. You've got two attempts to collect  
13 missing reports, in which the fourth quarter report was not  
14 identified as missing. And you've got a notification by  
15 voicemail, that wasn't followed up upon.

16 And they asked you without putting anyone on the  
17 stand to say we were definitely missing the fourth quarter  
18 2006 report, they asked you to assume that it was missing.

19 And given those circumstances that I just  
20 described, that's not an appropriate assumption.

21 If they had been missing that report, Mr. Nakaoka  
22 would have been advised either the first or second time that  
23 it was missing, and he was not.

24 So this is the basis for 60 percent of their  
25 penalties. This so-called missing report, that they never

1 asked for, when they had two opportunities to do it, that's  
2 the basis for a \$156,000 dollar fine? I think there are  
3 some serious doubts that that report was even missing.

4 We know that it was prepared on time. Thomas  
5 Fukimon's declaration makes it clear that it was prepared on  
6 time, the testing was conducted in the fourth quarter of  
7 2006. We know that it wasn't asked for. We know that once  
8 GID found out about it, they supplied it within three weeks.  
9 That is the report that they want a \$156,000 dollar fine  
10 for, and that's not justice.

11 In conclusion, thank you, again, for allowing us  
12 this opportunity to be heard. We appreciate that the Board  
13 has this procedure in place that allows us to stand up and  
14 make our case and our argument.

15 In conclusion, the Regional Board, here, has not  
16 pursued the correct party. They have pursued a responsible  
17 party who did everything right. The identity of the  
18 permittee, here, has never changed since 2001; it is Western  
19 Multi Family, LLC. We never said we were the new permittee.  
20 And we are not responsible for the Board's errors and who  
21 they sue.

22 If this had been handled by the Regional Board with  
23 the policy in mind and notification had been provided, this  
24 problem never would have arisen, and there never would have  
25 been exceedances, and there never would have been late

1 reporting violations. Thank you very much.

2 HEARING OFFICER MEHRANIAN: Okay. We will move on to  
3 the questions from the Hearing Panel. Do you want to start?

4 MS. DIAMOND: I will start with a few questions. I  
5 guess I'll -- I'd like to ask, first, Mr. O'Neil.

6 I'd like to know a little bit more about Western  
7 Multi Family, LLC. That is the permittee, as you have told  
8 us, and you've said that it has never changed; that they  
9 have been the permittee from the beginning of the permit  
10 that was issued, and you state that they are still the  
11 permittee? MR. O'NEIL: That's correct.

12 MS. DIAMOND: Can you identify who Western Family, LLC  
13 is? I mean, are there principals that you might be able to  
14 tell us about? I'd just like to know a little bit about  
15 this.

16 MR. O'NEIL: Western Multi Family, LLC, is a limited  
17 liability corporation that owns -- and Ms. Postyn can  
18 correct me if I am wrong, but it owns a portfolio of  
19 properties, and is -- it consists of, I believe, the main  
20 shareholder is CalPERS, but it is a legal entity that has  
21 always been the permittee on this property since 2001.

22 MS. DIAMOND: So CalPERS is a state agency, correct? Or  
23 a pension fund?

24 MR. O'NEIL: It's some type of pension fund for  
25 California Employees, is my understanding.

1 MS. DIAMOND: And are there any other owners or  
2 principals that you might identify?

3 MR. O'NEIL: A two percent ownership by GID; and prior  
4 to GID's purchase of that interest, it was two percent owned  
5 by Black Rock.

6 MS. DIAMOND: And that's the extent of it, as far as you  
7 know?

8 MR. O'NEIL: Yes.

9 MS. DIAMOND: Does CalPERS own any of GID?

10 MR. O'NEIL: No.

11 MS. DIAMOND: So there's no overlap, in terms of who the  
12 principals are, owners?

13 MR. O'NEIL: No. The principal duty of GID is to act as  
14 the advisor for Western Multi Family. They're -- that's  
15 what their real role is. In doing that, they hold a two  
16 percent ownership interest in Western Multi Family.

17 MS. DIAMOND: Okay. And I guess I should ask -- I  
18 should ask the representative from GID a couple questions.  
19 Is either microphone okay?

20 MS. POSTYN: Yes.

21 MS. DIAMOND: What responsibility does GID have in terms  
22 of environmental reporting, and taking care of any  
23 compliance issues with the Water Board?

24 MS. POSTYN: If there's a requirement by the Water  
25 Board, we would be the party responsible for overseeing it

1 for Western Multi Family.

2 MS. DIAMOND: So if there is a requirement in the permit

3 --

4 MS. POSTYN: Uh-huh.

5 MS. DIAMOND: -- for Western Multi Family to report, to  
6 have to do monitoring and timely file reports, you would --  
7 GID would be responsible for making sure that the monitoring  
8 is done and the files are timely reported?

9 MS. POSTYN: Correct.

10 MS. DIAMOND: And do you also understand that the filing  
11 of reports needs to be done under the permit, whether or not  
12 there is a reminder when they are late?

13 In other words, do you -- does your permit -- is it  
14 your understanding that the permit requires you to file a  
15 report every quarter, monitoring reports?

16 Or obviously, now you're hooked up to the sewer,  
17 so, but from the time you took over in October of 2010, did  
18 GID understand that you needed to file reports?

19 MS. POSTYN: Yes.

20 MS. DIAMOND: Okay. And the two percent ownership that  
21 you have in Western Multi Family, does that also require you  
22 to be responsible for two percent of any violations, for  
23 example?

24 MR. O'NEIL: Ms. Diamond, may I -- I have to interject.

25 MS. DIAMOND: That's okay. If you're the better person

1 to answer that.

2 MR. O'NEIL: Well, you're talking about responsibility.  
3 And what I believe what Ms. Postyn was talking about when  
4 she says "responsibility," is that GID has a contractual  
5 responsibility to Western Multi Family to take care of these  
6 kinds of things.

7 MS. DIAMOND: They will receive that?

8 MR. O'NEIL: Right. That's their contractual  
9 responsibility to this private party.

10 MS. DIAMOND: Okay.

11 MR. O'NEIL: And I don't want -- I really apologize for  
12 interrupting.

13 MS. DIAMOND: That's okay.

14 MR. O'NEIL: I don't want it to be construed that a  
15 non-permittee has the legal responsibility to file these  
16 things. It is a the permittee's responsibility. So I just  
17 wanted to clarify that what -- and correct me if I'm wrong,  
18 Ms. Postyn, but I believe what Ms. Postyn was saying is we  
19 have a contractual responsibility to Western Multi Family to  
20 take care of that.

21 MS. DIAMOND: Then maybe I should -- let me ask you the  
22 question, since -- do you have any responsibility for  
23 Western Multi Family, LLC?

24 Do you represent them at all?

25 MR. O'NEIL: I do represent them. But they are not

1 named in the complaint, and they're not a party to this  
2 action.

3 MS. DIAMOND: But as their lawyer, and if they, indeed,  
4 are still the permittee, which you say they are, are they  
5 responsible for filing the reports in a timely manner?

6 MR. O'NEIL: I would say that it's -- it is the  
7 permittee's responsibility to file reports in a timely  
8 fashion.

9 MS. DIAMOND: And that is part of the permit, is your  
10 understanding?

11 MR. O'NEIL: Yes. However, they are not here. And the  
12 only party being pursued is GID Investment Advisors.

13 MS. DIAMOND: That is all that I have for you. I do  
14 have a couple questions for our staff.

15 MR. O'NEIL: Thank you, Ms. Diamond.

16 MS. DIAMOND: The question that I have on the report  
17 that you gave us today, this report, on page two of that,  
18 it's the bottom line, determining if effluent violations are  
19 serious. I think that is the one. Okay.

20 So in looking at the fourth quarter of 2006 for  
21 copper, reported value is three and the permit limit is 2.9.

22 Does that relate in any way to the slide that asked  
23 these questions that you presented to us?

24 Are the effluent limits exceeded by 20 percent or  
25 more for a Group II or 40 percent or more for Group I?

1           Can you tell me if there's any relationship to  
2 this; is it three milligrams, is that what --

3           MS. OKAMOTO: Micrograms.

4           MS. DIAMOND: Okay. Is that something that should be  
5 considered under that presentation on that slide, and, if  
6 so, how?

7           MS. OKAMOTO: Yes. So because there is an effluent  
8 limit, exceedance of the copper limit in the permit, so you  
9 start with that first question.

10           Is there a violation of the NPS limit in the  
11 permit?

12           So yes. Is the constituent a Group I or Group II,  
13 while copper is a Group II toxic pollutant.

14           Are the effluent limits exceeded by 20 percent or  
15 more for a Group II pollutant?

16           And if you look at the chart, that this  
17 spreadsheet, it's expressed as the three percent exceedance  
18 over the limit.

19           So for purposes of determining this particular  
20 violation, a serious violation, according to the statutory  
21 definition, it is not, because the limit is only exceeded by  
22 three percent, and not the required 20 percent that would  
23 kick it into the serious effluent limit violation category.

24           However, it still is an effluent limit violation of  
25 the permit, which is subject to a discretionary penalty. It

1 still is -- it doesn't change the characterization of that  
2 exceedant, as an effluent limit violation.

3 It's just not termed a serious effluent violation  
4 for which an MMP is assessed.

5 Does that help?

6 MS. DIAMOND: Well, it helps. Still -- so, under this,  
7 falling less than 20 percent, does that exceedant point of  
8 .3 percent still lead you to the calculation of \$156,000?

9 MS. OKAMOTO: That pertains to the the MMP assessment  
10 exemption defense. So if you kind of have to look at it in  
11 different categories.

12 For purposes of the copper violation being either a  
13 serious or chronic effluent limit violation, it isn't,  
14 because there's not a 20 percent exceedance of the limit,  
15 and it's not the fourth or more violation in a period of six  
16 months. So it's neither serious nor chronic.

17 It comes into play when you look at that exception  
18 for late reports. Because the language -- let me grab my  
19 statute -- and it's actually -- let me point you to the  
20 slide. It would be at page four of your slide handout.  
21 It's that middle, the middle slide.

22 So the fourth quarter 2006 effluent limit violation  
23 comes into play on this slide, because the statute, in order  
24 to get the modified MMP amount, one of the conditions is  
25 that the report that was missing, when it is finally

1 submitted to the Board and it's reviewed, that report has to  
2 indicate that there were no effluent limit violations in  
3 that report to get the benefit of the exception.

4 Because once we received the fourth quarter 2006  
5 report, it was reviewed and determined that this copper  
6 exceedance occurred. That's the reason why the exception  
7 does not apply. The late reporting exception does not apply  
8 to the fourth quarter 2006 report.

9 Regardless of whether that copper violation is  
10 subject to a MMP as an effluent limit violation or not.

11 MS. DIAMOND: Okay. I guess I have one last question,  
12 and that can be answered by either you or Mr. Choi, and that  
13 has to do -- Mr. Choi, why don't you come up here, because  
14 you were the most directly involved.

15 Do you have any documentation at all that  
16 Mr. Nakaoka was informed that that fourth quarter 2006 was  
17 not received?

18 MR. Choi: Off the top of my head, I can't recall  
19 documents specifically stating fourth quarter 2006, until I  
20 was following up with him on April, 2011.

21 MS. DIAMOND: So there are documents that show that that  
22 was late, that we don't have?

23 MR. Choi: No. I have no documents.

24 MS. DIAMOND: Just verbal? You remember speaking to him  
25 about it, but there's nothing about any documents?

1 MR. Choi: No documents.

2 MS. DIAMOND: That's all I have.

3 HEARING OFFICER MEHRANIAN: Ms. Camacho, do you have any  
4 questions?

5 MS. CAMACHO: Hi. I have two questions for Ms. Postyn.  
6 Maybe Mr. O'Neil will have to help us here. We will put you  
7 up in the batter's box.

8 MR. O'NEIL: I'll get ready.

9 MS. CAMACHO: The one question is when GID became  
10 involved with Western Multi Family -- Western Multi Family,  
11 LLC, were there any agencies, like, was there a discussion  
12 of all of this kind of occurring with Black Rock and about  
13 agencies, and things that they were kind of doing and  
14 working on while you guys were in the process of taking  
15 over?

16 MS. POSTYN: I wasn't at GID when all those discussions  
17 were taking place. So I I can't answer that directly.

18 MS. CAMACHO: Okay. Because I know during your  
19 examination, you were saying that when you became aware, you  
20 contacted -- or someone forwarded you the letter.

21 MS. POSTYN: Angela did.

22 MS. CAMACHO: Angela did, and that's when you asked,  
23 okay, is there anything that I need to know about this, or  
24 what's happening with this letter?

25 MS. POSTYN: I asked why they were -- I asked about the

1 history of why these were missing reports, and why there  
2 were fined, receiving fines. I do know there were  
3 discussions with Black Rock about, which I think Mr. O'Neil  
4 and I discussed earlier, for Black Rock to disclose any  
5 major issues, and this was not disclosed.

6 MS. CAMACHO: Okay. So when -- so I don't know, then,  
7 because you maybe weren't there when the transfer occurred,  
8 so I don't know, Mr. O'Neil, if you can help.

9 But I'm just curious whether -- when the transfer  
10 occurred, were any phone calls made or any type of  
11 notification to folks that Black Rock was dealing with, that  
12 there is a change? I know you sent the letter here, and we  
13 have a copy of that.

14 But forget us. Just in general, what does that  
15 process usually entail, in terms of notifying whatever  
16 agencies or whatever entities that are being worked with?

17 Is it just, we'll let some folks know, we won't let  
18 other folks? Or how does it work?

19 MR. O'NEIL: Well, I -- because first of all, let me  
20 tell you that I haven't had a direct conversation about what  
21 the exact conversations people had with them. But I will  
22 say that the permittee, here, wasn't changing. It was still  
23 Western Multi Family, LLC. So it was our position that  
24 there was not a change in ownership of the permit; and  
25 therefore, no duty to notify.

1 I would have, essentially, equate it to a company  
2 that has, you know, a certain number of public shareholders.  
3 And every day those shareholders are traded in and out. The  
4 company is still the company. The company is still the  
5 legal entity that's required to comply with the law, not the  
6 shareholder.

7 The shareholders own a sliver of that company, and  
8 that's why the liability doesn't pass up to the  
9 shareholders. The liability remains with the entity, the  
10 legal entity that is the permittee in this case.

11 MS. CAMACHO: Right. But if the shareholder in this  
12 case is also managing the affairs of that legal entity, and  
13 again, it's not just for us, it's for any other agency or  
14 groups. I mean, is there a notification, and I know we had  
15 one in 2011.

16 But was there a notification done across the board  
17 for all of the agencies or all the entities being dealt  
18 with, to say, "Hey, we're the new contact for this entity,  
19 because we are managing their daily affairs?"

20 MR. O'NEIL: I really can't speak to that. I would have  
21 to speculate on that.

22 MS. CAMACHO: Okay. Okay. And then the other question  
23 was: I know we asked and I tried, but we'll see.

24 What does it mean when you're a shareholder, but  
25 also a daily manager?

1           I know they're two different worlds, but like what  
2 exactly does that mean as a shareholder?

3           MR. O'NEIL: Well, I think from a legal perspective,  
4 liability does not get passed from one shareholder to  
5 another. You know, we bought out two percent of Western  
6 Multi Family by purchasing that two percent from Black Rock.

7           MS. CAMACHO: From Black Rock, right.

8           MR. O'NEIL: The law does not pass liability from one  
9 shareholder to another in that circumstance.

10          MS. CAMACHO: Uh-huh.

11          MR. O'NEIL: With respect to management, in the context  
12 of the Regional Board's proceedings, it is the identity of  
13 the permittee that is the responsible party for legal  
14 compliance.

15                 We took on a contractual --

16          MS. CAMACHO: Agreement?

17          MR. O'NEIL: -- obligation, to help out Western Multi  
18 Family, and we did it, and frankly, I think we did it better  
19 than Black Rock. And we -- we got things here, and we got  
20 things to the Board when requested, we took care of the  
21 problem; and yes, we did have that contractual obligation to  
22 Western Multi Family.

23                 And frankly, I think we discharged it very well.

24                 And the fact that we're standing here instead of  
25 Black Rock, I don't even think you could hold Black Rock

1 legally responsible, because it's really the LLC that is the  
2 permittee, and that's the party over whom an agency like  
3 this has jurisdiction.

4 MS. CAMACHO: Okay. And then -- I just want to get  
5 clarification. Thank you.

6 MR. O'NEIL: Thank you.

7 MS. CAMACHO: From Staff, real quick, in 410 and 411, on  
8 those pages, I'm just reviewing the reports, here, and it  
9 shows that there were a couple limit violations, I think,  
10 after -- in this permit in March 2010 through 2011.

11 So were those effluent limitations -- effluent  
12 limit violations after GID took over?

13 I'm just trying to understand these dates and the  
14 time frame of when GID, along with the late reporting  
15 violations, on 411?

16 MR. MARLEY: Some of the violations in 2010, on page 410  
17 and 411, they did occur after GID took over, and the  
18 attorney had spoken to that.

19 There were a few lapsed (Inaudible).

20 MS. CAMACHO: And same with the late reporting  
21 violations?

22 MR. MARLEY: Yes.

23 MS. CAMACHO: For the first, and third quarter and  
24 fourth quarter of 2010?

25 MR. MARLEY: Yes.

1 MS. CAMACHO: I just wanted to understand. That was  
2 after GID took over?

3 MR. MARLEY: Yes.

4 MR. O'NEIL: May I just address that, Ms. Camacho?

5 MS. CAMACHO: Yes.

6 MR. O'NEIL: I don't think the first quarter --

7 MS. CAMACHO: Can you please do it in the microphone,  
8 only because we don't have a court reporter, and we need  
9 this transcribed, please.

10 MR. O'NEIL: I think the fourth quarter, with respect to  
11 what exceedances occurred after GID took management or asset  
12 management responsibility, they took it on October 1, 2010,  
13 so there would have been, as I count, seven exceedants,  
14 effluent limit violations, after we took over, and there  
15 would have been two late reporting violations after we took  
16 over, which would be third quarter of 2010 and fourth  
17 quarter of 2010.

18 MS. CAMACHO: Got it.

19 MR. O'NEIL: So I just wanted -- so the first quarter  
20 wouldn't fall into that.

21 MS. CAMACHO: Thank you.

22 MR. O'NEIL: I do also want to point out that, again,  
23 that it's Western Multi Family that has this legal  
24 obligation to the Board, rather than GID.

25 MS. CAMACHO: That's all for me.

1 HEARING OFFICER MEHRANIAN: Thank you, Ms. Camacho.

2 I have a few questions in this, basic report, Mr.  
3 O'Neil.

4 My main concern, mostly right now, is the overlap  
5 and the combination in the structure of the ownerships of  
6 these organizations. Because the concern is that some or  
7 all of those partners are the same people. It could be a  
8 name change, or -- that's my concern.

9 And therefore, I want to ask my questions to  
10 clarify that concern.

11 MR. O'NEIL: All right.

12 HEARING OFFICER MEHRANIAN: The first question is:  
13 Besides GID, who else is on the ownership of this?

14 MR. O'NEIL: Well, 98 percent of -- first of all, the  
15 legal entity that is on the permit is Western Multi Family,  
16 which is a legal, a limited liability corporation.

17 Ninety-eight percent of its shares are owned by  
18 CalPERS. Two percent of its shares are owned by GID. GID  
19 purchased those two percent, that two percent, effective  
20 October 1, 2010.

21 Prior to that, the two percent had been held by  
22 Black Rock, which had also been functioning in the role as  
23 the asset manager of the Western Multi Family.

24 HEARING OFFICER MEHRANIAN: Okay. So the Multi Family,  
25 LLC is the legal entity for CalPERS?

1 MR. O'NEIL: Well, no. It's -- its own legal entity,  
2 but the shares of it or the interest in it, it may not be  
3 shares. It may be some other way of dividing up the  
4 interest, but it is equivalent to thinking about a stock.

5 A company with 100 shares of stock, CalPERS owns 98  
6 of those shares. Black Rock owned two percent of those  
7 shares, and we own two percent now, because we bought those  
8 two percent, those two shares of the 100 shares of stock in  
9 our hypothetical situation, effective October 1, 2010.

10 So the legal entity is Western Multi Family. The  
11 shareholders are CalPERS, the entire time, 98 percent; and  
12 2 percent, a very small minority interest, was owned by  
13 Black Rock, and got transferred to us October 1, 2010.

14 HEARING OFFICER MEHRANIAN: Thank you. My second  
15 question is: On Black Rock and GID, is there any joint  
16 ownership or same owners on the two?

17 MR. O'NEIL: No.

18 HEARING OFFICER MEHRANIAN: They're two separate  
19 entities?

20 ME. O'NEIL: They're two separate entities.

21 HEARING OFFICER MEHRANIAN: The third question is then:  
22 Is it common that the asset manager is also responsible for  
23 the day-to-day management?

24 MR. O'NEIL: No.

25 HEARING OFFICER MEHRANIAN: So how is that that Black

1 Rock was, and GID is?

2 MR. O'NEIL: Well, do you want to explain this,  
3 Ms. Postyn? I think Ms. Postyn has a much handle on the  
4 business realities than I do.

5 MS. POSTYN: By "day-to-day management," do you mean the  
6 actual property management?

7 HEARING OFFICER MEHRANIAN: Property management,  
8 including receiving the notices, complying with the notices.

9 MS. POSTYN: We differentiate between the property  
10 management, and the asset management. The property  
11 management of the day to day, so leasing an apartment, to  
12 leasing the units, and paying the bills, and things like  
13 that is handled by a separate entity. I think previously,  
14 it was -- Black Rock had Alliance, Metric, and then River  
15 Stone.

16 We have a third party called Windsor Communities,  
17 who is our day-to-day property management, who's responsible  
18 for the leasing and paying utility bills, and things like  
19 that. The asset management, it is legal compliance,  
20 strategic -- strategy, and that is handled by the asset  
21 manager, previously Black Rock and now GID.

22 Does that answer your question?

23 HEARING OFFICER MEHRANIAN: It does. I'm just surprised  
24 somehow that the entity that advises on various strategic  
25 finance issues is also responsible for a permit.

1           And is this a common arrangement, and -- that's  
2 what I'm trying to reconcile in my mind.

3           MS. POSTYN: Responsible for a permit in what -- I guess  
4 I don't understand the question.

5           HEARING OFFICER MEHRANIAN: Permits in -- I mean, you're  
6 here, you're hired to tell them, you know, if this is a good  
7 investment or not; I mean, this is strategic financial, I  
8 mean, that's what you do?

9           MS. POSTYN: Right.

10          HEARING OFFICER MEHRANIAN: You're not doing permits, I  
11 mean, you're not responsible for -- I mean, how does it  
12 all come under you?

13           It's just something I can't reconcile. And I'm  
14 thinking there were some other parties that -- go ahead.

15           Is it common?

16          MS. POSTYN: Is it common? I can't speak for other  
17 companies. I think in the asset management that I've been  
18 involved with at GID, we oversee keeping the property in  
19 legal compliance with business licenses and permits, and  
20 some of that is -- falls on our overall -- it falls on the  
21 asset manager's responsibilities.

22           Some of the day-to-day aspects of that may be  
23 pushed down to property management, and ask for them to  
24 comply with that.

25          HEARING OFFICER MEHRANIAN: So contractually, you're

1 contract with Western Multi Family, says that you're  
2 responsible for those things?

3 MS. POSTYN: For --

4 HEARING OFFICER MEHRANIAN: For the permits?

5 MS. POSTYN: I couldn't tell you specifically if it says  
6 permits, but it would be strategy and legal compliance.

7 Does that answer the question?

8 HEARING OFFICER MEHRANIAN: I think it does, yes.

9 MS. CAMACHO: Could you then explain what procedures you  
10 have to assure that, let's say, on this one permit you're  
11 always current in your reporting.

12 Do you have procedures there?

13 MS. POSTYN: The permit has now been switched over, so  
14 there's no permit issue.

15 HEARING OFFICER MEHRANIAN: Right. I know.

16 MS. POSTYN: But after we were made aware of this May,  
17 of these delayed reporting, or delinquent reports, we had  
18 Chem Pro, who is a consultant, who's doing the monitoring,  
19 send them to GID, not to the site. So that it would be  
20 filed in a timely manner.

21 HEARING OFFICER MEHRANIAN: Thank you. That's all I  
22 have. Yes?

23 MS. DIAMOND: For my own information, when you did stop  
24 discharging into the storm water system, and went on to  
25 hookup to the sewer, what kind of expense did that entail?

1           Was that a very expensive project?

2           MS. POSTYN:    To switch over the permit?

3           MS. DIAMOND:   I mean, what did it cost for you to hook  
4 up a sewer system; do you know, was a major expense?

5           MS. POSTYN:   I don't recall what the expense is.  It was  
6 a lot less than being subject to quarterly fines.

7           MS. DIAMOND:   Okay.  Thank you.

8           HEARING OFFICER MEHRANIAN:  No other questions?

9                         Mr. Unger?

10          MR. UNGER:     Thank you.  Yes, I did have a couple  
11 questions for you, and for Mr. O'Neil as well.  I just  
12 wanted to, I think, clarify something that I thought I heard  
13 on the record, when you said it's been Western Family since  
14 day one.

15                         I think, if you look back at the previous permit in  
16 2006, it was Province Group, is my recollection.

17          MR. O'NEIL:   Well, I think it was -- there was Western  
18 Multi Family on it in 2001 when I saw it, and the 2009  
19 renewal, it still says Western Multi Family.

20                         And could you point out to me, Mr. Unger, where  
21 you're --

22          MR. UNGER:     Excuse me.  Just a second.

23          HEARING OFFICER MEHRANIAN:  4.6?

24          MR. UNGER:     4.6, yes.  Thank you.

25          MR. O'NEIL:   That does says Province Group, and frankly,

1 we don't know what Province Group was. That was before our  
2 time.

3 But the 2009 renewal does say Western Multi Family.

4 MR. UNGER: Correct. Okay. And then I had a follow-up  
5 question to Ms. Diamond's; the date when you switched over  
6 to, I presuming it's the hyperion system discharge?

7 MS. POSTYN: To the sewer system?

8 MR. UNGER: Yes, the sewer system.

9 MS. POSTYN: I believe it's -- I don't have the specific  
10 date, but I believe it's October of 2011.

11 MR. UNGER: Thank you.

12 I have some questions for the Prosecution Team.  
13 And I just -- I don't -- I just want to call attention to  
14 page 410, 4.10, and I would ask who the person was most  
15 knowledgeable in preparing that table; would that be  
16 Mr. Choi?

17 MR. Choi: Yes.

18 MR. UNGER: I want to go back to, I guess, a couple  
19 things that were discussed earlier with the second line in  
20 that table, 11-15-06. And I know we discussed it partially,  
21 earlier. I want to delve a little deeper. The milligrams  
22 per liter, can you explain how that is, when all the other  
23 -- it appears that the copper unit -- units for copper are  
24 micrograms per liter.

25 MR. Choi: That was a typographic error.

1 MR. UNGER: So, but the numbers 3 and 2.9 are still  
2 holding?

3 MR. Choi: They are correct. And the units should have  
4 been micrograms per liter.

5 MR. UNGER: Thank you. And then, so when you look at  
6 reports that are coming in, monitoring reports that are  
7 coming in, how do you determine that there was an  
8 exceedance, do you just -- or do you -- how do you look at  
9 the numbers 3 and 2.9 and determine it?

10 MR. Choi: That is an exceedance.

11 MR. UNGER: Just one is greater than the other?

12 MR. Choi: The table that's on the sheet, that's the  
13 Excel sheet that we already have calculating ability, so we  
14 put in the limits in, and also the reported value, and we  
15 will calculate the three percent exceedance.

16 MR. UNGER: I see. And do you know in the Excel  
17 calculation -- or are you familiar with the Excel  
18 calculation to know whether the Excel calculation takes into  
19 account significant digits?

20 MR. Choi: No, I don't believe so.

21 MR. UNGER: Okay. And I guess I would ask when you  
22 reviewed -- as an engineer, you're familiar with the  
23 principal of significant digits?

24 MR. Choi: Yes.

25 MR. UNGER: And so when you go through there, you don't

1 look -- you don't review the Excel sheet to be sure that  
2 significant figures, I should say, significant figures are  
3 being accounted for; is that a fair statement on my part or  
4 am I missing something?

5 MR. Choi: I think for this violation, the reported  
6 finding was reporting in milligrams per liter, which was  
7 .003, and I just convert that micrograms per liter, and put  
8 it in as three.

9 MR. UNGER: Okay. I think my question is, then: If  
10 either the Excel program or your review would have accounted  
11 for significant figures, would you have come up with the  
12 same three percent exceedance rate?

13 Or it's probably a little difficult to answer the  
14 question on the spot, but maybe I could articulate my  
15 concern with this.

16 MR. MARLEY: Can I talk about the significant figures?

17 MR. UNGER: Please.

18 MR. MARLEY: The Excel spreadsheet that we use -- the  
19 Excel spreadsheet that we use goes, is in the limit in the  
20 permit; the permit has significant figures in our Excel  
21 spreadsheet, and shows the same. And it's designed to  
22 replicate what is in the permit.

23 So if there was an exceedance, it will show up as  
24 an exceedance with the correct percentage in our  
25 spreadsheet. And we have the staff person here who helped

1 develop that calculation. I don't believe he's sworn in,  
2 but if you would like to question him, he can discuss the  
3 details of this on the spreadsheet.

4 MR. UNGER: No, that's fine. I guess I would like to  
5 add: With the enforcement policy now, or anything in the  
6 statute, is there any guidance on analyzing your  
7 calculations in consideration of significant figures that  
8 may have been reported?

9 MR. MARLEY: There is nothing like that in the  
10 enforcement policy.

11 MR. UNGER: In your opinion, do you think that that is a  
12 valid, or more technically valid or scientifically valid  
13 analysis than one which does not consider significant  
14 figures?

15 MR. MARLEY: In my opinion, yes. That it would be more  
16 valid. But we go with what's in the permit. We go exactly  
17 the way the permit states.

18 MR. UNGER: Okay.

19 I think that's basically most of my questions. I  
20 mean, I'm just -- I'll just leave it at that, and we can go  
21 over any information we need. Thank you.

22 MR. O'NEIL: Mr. Unger, may I address that point  
23 briefly?

24 MR. UNGER: If the Hearing Chair will allow you to, yes.

25 HEARING OFFICER MEHRANIAN: Sure.

1 MR. O'NEIL: This three percent exceedance that we're  
2 talking about, which was not sufficient to justify an  
3 exceedance penalty, but which is being used as the  
4 foundation for the very single largest penalty being issued  
5 here, which is the late reporting fee on -- late reporting  
6 penalty on the fourth quarter of 2006.

7 The fact that a three percent exceedance is not  
8 enough to justify an exceedance penalty is, in my opinion, a  
9 reflection of the reality that laboratory testing has a  
10 certain margin of error within it, and all laboratory  
11 testing requires QA/QC, et cetera.

12 And the fact that the Board recognizes that there  
13 is not really a fineable penalty until there's a 20 percent  
14 exceedance, is a reflection of that kind of a difficulty,  
15 the quantitative difficulty that we're -- that you were  
16 talking about.

17 And I --

18 MR. UNGER: That's not exactly my question.

19 MR. O'NEIL: I know. But I do think that this is an  
20 important point, and the fact that that minor exceedance is  
21 being used as the foundation for the largest penalty here,  
22 is, I think, something that should be recognized by the  
23 Hearing Board.

24 MR. UNGER: That wasn't my question.

25 HEARING OFFICER MEHRANIAN: Okay. I think we understand

1 the argument.

2 MR. O'NEIL: Thank you. That's all.

3 MS. OLIINGER: I have a few questions for everyone.

4 Let's start with the GID representative, again. If  
5 you can come to the microphone?

6 MR. O'NEIL: I'm getting a workout.

7 MS. OLINGER: So based on your contractual obligation  
8 with GID -- excuse me, with Western Multi Family, once you  
9 came online in October of 2010, are you, therefore,  
10 responsible for ensuring compliance with this MPDES permit?

11 Is it under that contractual obligation, you  
12 contractually obligated yourselves to be responsible for  
13 ensuring that the permit's complied with?

14 MR. O'NEIL: I've not seen that contract.

15 MS. POSTYN: I haven't -- we are responsible for legal  
16 compliance, but that's the same contract in Canada.

17 MS. OLINGER: Just to pursue that a little bit further.

18 So is your understanding then, in being responsible  
19 for legal compliance, to ensure that all reports are  
20 submitted to the Regional Board timely, that to -- and any  
21 other obligations arising out of the permit, is that  
22 something that you see as part of that responsibility?

23 MS. POSTYN: Yes.

24 MS. OLINGER: I would like to turn your attention to --  
25 I don't know if you have it in front of you. Go ahead.

1           But I'm going to turn to page, Bates stamp 410 and  
2 411 and Tab 4.2, these are Exhibit A to the complaint.

3           MS. POSTYN: Uh-huh.

4           MS. OLINGER: You say that GID became, you know, came  
5 online or starting -- bought that two percent shareholder  
6 interest in Western Multi Family, beginning October 1st,  
7 2010, and as it's already been established, there are both  
8 effluent limit violations, looking at January, starting with  
9 January 19th, 2011, through July 20th, 2011. And then for  
10 reporting violations, there was starting the third quarter  
11 report due on November 14th, 2010, and a fourth quarter  
12 report due on February 14th, 2011.

13           So those all were time periods following the two  
14 percent ownership stake that you purchased.

15           So as far as your obligation to comply or your  
16 contractual obligation to ensure compliance with that  
17 permit, in submitting those reports on time, can you explain  
18 why those, at least for the reporting violations, why those  
19 were late?

20           MS. POSTYN: Black Rock had a system that was set up  
21 where Chem Pro had submitted the reports to the property,  
22 which we were not aware of, so we were not -- GID had not  
23 received any of the reports; and apparently, somebody at the  
24 property had not been submitting the reports to the Water  
25 Board.

1           Once we found out about the late reports, we  
2       changed that process and had the reports submitted to GID.

3           MS. OLINGER:   You mean, to the Regional Board?

4           MS. POSTYN:   I had them submitted to GID.  They have to  
5       come to a representative, to the owner first, and be signed  
6       and then submitted to the Water Board.

7           MS. OLINGER:   Okay.  Is there any cross-over in, like a  
8       responsible corporate officer, just the same person who has  
9       some sort of position with Western Multi Family, that is  
10      also with GID?

11          MR. O'NEIL:   No.

12          MS. OLINGER:   So completely different people, individual  
13      people?

14          MR. O'NEIL:   Correct,

15          MS. OLINGER:   Okay.

16          MR. O'NEIL:   And there's also no connection between  
17      Black Rock and GID.

18          MS. OLINGER:   So no same individuals working for either?

19          MR. O'NEIL:   No.

20          MS. OLINGER:   Okay.  Okay.  You probably won't be able  
21      to answer this question, because you're here on behalf of  
22      GID only, but regarding that 2006 fourth quarter monitoring  
23      report.

24                        Is there -- do you have any evidence or testimony  
25      that that report was submitted timely on or before

1 February 15th, 2007?

2 MR. O'NEIL: We have tried to locate the person who was  
3 doing the day-to-day management at the time. We have been  
4 unable to locate that person; however, we do know that it  
5 was timely prepared, and we do know it was timely sent to  
6 the property.

7 And we do know that it was not included twice in  
8 lists that the Regional Board put together for Black Rock to  
9 submit.

10 So do we have that direct person to say, "I  
11 submitted it. I mailed it."

12 No. That person, we were not able to find.

13 However, the evidence that we have submitted  
14 suggests that the Board did not identify that as a missing  
15 report.

16 In fact, the only time it was brought to someone's  
17 attention was through a voicemail message, apparently, as  
18 Mr. Choi testified, that was left for Mr. Nakaoka, who was a  
19 Black Rock employee, and that was left for him six months,  
20 eight months after GID took over.

21 In speaking with Mr. Nakaoka, he did not mention  
22 that voicemail message to us.

23 MS. OLINGER: But he's also not here, either. So --

24 MR. O'NEIL: That's correct. But that's what he told  
25 us, so I'm forwarding that to you in response to your

1 question.

2 MS. OLINGER: Thank you. Just one last question, just  
3 to be complete.

4 So you have not uncovered any certified mail or  
5 E-mail communications transmitting that fourth quarter  
6 monitoring report back on or before 2003 between 2007?

7 MR. O'NEIL: We have not. Although I don't think -- I  
8 don't think any of these reports were sent certified.

9 MS. OLINGER: I'm not sure if it's required to be, or if  
10 that's the practice, for any sort of paper documentation or  
11 written communication.

12 MR. O'NEIL: No.

13 MS. OLINGER: Okay.

14 That's all my questions.

15 MR. O'NEIL: Thank you.

16 MS. OLINGER: I have questions for Staff or the  
17 Prosecution Team.

18 I guess maybe Hugh and Andrew.

19 And reviewing, in general, as a general practice,  
20 when you receive lab reports or discharge monitoring  
21 reports, what is your procedure for determining or to insure  
22 that they are, in fact, accurate, that the data is, in fact,  
23 accurate?

24 Or do you just assume that it is accurately  
25 reported?

1 MR. MARLEY: We do -- staff do go through the lab  
2 reports, and they look at the -- they assume that we get the  
3 information that's being provided is accurate. They do look  
4 at the lab QA/QC, and validate that it is correct, and we  
5 compare that with what we've got in the permit.

6 We make sure that it's signed, it's from a  
7 state-certified laboratory; that there is a declaration  
8 statement that comes along with it.

9 MS. OLINGER: Is there anything with respect to this,  
10 the fourth quarter 2006 monitoring report, that would have  
11 caused you to believe that the incorrect -- an incorrect  
12 testing method was used?

13 MR. MARLEY: None was brought to our attention. We did  
14 not notice anything.

15 MS. OLINGER: And anything that would have caused you to  
16 believe that the exceedance reported as three, would have  
17 been calculated incorrectly?

18 MR. MARLEY: No.

19 MR. OLINGER: And do you have -- are you aware if this  
20 number, based on the testing methods used, was rounded up or  
21 rounded down?

22 MR. MARLEY: No.

23 MS. OLINGER: Okay. Going back to requirements by the  
24 permit.

25 Did Western Multi Family ever submit to you a

1 change of ownership or a notification of transfer as  
2 required -- and I can point you to the -- there's two parts  
3 to -- they're in both permits.

4 But let's look at the 2009 permit, that's -- so on  
5 tabs -- in Tab 4.7, looking at, Bates stamped numbers 4.120  
6 and 4.158, starting with 4.120, you can see at the bottom  
7 page there, change of ownership.

8 Have you ever received a change of ownership  
9 notification from Western Multi Family?

10 MR. MARLEY: Under that section, no.

11 MS. OLINGER: Under that section? Okay. Thank you.

12 And then, moving to page 4.158, have you ever  
13 received any notification of transfer to any other person of  
14 this order?

15 MR. MARLEY: No.

16 MS. OLINGER: Thank you.

17 And one last question: If it's been established  
18 that GID Investment Advisors did not obtain any, or had no  
19 interaction with Western Multi Family until October 2010,  
20 can you explain why you determined GID to be allegedly  
21 liable for these other violations beginning in 2006?

22 MR. MARLEY: We attempted in early -- a settlement offer  
23 to Western, originally.

24 And in response, we received a letter from the  
25 attorney, here, who stated that he was the representative

1 and that the contact person was Ms. Sarah Postyn.

2 And based on that, we issued the MMP to GID.

3 MS. OLINGER: Okay. Thank you. I have no further  
4 questions.

5 MR. O'NEIL: May I address a point that I think you were  
6 making?

7 HEARING OFFICER MEHRANIAN: Yes. You can address the  
8 point, but you can't make further argument.

9 MR. O'NEIL: Okay. Ms. Olinger, you were asking about  
10 the change of ownership notification, and I'm looking at  
11 4-120.

12 I just wanted to point out that the ownership of  
13 the land has not changed, and the ownership of the discharge  
14 facility has not changed. The land is owned by Western  
15 Multi Family, and the apartments and discharge facility are  
16 owned by Western Multi Family; those have not changed.

17 And page 159, was it?

18 MS. OLINGER: Yes. No, 158.

19 MR. O'NEIL: We did not apply for a transfer because it  
20 was still Western Multi Family that was the permit holder.

21 So those are the facts.

22 MS. OLINGER: Thank you.

23 HEARING OFFICER MEHRANIAN: There is one more question,  
24 here.

25 MS. DIAMOND: Mr. O'Neil, I have another question.

1 MR. O'NEIL: Yes.

2 MS. DIAMOND: When a letter -- when you received the  
3 communication from the Regional Board and you responded  
4 that, from GID, did you make any effort to send the  
5 communication to Western Multi -- Western Family?

6 Why weren't -- I mean, if they were still the  
7 permittee, and in fact you're saying they have never  
8 changed, they have always been the permittee, when you got  
9 something, why wasn't it forwarded to Western Multi Family,  
10 LLC?

11 MR. O'NEIL: By me, you mean?

12 MS. DIAMOND: Or by GID?

13 MR. O'NEIL: I think GID did forward it to Western Multi  
14 Family.

15 MS. DIAMOND: Well, maybe I should ask: I'm sorry --  
16 when I just heard that response, that when when information  
17 from the Regional Board was sent, you responded that GID was  
18 now, I don't know, in charge, I don't know what the word is.

19 MR. O'NEIL: The letter is included, I believe, in the  
20 package, and I think --

21 MS. DIAMOND: Refresh my memory.

22 MR. O'NEIL: I think it's been mischaracterized.

23 The letter advised the Regional Board that  
24 Ms. Postyn would be the contact person, and that I should be  
25 considered the contact person for communications.

1           It did not say that the permit is now held by  
2 someone else.

3           MS. DIAMOND: But did you forward the document from the  
4 Regional Board that you were responding to when you sent  
5 that letter, did you forward it to GID?

6           MR. O'NEIL: GID forwarded it to me. What happened was  
7 --

8           MS. DIAMOND: Okay. Did you forward it to Western?

9           MR. O'NEIL: What happened was, the letter came into  
10 Angela Kralovec, who was a Black Rock asset manager like  
11 Ms. Postyn is for GID Investments. So the letter comes into  
12 her, that's dated May, I think 17th; Ms. Kralovec looks at  
13 it, realized, oh, this should be going to GID.

14           She sends it to Ms. Postyn, I believe, and that's  
15 when I got retained to be counsel in this matter. I wasn't  
16 involved until Ms. Postyn got that letter. I was not, you  
17 know, I wasn't even aware of the existence of Sea Castle  
18 Apartments at the time.

19           Ms. Postyn got the letter from Ms. Kralovec;  
20 Ms. Kralovec was a Black Rock person. She sent it to  
21 Ms. Postyn, Ms. Postyn sent it to their internal people,  
22 their lawyers, and then we got retained to deal with this  
23 issue.

24           But we were not in a position to send a letter to  
25 Western Multi Family or to Black Rock, because Black Rock

1 got it first, and they sent it to us.

2 MS. DIAMOND: Well, okay. So I guess, Ms. Postyn, let  
3 me just follow-up. You'll have to come back to the  
4 microphone.

5 If we understand, and I know we went -- there have  
6 been a lot of questions what the relationship between GID  
7 and Western Multi Family is, and Chairman Mehranian asked  
8 you whether that was common, that you took care of  
9 compliance and strategy, and financial strategy, and you  
10 just said that was what -- that was how you handled it.

11 So do you send information to Western Multi Family  
12 as the permittee, when there are issues that might require  
13 large fines, for example?

14 How did they find out about it as the permittee?

15 MS. POSTYN: We represent Western Multi Family. Western  
16 Multi Family doesn't have employees to send documents to.

17 It's, you know -- I think we've discussed who the  
18 parties -- who the investors are in Multi Family -- sorry,  
19 who the investors are in Western Multi Family.

20 MS. DIAMOND: Right.

21 MS. POSTYN: But because of the way it's a legal entity,  
22 so we are advising the legal entity, and we represent them.

23 MS. DIAMOND: De facto; it sound like you take care of  
24 everything for them in terms of compliance. So in essence,  
25 you're acting as the permittee or acting for the permittee;

1 is that correct?

2 MS. POSTYN: We act on behalf of the permittee.

3 MS. DIAMOND: All right. Thank you.

4 HEARING OFFICER MEHRANIAN: The last question's, again,  
5 from your continuation of the same line that Ms. Diamond  
6 had.

7 So in reality, there's no way for Western Multi  
8 Family to know any of this stuff, except through either an  
9 entity like you, or Black Stone. (Sic)

10 There's no other way for them? They don't have  
11 employees? They don't -- there is a -- it's a legal thing,  
12 but it doesn't have a structure; so is that true?

13 MS. POSTYN: Correct.

14 HEARING OFFICER MEHRANIAN: Thank you.

15 MS. DIAMOND: I noticed that Ms. Okamoto had a response  
16 to a point in the question.

17 MS. OKAMOTO: One moment. The letters that  
18 Ms. Diamond had asked about just now, those, we did include  
19 it in the package of documents that we handed out today. It  
20 is in there, if you want to take a look at it.

21 HEARING OFFICER MEHRANIAN: So we'll break for  
22 deliberation for an hour. So we're at 12:40? That's right.

23 MR. O'NEIL: That's right.

24 HEARING OFFICER MEHRANIAN: Be back here at 1:40.

25 So that brings it to 1:10, 1:15. We'll reconvene

1 at 1:15.

2 (Recess)

3 HEARING OFFICER MEHRANIAN: We are back on the record.  
4 I'm sorry for the delay, but we reached conclusion, and  
5 I'll let Sarah Olinger share it with you.

6 MS. OLINGER: Just for the record, for the parties'  
7 understanding, that this is merely what the Panel Hearing's  
8 recommendation is, and it's going to be presented to the  
9 full Board consideration at its next Board meeting, I  
10 believe, the first Thursday in April. So I should have  
11 written that down; but the next Board meeting in April.

12 And we've provided, if you would turn to -- well,  
13 the Resolution is that, or the Recommendation is that  
14 pursuant to section 13323 of the Water Code, that GID shall  
15 pay only \$42,000 in mandatory minimum penalties, and that  
16 the complaints are for 2011-0027 and is dismissed without  
17 prejudice, for effluent limit violations prior to  
18 October 1st, 2010, and late discharge monitoring violations  
19 prior to the third quarter of 2010.

20 So, in essence, what this does is only ordering, or  
21 the recommendation is to only order MMP's which amount to  
22 \$42,000 dollars for violations in the complaint that begin  
23 October 1st, 2010, and later.

24 And we've made -- the Hearing Panel has made  
25 substantive additions to the proposed Hearing Panel Report,

1 which we would like to share with the parties. And those  
2 changes, so we don't want to waste anyone else's more time,  
3 will then be transferred over into the Proposed Order, into  
4 the Proposed Order as well.

5 So if we could have the people put up the  
6 proposed -- no, the other one -- the other document  
7 entitled, "Final Proposed Hearing Report." It's very small.

8 Sorry to track changes, but this is what the  
9 Hearing Panel has discussed and is going to be recommending;  
10 and again, these changes will be reflected also in the  
11 Proposed Order. These mikes are terrible.

12 Thank you, Sam. Okay. I'll just go to this one.

13 Okay. So in the first paragraph, that we note that  
14 Maria Camacho is here instead of Mr. John Stringer; and the  
15 Hearing Panel has made a determination and recommend that  
16 GID is not, in fact, called a "permittee."

17 So that is stricken. So in the Findings of Fact,  
18 number one, it states in new language:

19 "GID Investment Advisors LLC, is contractually  
20 responsible for compliance by Regional Board Order Number  
21 R4-2009-0047, issued to Western Multi Family, LLC:

22 "Western Multi Family, LLC, owns Sea Castle  
23 Apartments, hereinafter facility."

24 And no more changes are made in that sentence. And  
25 the Hearing Panel changed "permittee" to "facility" and made

1 that past tense, "discharged."

2 Is this microphone bothering people?

3 It is really static. Can you hear me?

4 But I need -- the audio recording needs to hear me.

5 This one I was trying, and it went in and out.

6 Okay. "Finding of Fact," number two is a new  
7 Finding of Fact, and it states:

8 "Western Multi Family, LLC, has no employees  
9 responsible for ensuring compliance with Regional Board  
10 orders, except for its contractual agreement with GID."

11 "On October 1st, 2010 GID gained Black Rock Realty  
12 Advisors two percent interest in Western Multi Family, LLC,  
13 and assumed the role of asset manager, with responsibility  
14 for legal compliance with Regional Board Order Number  
15 R4-2009-0047."

16 "Finding number three: Waste water discharge from  
17 the facility contained pollutants, and are subject to the  
18 requirements and limitations set forth in Water Code Section  
19 13376, and Regional Board Order Number R4-2009-0047."

20 We struck out all references in this Hearing Panel  
21 recommendation, or report on 2-R4-2004, because Western  
22 Multi Family -- excuse me -- GID has basically no  
23 relationship to that permit.

24 Moving on to other substantive changes, the next  
25 one occurs in old number six, which is now number seven, and

1 we state: "Seven effluent limitation violations of Order  
2 Number R4-2009-0047 were noted in Western Multi Family LLC's  
3 self-monitoring reports, from January 19, 2011, through July  
4 20, 2011."

5 "The violations include effluent limit exceedances  
6 for copper.

7 The Prosecution Team determined that all seven of  
8 those effluent limitation violations are subject to MMP's in  
9 the amount of \$21,000. These violations are listed in  
10 Exhibit A, which is incorporated herein.

11 Moving on to old number seven, new eight:

12 "GID failed to timely submit two discharge  
13 monitoring reports by the deadline specified in the  
14 monitoring reporting program, contained in Order Number  
15 R4-2009-0047, resulting in nine complete 30-day periods in  
16 which the reports were not timely submitted. The late  
17 discharge monitoring reports include the third quarter of  
18 2010, and the fourth quarter, 2010."

19 Moving to 8-A:

20 "The fourth quarter 2010 late discharge monitoring  
21 report qualifies under California Water Code Section  
22 13385.1B-1. A lot is stricken out there, therefore, a  
23 mandatory minimum penalty of \$3,000 dollars is assessed only  
24 for one of the three complete 30-day periods, and not  
25 separately assessed for each 30-day period.

1           Little (b): "The third quarter 2010 rate discharge  
2 monitoring report does not qualify under California Water  
3 Code section 13385.B-1, because the discharges that occurred  
4 during the period covered by this monitoring report violated  
5 effluent limitations. Accordingly, a mandatory minimum  
6 penalty of \$18,000 is assessed for each 30-day period in  
7 which the report was late."

8           Oh actually, I have to -- that is incorrect.

9           "A mandatory minimum penalty is assessed for each  
10 30-day" -- I'm going to change that and state, "accordingly  
11 amend mandatory minimum penalty is assessed for each 30-day  
12 period in which the report was late, resulting in the  
13 assessment of mandatory minimum penalties of \$18,000 for  
14 period."

15           I will change that to reflect that it's only  
16 \$18,000 for all of those 30-day periods, total. There were  
17 a total of six complete 30-day periods for this third  
18 quarter 2010 monitoring reports.

19           Maybe, at that point, I'll say, "and accordingly a  
20 mandatory minimum penalty of \$18,000 is assessed." And  
21 we'll make sure that that is stated that way, because  
22 certainly not \$18,000 for each 30 days; only \$18,000 total.

23           In summary, now moving to "C": "The total  
24 mandatory minimum penalties assessed for the late discharge  
25 monitoring reports from third quarter of 2010, and fourth

1 quarter of 2010, are \$21,000 dollars. These violations are  
2 listed in Exhibit A."

3 Now, moving to number 9:

4 "Finding of fact: On December 16th of 2011, the  
5 Chief Prosecutor issued a complaint to GID for mandatory  
6 minimum penalties in the amount of \$267,000, for 17  
7 violations."

8 Nothing else has changed there.

9 Conclusions of Law. Number 1 -- new number 1.

10 "GID is responsible for violations beginning on  
11 October 1st, 2010, given GID's role as Western Multi Family,  
12 LLC's asset manager, with responsibility for legal  
13 compliance with Regional Board Order Number R4-2009-0047.  
14 GID is not responsible for violations alleged in Complaint  
15 Number R4-2011-0027-M, recorded prior to October 1st, 2010.

16 Number 2, which is a new number 2, under  
17 Conclusions of Law.

18 "Even though GID is not named as the permittee in  
19 Order Number R4-2009-0047, GID can still be held responsible  
20 for violations of MPDES permit, under United States V.  
21 Cooper, 173 et Third, 1192, Ninth Circuit 1999, which held  
22 that non-permittees maybe liable for violating a permit.

23 "Here, GID exercises authority over Western Multi  
24 Family LLC's day-to-day activities, and had the  
25 responsibility for legal compliance with this MPDES permit."

1           Finding number 3:   "The discharges of waste,  
2           containing copper in excess of the effluent limitation under  
3           R4-2009-0047 into navigable waters of the United States  
4           constitutes seven violations of effluent limitations,  
5           contained in R4-2009-0047, of which seven violations are  
6           subject to mandatory minimum penalties."

7           "In conclusion, \$21,000 dollars is assessed for  
8           mandatory minimum penalties for violations of effluent  
9           limitation."

10           I have got to change that, limitations to make it  
11           spelled correctly.

12           In any case, moving on.

13           Findings and Conclusion of Law.

14           Number 4:   "GID submitted two of Western Multi  
15           Family, LLC's discharge monitoring reports more than 30 days  
16           after the required deadline specified in the monitoring and  
17           reporting program contained in Order Number R4-2009-0047.  
18           The third quarter 2010 discharge monitoring report does not  
19           qualify under California Water Code Section 13385.1-B1, and  
20           resulted in \$18,000 dollars in mandatory minimum penalties.

21           However, the fourth quarter 2010 discharge  
22           monitoring report qualifies under 13385.1.B-1, which  
23           resulted in \$3,000 in mandatory minimum penalties. In  
24           conclusion, \$21,000 dollars is assessed in mandatory minimum  
25           penalties for late reporting violations."

1           Moving on to the next substantive addition, or  
2 adding a new Conclusion of Law, number 6:

3           "The applicable Doctrine of Laches does not apply  
4 to mandatory minimum penalties. Laches is an equitable  
5 defense. Principles of equity cannot be used to avoid  
6 statutory mandates such as those seen in the mandatory  
7 penalty scheme established by Water Code Section 13385."

8           And there's a bunch of legal citations there.

9           Conclusion of Law Number 7:

10          "\$42,000 dollars in mandatory minimum penalty  
11 amount that must be assessed against GID, under California  
12 Water Code Section 13385, for the violations of effluent  
13 limitations between January 19, 2011, through July 20th,  
14 2011, and the violations associated with late discharge  
15 monitoring reports from the third and fourth quarters of  
16 2010."

17          Then moving on to finally, to recommended MMP.

18          "The amount of \$42,000 must be imposed on GID as a  
19 mandatory minimum penalty for the violations found herein,  
20 to have been committed by GID, because GID is Western Multi  
21 Family LLC's Asset Manager, with responsibility for legal  
22 compliance with Regional Board Order Number R4-2009-0047. A  
23 Proposed Order on Complaint is attached."

24          So once again, on two things, I'm going to make  
25 sure that the finding is -- correctly reflects that \$18,000

1 only, for a total -- and that would be in Finding of Fact  
2 Number 8-B -- no. Yes, 8-B.

3 I'll make sure that is -- correctly reflects what  
4 the \$18,000 applies to, and then that these similar,  
5 substantive changes will be made to the Proposed Order that  
6 will be presented to the Board for adoption in the April  
7 Board meeting.

8 And I guess I might as well mention as well, that  
9 at this point, that once this hearing closes today, that at  
10 the Board meeting, there will be no further opportunity for  
11 presentation of evidence or argument.

12 That this is the final opportunity for the hearing.  
13 And so, it would be up to the the Hearing Officer, Maria  
14 Mehranian, to close this hearing.

15 MS. OKAMOTO: Are we allowed to ask any questions or  
16 clarifications on the recommendation, at this time or no?

17 MS. OLINGER: Of course. I'm sure you can ask  
18 questions.

19 MS. OKAMOTO: I just had a question because I think in  
20 the beginning of your statement, you had said that this  
21 complaint will be restated as being dismissed without  
22 prejudice, is that correct?

23 MS. OLINGER: Yes. But the part of the complaint, a  
24 portion of the complaint. I should say, "dismissed in  
25 part," perhaps. Thank you for bringing that to my

1 attention. That the hereby ordered section would then  
2 instead say "dismissed in part without prejudice."

3 I'm making that change right now.

4 Any further comments or questions?

5 HEARING OFFICER MEHRANIAN: We will close the session.

6 Thank you.

7 MR. O'NEIL: Thank you.

8 (Panel Hearing adjourned)

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# EXHIBIT B

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

In the matter of:	)	Order on Complaint No. R4-2011-0027-M
	)	Mandatory Minimum Penalty
	)	For
	)	Violation of California Water Code §§ 13376, 13383,
GID Investment Advisers, LLC	)	and
Sea Castle Apartments	)	Order No. R4-2009-0047
Santa Monica, California	)	(NPDES No. CAG994003)

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. The Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) has found and determined that GID Investment Advisers, LLC (GID) violated requirements contained in California Water Code (CWC) §§ 13376, 13383, and Los Angeles Water Board Order No. R4-2009-0047.
2. On December 16, 2011, the Chief Prosecutor issued Administrative Civil Liability Complaint No. R4-2011-0027-M (hereinafter Complaint) recommending that the Los Angeles Water Board assess GID total mandatory minimum penalties in the amount of \$267,000 for seventeen (17) alleged effluent limitation violations and seventy-two (72) alleged late reporting violations of Los Angeles Water Board Order Nos. R4-2004-0058 and R4-2009-0047 that occurred between May 2006 and July 2011.
3. On March 15, 2012, this matter was heard in Los Angeles, California before a Los Angeles Water Board Hearing Panel (Panel) consisting of Los Angeles Water Board Members Maria Mehranian (Chair), Francine Diamond, and Maria Camacho. Samuel Unger and Sarah Olinger were Panel advisors. Stephen O'Neil appeared on behalf of GID. Hugh Marley, Mayumi Okamoto, and Andrew Choi appeared for the Prosecution Team. The Panel subsequently submitted to the Los Angeles Water Board its report of the hearing consisting of findings of fact, conclusions of law, and recommended administrative civil liability, a copy of which is attached hereto and incorporated herein by reference.
4. Western MultiFamily, LLC (WMF), a party not named in the Complaint, owns Sea Castle Apartments (hereinafter facility) located at 1725 Ocean Front Walk, in Santa Monica, California. From February 16, 2006 to January 28, 2010, the discharges from the facility were subject to the waste discharge requirements, limitations, and monitoring and reporting requirements set forth in Los Angeles Water Board Order No. R4-2004-0058. Province Group, LLC, an operator of the facility, was named as permittee to Order No. R4-2004-0058. Beginning on January 29, 2010, the discharges from the facility are subject to the waste discharge requirements, limitations, and monitoring and reporting requirements set forth in Los Angeles Water Board Order No. R4-2009-0047. WMF was named as permittee to Order No. R4-2009-0047.
5. Although a legal entity, WMF has no employees. Rather, WMF contracts with investment advisors and/or asset managers who act on behalf of WMF and manage the day-to-day operations of the

EXHIBIT   B

facility, including compliance with Los Angeles Water Board orders. Prior to October 1, 2010, BlackRock Realty Advisers, Inc. (BlackRock) owned a two percent (2%) interest in WMF and was the investment advisor/asset manager to WMF. CalPERS owns the other ninety-eight percent (98%) interest in WMF. Effective October 1, 2010, GID purchased BlackRock's two-percent (2%) ownership interest in WMF and replaced BlackRock as the investment advisor/asset manager to WMF for the facility. BlackRock and GID are separate entities and have no connection with each other. As the investment advisor/asset manager to WMF, GID is contractually responsible to WMF for strategic property decisions and operation and oversight of the facility, which includes ensuring legal compliance with business licenses and permits. Thus, GID is contractually responsible for ensuring legal compliance with Los Angeles Water Board Order No. R4-2009-0047 issued to WMF.

6. At the hearing on this matter, GID presented testimony and argument that it was not a proper party to the Complaint on the basis that it was not a named permittee to either Order No. R4-2004-0058 or R4-2009-0047 and, further, GID was not involved in any way with the facility until October 1, 2010.
7. Based on the written record and evidence presented at the hearing, the Panel determined that GID violated CWC §§ 13376, 13383, and Los Angeles Water Board Order No. R4-2009-0047 and should be assessed total mandatory minimum penalties in the amount of \$42,000 for seven (7) effluent limitation violations and nine (9) late reporting violations, as identified in Exhibit "1" attached hereto and incorporated herein by reference. The Panel based its determination on the following findings of fact and conclusions of law:
  - a. GID is not a proper party to the Complaint for the alleged effluent limitation and reporting violations that occurred on and prior to September 30, 2010. GID was not named as a permittee in Order No. R4-2004-0058 or R4-2009-0047, nor was GID involved in the facility in any way until October 1, 2010 when it purchased BlackRock's ownership interest in WMF and became WMF's investment advisor/asset manager. With the exception of the September 30, 2010 effluent limitation violation, the Panel found that the alleged effluent limitation and reporting violations in the Complaint that occurred prior to October 1, 2010 should be dismissed without prejudice to the Prosecution Team and the Panel made no determinations on the merit for those alleged violations. For the September 30, 2010 effluent limitation violation, although the Panel found that the violation occurred as reported by GID, the Panel found that GID was not a proper party for purposes of assessing a penalty for that specific effluent limitation violation. The Panel further determined that the Prosecution Team, in its discretion, may issue another administrative civil liability complaint for any or all of the alleged violations that occurred prior to October 1, 2010, as well as the effluent limitation violation that did occur on September 30, 2010.
  - b. GID is a proper party to the Complaint for the effluent limitation and reporting violations that occurred on and after October 1, 2010. Even though GID is not named as a permittee in Order No. R4-2009-0047, GID can still be held responsible for violations of an NPDES permit under *United States v. Cooper*, 173 F.3d 1192 (9th Cir. 1999), which held that non-permittees may be liable for violating a permit. GID, as WMF's investment advisor/asset manager, exercises authority over the day-to-day operations of the facility, and had the responsibility for legal compliance with Order No. R4-2009-0047.
  - c. Seven (7) effluent limitation violations of Order No. R4-2009-0047 were noted in WMF's 1<sup>st</sup> Quarter 2011, 2<sup>nd</sup> Quarter 2011, and 3<sup>rd</sup> Quarter 2011 self-monitoring reports. The Panel found that all those violations occurred as alleged in the Complaint and as reported in the self-monitoring reports. The Panel determined that all seven (7) of those effluent limitation violations

are subject to mandatory minimum penalties in the amount of twenty-one thousand dollars (\$21,000).

- d. GID failed to timely submit two (2) discharge self-monitoring reports by the deadlines specified in the Monitoring and Reporting Program contained in Order No. R4-2009-0047, resulting in nine (9) complete late reporting violations as follows:
  - 1) GID submitted the 3<sup>rd</sup> Quarter 2010 monitoring report a total of two-hundred and six (206) days after the required deadline of November 14, 2010, constituting a total of six (6) late reporting violations. The 3<sup>rd</sup> Quarter 2010 report does not qualify for the modified penalty assessment exceptions under CWC § 13385(b)(1) because the discharges that occurred during the period covered by this monitoring period violated effluent limitations. The Panel found that a effluent limitation violation occurred on September 30, 2010 as reported by GID in its 3<sup>rd</sup> Quarter 2010 monitoring report. However, the Panel found that GID was not a proper party for assessment of a penalty for this effluent limitation violation as GID was not involved with the facility until October 1, 2010. The Panel, however, found that GID should be assessed a penalty for the reporting violation. Thus, the Panel determined that the late reporting violations for the 3<sup>rd</sup> Quarter 2010 report are subject to a mandatory minimum penalty of eighteen thousand dollars (\$18,000).
  - 2) GID submitted the 4<sup>th</sup> Quarter 2010 monitoring report a total of one-hundred fourteen (114) days after the required deadline of February 14, 2011. The 4<sup>th</sup> Quarter 2010 report qualifies for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) because the discharges that occurred during the period covered by this monitoring report did not violate effluent limitations. Therefore, the Panel determined that a mandatory minimum penalty of three-thousand dollars (\$3,000) should be assessed for this report only and not separately assessed for each 30-day period.
8. Upon considering the Panel's report and making an independent review of the record, the Los Angeles Water Board during its meeting on June 7, 2012 adopted the findings and conclusions of the Panel report as the findings and conclusions of the Board and upheld the imposition of the Panel's proposed administrative civil liability on GID. The Los Angeles Water Board directed GID to pay a total assessment of \$42,000 on Complaint No. R4-2011-0027-M.
9. Pursuant to CWC § 13385.1(b)(2)(B), GID is hereby notified that it must pay all penalties assessed by the Los Angeles Water Board for the 4<sup>th</sup> Quarter 2010 late reporting violation within 30 days after this Order is issued. This requirement will be stayed if a petition is filed pursuant to Paragraph 12 below. If GID does not pay the penalties within 30 days of issuance of this Order, and did not file a timely petition, GID will no longer qualify for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) and GID must pay a mandatory minimum penalty of three-thousand dollars (\$3,000) for each 30-day period in which the report was late. Thus, the mandatory minimum penalty associated with the 4<sup>th</sup> Quarter 2010 late reporting violation would increase from three-thousand dollars (\$3,000) to nine-thousand dollars (\$9,000).
10. This Order on Complaint is effective and final upon issuance by the Los Angeles Water Board. Payment must be received by the Los Angeles Water Board no later than thirty days from the date on which this Order is issued.
11. In the event that GID fails to comply with the requirements of this Order, the Executive Officer or his delegatee is authorized to refer this matter to the Office of Attorney General or a debt collection agency

for enforcement and/or collection of penalties.

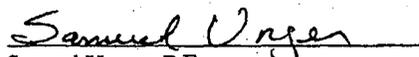
12. Any person aggrieved by this action of the Los Angeles Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the Los Angeles Water Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**IT IS HEREBY ORDERED that:**

1. Pursuant to § 13323 of the CWC, GID shall make a payment by check in the amount of \$42,000 (payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days after from the date on which this Order is issued. The check shall reference the number of this Order.
2. With the exception of the September 30, 2010 effluent limitation violation, the alleged effluent limitation and reporting violations in Complaint No. R4-2011-0027-M that occurred prior to October 1, 2010 are dismissed without prejudice to the Prosecution Team and the Los Angeles Water Board makes no determinations on the merit for those alleged violations. For the September 30, 2010 effluent limitation violation, GID is not a proper party for purposes of assessing a penalty for this effluent limitation violation. The Prosecution Team, in its discretion, may issue another administrative civil liability complaint for any or all of the alleged violations that occurred prior to October 1, 2010, as well as the effluent limitation violation that did occur on September 30, 2010.
3. In the event that GID fails to comply with the requirements of this Order on Complaint No. R4-2011-0027-M, the Executive Officer or his delegee is authorized to refer this matter to the Office of the Attorney General or a debt collection agency for enforcement and/or collection of penalties.

**CERTIFICATION**

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Los Angeles Region, and that such action occurred on June 7, 2012.

  
Samuel Unger, P.E.  
Executive Officer

**EXHIBIT "1"**  
**Violation Summary**

<b>Effluent Limitation Violations</b>											
Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
09/30/10	3rd Quarter 2010	Monthly Average	Copper	3.1	2.9	ug/L	2	7%	n/a	n/a	\$0
01/19/11	1st Quarter 2011	Daily Max	Copper	18	5.8	ug/L	2	210%	Serious	(h)1	\$3,000
01/31/11	1st Quarter 2011	Monthly Average	Copper	18	2.9	ug/L	2	521%	Serious	(h)1	\$3,000
04/27/11	2nd Quarter 2011	Daily Max	Copper	23	5.8	ug/L	2	297%	Serious	(h)1	\$3,000
04/27/11	2nd Quarter 2011	Monthly Average	Copper	23	2.9	ug/L	2	693%	Serious	(h)1	\$3,000
05/19/11	2nd Quarter 2011	Daily Max	Copper	10	5.8	ug/L	2	72%	Serious	(h)1	\$3,000
05/19/11	2nd Quarter 2011	Monthly Average	Copper	10	2.9	ug/L	2	245%	Serious	(h)1	\$3,000
07/26/11	3rd Quarter 2011	Monthly Average	Copper	4.1	2.9	ug/L	2	41%	Serious	(h)1	\$3,000

**Total \$21,000**

<b>Late Reporting Violations</b>											
Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day	Amount Per 30-Day Period	Qualifies for Water Code Section	Serious/Chronic	Water Code Section 13385	Penalty	
3rd Quarter 2010	Late Reporting	11/14/2010	06/08/2011	206	6	\$3,000	No	Serious	(h)(1)	\$18,000	
4th Quarter 2010	Late Reporting	02/14/2011	06/08/2011	114	3	\$3,000	Yes	Serious	(h)(1)	\$3,000	

**Total \$21,000**

**GRAND TOTAL \$42,000**

## HEARING PANEL REPORT AND PROPOSED ORDER

GID Investment Advisers, LLC, Sea Castle Apartments  
ACL Complaint No. R4-2011-0027-M

This matter was heard on March 15, 2012 in Los Angeles, California before a Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board ) Hearing Panel (Panel) consisting of Los Angeles Water Board Members Maria Mehranian (Chair), Francine Diamond, and Maria Camacho. Samuel Unger and Sarah Olinger were Panel advisors. Stephen O'Neil appeared on behalf of GID Investment Advisers, LLC. Hugh Marley, Mayumi Okamoto, and Andrew Choi appeared for the Prosecution Team.

The Panel makes the following:

### FINDINGS OF FACT

1. Western MultiFamily, LLC (WMF) owns Sea Castle Apartments (hereinafter facility) located at 1725 Ocean Front Walk, in Santa Monica, California. WMF has owned the facility since at least 2001. The facility discharges up to 20,000 gallons per day (GPD) of wastewater that consists of blowdown water from cooling tower and infiltrating groundwater. The discharge flows into the Pico Kenter Storm Drain, then to Santa Monica Bay, a navigable water of the United States. The wastewater contains pollutants defined as waste under the Porter-Cologne Water Quality Control Act (California Water Code § 13000 et seq.).
2. On April 1, 2004, the Los Angeles Water Board adopted Order No. R4-2004-0058, *NPDES Permit and Waste Discharge Requirements for Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties*. Province Group, LLC, an operator of the facility, submitted a Notice of Intent to enroll under Order No. R4-2004-0058. On February 16, 2006, the Executive Officer determined that the waste discharge from the facility met the conditions to be enrolled under Order No. R4-2004-0058. Province Group, LLC was named as the permittee to this NPDES permit.
3. On April 2, 2009, the Los Angeles Water Board adopted Order No. R4-2009-0047, *NPDES Permit and Waste Discharge Requirements for Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties*. On June 9, 2009, WMF submitted a Notice of Intent to enroll under the general NPDES permit. Order No. R4-2009-0047 became effective to the facility's discharge on January 29, 2010, and superseded Order No. R4-2004-0058 except for enforcement purposes. WMF was named as the permittee to this NPDES permit.
4. Although a legal entity, WMF has no employees. Rather, WMF contracts with investment advisors and/or asset managers who act on behalf of WMF and manage the day-to-day operations of the facility, including compliance with Los Angeles Water Board orders. Prior to October 1, 2010, BlackRock Realty Advisers, Inc. (BlackRock) owned a two percent (2%) interest in WMF and was the investment advisor/asset manager to WMF. CalPERS owns the other ninety-eight percent (98%) interest in WMF. Effective October 1, 2010, GID Investment Advisers, LLC (GID) purchased BlackRock's two percent (2%) ownership interest in WMF and replaced BlackRock as the investment advisor/asset manager to WMF for the facility. BlackRock and GID are separate entities and have no connection with each other. As the investment advisor/asset manager to WMF, GID is contractually responsible to WMF for strategic property decisions and operation and oversight of the facility, which includes ensuring legal compliance with business

licenses and permits. Thus, GID is contractually responsible for ensuring legal compliance with Los Angeles Water Board Order No. R4-2009-0047 issued to WMF.

5. Wastewater discharges from the facility contain pollutants and are subject to the requirements and limitations set forth in California Water Code (CWC) § 13376 and Los Angeles Water Board Orders No. R4-2004-0058 and R4-2009-0047. CWC § 13376 prohibits the discharge of pollutants to surface waters, except as authorized by waste discharge requirements that implement the provisions of the Federal Clean Water Act. Order Nos. R4-2004-0058 and R4-2009-0047 set forth waste discharge requirements and effluent limitations governing the discharges from the facility during the relevant period of time.
6. Order Nos. R4-2004-0058 and R4-2009-0047 required the permittees to implement a Monitoring and Reporting Program, and to prepare and submit quarterly self-monitoring reports to the Los Angeles Water Board pursuant to CWC § 13383. These requirements applied throughout the permittees' term of enrollment.
7. On May 17, 2011, the Chief Prosecutor of the Los Angeles Water Board issued WMF Settlement Offer No. R4-2011-0027-M, which included a Notice of Violation (NOV) notifying WMF, among other alleged violations, of its failure to submit self-monitoring reports for 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010. On June 8, 2011, in response to the NOV, GID submitted both the 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010 monitoring reports. GID submitted these reports within 30 days of the NOV.
8. CWC § 13385(h)(1) requires the Los Angeles Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2), a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.
9. CWC § 13385(i) requires the Los Angeles Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for each violation whenever a person violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
10. CWC § 13385.1(a)(1) requires the Los Angeles Water Board to assess a mandatory minimum penalty of three-thousand dollars (\$3,000) for a "serious violation" defined by that subsection as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations." This subsection applies to late reporting violations occurring on or after January 1, 2004.
11. On December 16, 2011, the Chief Prosecutor issued Administrative Civil Liability Complaint No. R4-2011-0027-M (hereinafter Complaint) recommending that the Los Angeles Water Board assess GID total mandatory minimum penalties in the amount of \$267,000 for seventeen (17) alleged effluent limitation violations and seventy-two (72) alleged late reporting violations of Los Angeles Water Board Order Nos. R4-2004-0058 and R4-2009-0047 that occurred between May 2006 and July 2011, as identified in Exhibit "A" to the Complaint.

12. At the hearing on this matter, GID presented testimony and argument that it was not a proper party to the Complaint on the basis that it was not a named permittee to either Order No. R4-2004-0058 or R4-2009-0047 and, further, GID was not involved in any way with the facility until October 1, 2010. GID also argued that several violations set forth in the Complaint were not enforceable as they were time barred by either a statute of limitations or by the doctrine of laches.
13. Upon considering the written record and evidence presented at the hearing, the Panel finds:
  - a. GID is not a proper party to the Complaint for the alleged effluent limitation and reporting violations that occurred on and prior to September 30, 2010. However, GID is a property party to the Complaint for effluent limitation and reporting violations that occurred on and after October 1, 2010.
  - b. Seven (7) effluent limitation violations of Order No. R4-2009-0047 were noted in WMF's 1<sup>st</sup> Quarter 2011, 2<sup>nd</sup> Quarter 2011, and 3<sup>rd</sup> Quarter 2011 self-monitoring reports. These violations include effluent limitation exceedances for copper. The Panel finds that those violations occurred as alleged in the Complaint and as reported in the self-monitoring reports. The Panel determined that all seven (7) of those effluent limitation violations are subject to mandatory minimum penalties in the amount of twenty-one thousand dollars (\$21,000). These violations are identified in Exhibit "1", which is attached hereto and incorporated herein by reference.
  - c. GID failed to timely submit two (2) discharge self-monitoring reports by the deadlines specified in the Monitoring and Reporting Program contained in Order No. R4-2009-0047, resulting in nine (9) complete thirty (30) day periods in which the reports were not timely submitted. The late reports include the 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010 reports.
  - d. GID submitted the 3<sup>rd</sup> Quarter 2010 monitoring report a total of two-hundred and six (206) days after the required deadline of November 14, 2010, constituting a total of six (6) late reporting violations as identified in Exhibit "1." This late report does not qualify for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) because the discharges that occurred during the period covered by this monitoring report violated effluent limitations. The 3<sup>rd</sup> Quarter 2010 monitoring report submitted by GID indicated that a violation of the monthly average effluent limitation for copper occurred on September 30, 2010.<sup>1</sup> The Panel finds that this effluent limitation violation occurred as reported in the 3<sup>rd</sup> Quarter 2010 report. However, GID is not a proper party for assessment of a penalty for this effluent limitation violation as GID was not involved with the facility until October 1, 2010. GID, however, should be assessed a penalty for the reporting violation. Accordingly, a mandatory minimum penalty of three-thousand dollars (\$3,000) is assessed for each 30-day period in which the report was late, resulting in a total assessment of mandatory minimum penalties in the amount of eighteen thousand dollars (\$18,000) for the 3<sup>rd</sup> Quarter 2010 monitoring report.
  - e. GID submitted the 4<sup>th</sup> Quarter 2010 monitoring report a total of one-hundred fourteen (114) days after the required deadline of February 14, 2011, constituting a total of three (3) late reporting violations as identified in Exhibit "1." This late report qualifies for the

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<sup>1</sup> The 3<sup>rd</sup> Quarter 2010 self-monitoring report submitted by GID dated June 13, 2011 indicated the effluent sample was collected on September 15, 2010. As no other samples were taken during the month of September 2010, the violation of the monthly average effluent limitation occurred on the last day of the month, September 30, 2010.

modified penalty assessment exceptions under CWC § 13385.1(b)(1) because the discharges that occurred during the period covered by this monitoring report did not violate effluent limitations. Therefore, a mandatory minimum penalty of three-thousand dollars (\$3,000) is assessed for this report only and not separately assessed for each 30-day period.

- f. In summary, the total mandatory minimum penalties that should be assessed for the effluent limitation and late monitoring report violations of Order No. R4-2009-0047 are forty-two thousand dollars (\$42,000). These violations are listed in Exhibit "1."

## CONCLUSIONS OF LAW

1. GID is not a proper party to the Complaint for the alleged effluent limitation and reporting violations that occurred on and prior to September 30, 2010. GID was not named as a permittee in Order No. R4-2004-0058 or R4-2009-0047, nor was GID involved in the facility in any way until October 1, 2010 when it purchased BlackRock's ownership interest in WMF and became WMF's investment advisor/asset manager. Accordingly, with the exception of the September 30, 2010 effluent limitation violation, the Panel finds that the alleged effluent limitation and reporting violations in the Complaint that occurred prior to October 1, 2010 should be dismissed without prejudice to the Prosecution Team and the Panel makes no determinations on the merit for these alleged violations. For the September 30, 2010 effluent limitation violation, although the Panel finds that the violation occurred as reported by GID, the Panel finds that GID is not a proper party for purposes of assessing a penalty for this specific effluent limitation violation. The Prosecution Team, in its discretion, may issue another administrative civil liability complaint for any or all of the alleged violations that occurred prior to October 1, 2010, as well as the effluent limitation violation that did occur on September 30, 2010.
2. GID is a proper party to the Complaint for the effluent limitation and reporting violations that occurred on and after October 1, 2010. Even though GID is not named as a permittee in Order No. R4-2009-0047, GID can still be held responsible for violations of an NPDES permit under *United States v. Cooper*, 173 F.3d 1192 (9th Cir. 1999), which held that non-permittees may be liable for violating a permit. Here, GID, as WMF's investment advisor/asset manager, exercises authority over the day-to-day operations of the facility, and had the responsibility for legal compliance with Order No. R4-2009-0047.
3. The discharges of waste containing copper in excess of the effluent limitations set forth in Order No. R4-2009-0047 into navigable waters of the United States is a violation of CWC § 13376. Pursuant to CWC § 13385, seven (7) violations of effluent limitations contained in Order No. R4-2009-0047 are subject to mandatory minimum penalties in the amount of twenty-one thousand dollars (\$21,000).
4. GID submitted two (2) discharge monitoring reports, namely the 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010 reports, more than thirty (30) days after the required deadlines specified in the Monitoring and Reporting Program contained in Order No. R4-2009-0047. Submittal of late monitoring reports constitutes a violation of CWC § 13383. Submitting the 3<sup>rd</sup> Quarter 2010 and 4<sup>th</sup> Quarter 2010 monitoring reports on June 8, 2011, two-hundred and six (206) and one-hundred fourteen (114) days, respectively, after the required deadlines constitute nine (9) serious violations of monitoring and reporting requirements contained in Order No. R4-2009-0047, as identified in Exhibit "1." The 3<sup>rd</sup> Quarter 2010 report does not qualify for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) and resulted in eighteen thousand dollars (\$18,000) in mandatory minimum penalties. However, the 4<sup>th</sup> Quarter 2010 report qualifies for the modified

penalty assessment exceptions under CWC § 13385.1(b)(1), resulting in a mandatory minimum penalty of three-thousand dollars (\$3,000). In sum, twenty-one thousand dollars (\$21,000) is assessed in mandatory minimum penalties for the late reporting violations.

5. \$42,000 is the mandatory minimum penalty that must be assessed under CWC § 13385 for the violations identified in Exhibit "1."
6. The maximum amount of administrative civil liability assessable for the violations alleged in the Complaint pursuant to CWC § 13385 is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
7. There are no statutes of limitations that apply to this administrative proceeding. The statutes of limitations in the California Code of Civil Procedure that refer to "actions" and "special proceedings" apply to judicial proceedings, not administrative proceedings. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 405(2), p. 510.)
8. ~~The equitable doctrine of laches does not apply to mandatory minimum penalties. Laches is an equitable defense. (*Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1494.) Principles of equity cannot be used to avoid statutory mandates, such as those seen in the mandatory penalty scheme established by CWC section 13385. (*Ghory v. Al-Lahhan* (1989) 209 Cal.App.3d 1487, 1492; *Jiagbogu v. Mercedes Benz* (2004) 118 Cal.App.4th 1235, 1244; see also *City of Brentwood v. Central Valley Regional Water Quality Control Board* (2004) 123 Cal.App.4th 714, 726; State Water Resources Control Board Order WQ 2007-0010 (*Escondido Creek Conservancy*)).~~

#### RECOMMENDED ADMINISTRATIVE CIVIL LIABILITY

The Hearing Panel recommends assessing GID administrative civil liability in the amount of \$42,000, which is the mandatory minimum penalty for the violations discussed above. A proposed Order on Complaint No. R4-2011-0027-M is attached.

*Samuel Urges for*  
Maria Mehranian  
Chair

*May 18, 2012*  
Date

#### Attachments:

Exhibit "1": Violation Summary  
Proposed Order on Complaint No. R4-2011-0027-M

## EXHIBIT "1" Violation Summary

Effluent Limitation Violations											
Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
09/30/10	3rd Quarter 2010	Monthly Average	Copper	3.1	2.9	ug/L	2	7%	n/a	n/a	\$0
01/19/11	1st Quarter 2011	Daily Max	Copper	18	5.8	ug/L	2	210%	Serious	(h)1	\$3,000
01/31/11	1st Quarter 2011	Monthly Average	Copper	18	2.9	ug/L	2	521%	Serious	(h)1	\$3,000
04/27/11	2nd Quarter 2011	Daily Max	Copper	23	5.8	ug/L	2	297%	Serious	(h)1	\$3,000
04/27/11	2nd Quarter 2011	Monthly Average	Copper	23	2.9	ug/L	2	693%	Serious	(h)1	\$3,000
05/19/11	2nd Quarter 2011	Daily Max	Copper	10	5.8	ug/L	2	72%	Serious	(h)1	\$3,000
05/19/11	2nd Quarter 2011	Monthly Average	Copper	10	2.9	ug/L	2	245%	Serious	(h)1	\$3,000
07/20/11	3rd Quarter 2011	Monthly Average	Copper	4.1	2.9	ug/L	2	41%	Serious	(h)1	\$3,000

**Total \$21,000**

Late Reporting Violations										
Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day Periods	Amount Per 30-Day Period	Qualifies for Water Code Section 13385.1(b)(1)	Serious/Chronic	Water Code Section 13385	Penalty
3rd Quarter 2010	Late Reporting	11/14/2010	06/08/2011	206	6	\$3,000	No	Serious	(h)(1)	\$18,000
4th Quarter 2010	Late Reporting	02/14/2011	06/08/2011	114	3	\$3,000	Yes	Serious	(h)(1)	\$3,000

**Total \$21,000**

**GRAND TOTAL \$42,000**

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

<b>In the matter of:</b>	)	<b>Order on Complaint No. R4-2011-0027-M</b>
	)	<b>Mandatory Minimum Penalty</b>
	)	<b>For</b>
	)	<b>Violation of California Water Code §§ 13376, 13383,</b>
<b>GID Investment Advisers, LLC</b>	)	<b>and</b>
<b>Sea Castle Apartments</b>	)	<b>Order No. R4-2009-0047</b>
<b>Santa Monica, California</b>	)	<b>(NPDES No. CAG994003)</b>

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. The Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) has found and determined that GID Investment Advisers, LLC (GID) violated requirements contained in California Water Code (CWC) §§ 13376, 13383, and Los Angeles Water Board Order No. R4-2009-0047.
2. On December 16, 2011, the Chief Prosecutor issued Administrative Civil Liability Complaint No. R4-2011-0027-M (hereinafter Complaint) recommending that the Los Angeles Water Board assess GID total mandatory minimum penalties in the amount of \$267,000 for seventeen (17) alleged effluent limitation violations and seventy-two (72) alleged late reporting violations of Los Angeles Water Board Order Nos. R4-2004-0058 and R4-2009-0047 that occurred between May 2006 and July 2011.
3. On March 15, 2012, this matter was heard in Los Angeles, California before a Los Angeles Water Board Hearing Panel (Panel) consisting of Los Angeles Water Board Members Maria Mehranian (Chair), Francine Diamond, and Maria Camacho. Samuel Unger and Sarah Olinger were Panel advisors. Stephen O'Neil appeared on behalf of GID. Hugh Marley, Mayumi Okamoto, and Andrew Choi appeared for the Prosecution Team. The Panel subsequently submitted to the Los Angeles Water Board its report of the hearing consisting of findings of fact, conclusions of law, and recommended administrative civil liability, a copy of which is attached hereto and incorporated herein by reference.
4. Western MultiFamily, LLC (WMF), a party not named in the Complaint, owns Sea Castle Apartments (hereinafter facility) located at 1725 Ocean Front Walk, in Santa Monica, California. From February 16, 2006 to January 28, 2010, the discharges from the facility were subject to the waste discharge requirements, limitations, and monitoring and reporting requirements set forth in Los Angeles Water Board Order No. R4-2004-0058. Province Group, LLC, an operator of the facility, was named as permittee to Order No. R4-2004-0058. Beginning on January 29, 2010, the discharges from the facility are subject to the waste discharge requirements, limitations, and monitoring and reporting requirements set forth in Los Angeles Water Board Order No. R4-2009-0047. WMF was named as permittee to Order No. R4-2009-0047.
5. Although a legal entity, WMF has no employees. Rather, WMF contracts with investment advisors and/or asset managers who act on behalf of WMF and manage the day-to-day operations of the

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facility, including compliance with Los Angeles Water Board orders. Prior to October 1, 2010, BlackRock Realty Advisers, Inc. (BlackRock) owned a two percent (2%) interest in WMF and was the investment advisor/asset manager to WMF. CalPERS owns the other ninety-eight percent (98%) interest in WMF. Effective October 1, 2010, GID purchased BlackRock's two percent (2%) ownership interest in WMF and replaced BlackRock as the investment advisor/asset manager to WMF for the facility. BlackRock and GID are separate entities and have no connection with each other. As the investment advisor/asset manager to WMF, GID is contractually responsible to WMF for strategic property decisions and operation and oversight of the facility, which includes ensuring legal compliance with business licenses and permits. Thus, GID is contractually responsible for ensuring legal compliance with Los Angeles Water Board Order No. R4-2009-0047 issued to WMF.

6. At the hearing on this matter, GID presented testimony and argument that it was not a proper party to the Complaint on the basis that it was not a named permittee to either Order No. R4-2004-0058 or R4-2009-0047 and, further, GID was not involved in any way with the facility until October 1, 2010.
7. Based on the written record and evidence presented at the hearing, the Panel determined that GID violated CWC §§ 13376, 13383, and Los Angeles Water Board Order No. R4-2009-0047 and should be assessed total mandatory minimum penalties in the amount of \$42,000 for seven (7) effluent limitation violations and nine (9) late reporting violations, as identified in Exhibit "1" attached hereto and incorporated herein by reference. The Panel based its determination on the following findings of fact and conclusions of law:
  - a. GID is not a proper party to the Complaint for the alleged effluent limitation and reporting violations that occurred on and prior to September 30, 2010. GID was not named as a permittee in Order No. R4-2004-0058 or R4-2009-0047, nor was GID involved in the facility in any way until October 1, 2010 when it purchased BlackRock's ownership interest in WMF and became WMF's investment advisor/asset manager. With the exception of the September 30, 2010 effluent limitation violation, the Panel found that the alleged effluent limitation and reporting violations in the Complaint that occurred prior to October 1, 2010 should be dismissed without prejudice to the Prosecution Team and the Panel made no determinations on the merit for those alleged violations. For the September 30, 2010 effluent limitation violation, although the Panel found that the violation occurred as reported by GID, the Panel found that GID was not a proper party for purposes of assessing a penalty for that specific effluent limitation violation. The Panel further determined that the Prosecution Team, in its discretion, may issue another administrative civil liability complaint for any or all of the alleged violations that occurred prior to October 1, 2010, as well as the effluent limitation violation that did occur on September 30, 2010.
  - b. GID is a proper party to the Complaint for the effluent limitation and reporting violations that occurred on and after October 1, 2010. Even though GID is not named as a permittee in Order No. R4-2009-0047, GID can still be held responsible for violations of an NPDES permit under *United States v. Cooper*, 173 F.3d 1192 (9th Cir. 1999), which held that non-permittees may be liable for violating a permit. GID, as WMF's investment advisor/asset manager, exercises authority over the day-to-day operations of the facility, and had the responsibility for legal compliance with Order No. R4-2009-0047.
  - c. Seven (7) effluent limitation violations of Order No. R4-2009-0047 were noted in WMF's 1<sup>st</sup> Quarter 2011, 2<sup>nd</sup> Quarter 2011, and 3<sup>rd</sup> Quarter 2011 self-monitoring reports. The Panel found that all those violations occurred as alleged in the Complaint and as reported in the self-monitoring reports. The Panel determined that all seven (7) of those effluent limitation violations

are subject to mandatory minimum penalties in the amount of twenty-one thousand dollars (\$21,000).

- d. GID failed to timely submit two (2) discharge self-monitoring reports by the deadlines specified in the Monitoring and Reporting Program contained in Order No. R4-2009-0047, resulting in nine (9) complete late reporting violations as follows:
  - 1) GID submitted the 3<sup>rd</sup> Quarter 2010 monitoring report a total of two-hundred and six (206) days after the required deadline of November 14, 2010, constituting a total of six (6) late reporting violations. The 3<sup>rd</sup> Quarter 2010 report does not qualify for the modified penalty assessment exceptions under CWC § 13385(b)(1) because the discharges that occurred during the period covered by this monitoring period violated effluent limitations. The Panel found that a effluent limitation violation occurred on September 30, 2010 as reported by GID in its 3<sup>rd</sup> Quarter 2010 monitoring report. However, the Panel found that GID was not a proper party for assessment of a penalty for this effluent limitation violation as GID was not involved with the facility until October 1, 2010. The Panel, however, found that GID should be assessed a penalty for the reporting violation. Thus, the Panel determined that the late reporting violations for the 3<sup>rd</sup> Quarter 2010 report are subject to a mandatory minimum penalty of eighteen thousand dollars (\$18,000).
  - 2) GID submitted the 4<sup>th</sup> Quarter 2010 monitoring report a total of one-hundred fourteen (114) days after the required deadline of February 14, 2011. The 4<sup>th</sup> Quarter 2010 report qualifies for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) because the discharges that occurred during the period covered by this monitoring report did not violate effluent limitations. Therefore, the Panel determined that a mandatory minimum penalty of three-thousand dollars (\$3,000) should be assessed for this report only and not separately assessed for each 30-day period.
8. Upon considering the Panel's report and making an independent review of the record, the Los Angeles Water Board during its meeting on June 7, 2012 adopted the findings and conclusions of the Panel report as the findings and conclusions of the Board and upheld the imposition of the Panel's proposed administrative civil liability on GID. The Los Angeles Water Board directed GID to pay a total assessment of \$42,000 on Complaint No. R4-2011-0027-M.
9. Pursuant to CWC § 13385.1(b)(2)(B), GID is hereby notified that it must pay all penalties assessed by the Los Angeles Water Board for the 4<sup>th</sup> Quarter 2010 late reporting violation within 30 days after this Order is issued. This requirement will be stayed if a petition is filed pursuant to Paragraph 12 below. If GID does not pay the penalties within 30 days of issuance of this Order, and did not file a timely petition, GID will no longer qualify for the modified penalty assessment exceptions under CWC § 13385.1(b)(1) and GID must pay a mandatory minimum penalty of three-thousand dollars (\$3,000) for each 30-day period in which the report was late. Thus, the mandatory minimum penalty associated with the 4<sup>th</sup> Quarter 2010 late reporting violation would increase from three-thousand dollars (\$3,000) to nine-thousand dollars (\$9,000).
10. This Order on Complaint is effective and final upon issuance by the Los Angeles Water Board. Payment must be received by the Los Angeles Water Board no later than thirty days from the date on which this Order is issued.
11. In the event that GID fails to comply with the requirements of this Order, the Executive Officer or his delegatee is authorized to refer this matter to the Office of Attorney General or a debt collection agency

for enforcement and/or collection of penalties.

12. Any person aggrieved by this action of the Los Angeles Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the Los Angeles Water Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**IT IS HEREBY ORDERED that:**

1. Pursuant to § 13323 of the CWC, GID shall make a payment by check in the amount of \$42,000 (payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days after from the date on which this Order is issued. The check shall reference the number of this Order.
2. With the exception of the September 30, 2010 effluent limitation violation, the alleged effluent limitation and reporting violations in Complaint No. R4-2011-0027-M that occurred prior to October 1, 2010 are dismissed without prejudice to the Prosecution Team and the Los Angeles Water Board makes no determinations on the merit for those alleged violations. For the September 30, 2010 effluent limitation violation, GID is not a proper party for purposes of assessing a penalty for this effluent limitation violation. The Prosecution Team, in its discretion, may issue another administrative civil liability complaint for any or all of the alleged violations that occurred prior to October 1, 2010, as well as the effluent limitation violation that did occur on September 30, 2010.
3. In the event that GID fails to comply with the requirements of this Order on Complaint No. R4-2011-0027-M, the Executive Officer or his delegee is authorized to refer this matter to the Office of the Attorney General or a debt collection agency for enforcement and/or collection of penalties.

**CERTIFICATION**

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Los Angeles Region, and that such action occurred on June 7, 2012.

\_\_\_\_\_  
Samuel Unger, P.E.  
Executive Officer

## EXHIBIT "1" Violation Summary

Effluent Limitation Violations											
Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
09/30/10	3rd Quarter 2010	Monthly Average	Copper	3.1	2.9	ug/L	2	7%	n/a	n/a	\$0
01/19/11	1st Quarter 2011	Daily Max	Copper	18	5.8	ug/L	2	210%	Serious	(h)1	\$3,000
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07/20/11	3rd Quarter 2011	Monthly Average	Copper	4.1	2.9	ug/L	2	41%	Serious	(h)1	\$3,000

**Total \$21,000**

Late Reporting Violations											
Reporting Period	Violation Type	Due Date	Received Date	Days Late	# of Complete 30-Day	Amount Per 30-Day Period	Qualifies for Water Code Section	Serious/Chronic	Water Code Section 13385	Penalty	
3rd Quarter 2010	Late Reporting	11/14/2010	06/08/2011	206	6	\$3,000	No	Serious	(h)(1)	\$18,000	
4th Quarter 2010	Late Reporting	02/14/2011	06/08/2011	114	3	\$3,000	Yes	Serious	(h)(1)	\$3,000	

**Total \$21,000**

**GRAND TOTAL \$42,000**

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I  
4 am employed in the County of Los Angeles, State of California. My business address is  
333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

5 On July 9, 2012, I served true copies of the following document(s) described as **GID**  
6 **INVESTMENT ADVISERS LLC: (1) PETITION FOR REVIEW; and (2)**  
7 **DECLARATION OF STEPHEN J. O'NEIL (attaching Exhibits)** on the interested  
parties in this action as follows:

8 Jennifer Fordyce - JFordyce@waterboards.ca.gov  
9 Jeannette Bashaw - jbashaw@waterboards.ca.gov  
10 Andrew Choi - achoi@waterboards.ca.gov  
11 Mayumi Okamoto - MOkamoto@waterboards.ca.gov  
12 Hugh Marley Hmarley@waterboards.ca.gov  
13 Paula Rasmussen - Prasmussen@waterboards.ca.gov  
14 Samuel Unger - Sunger@waterboards.ca.gov

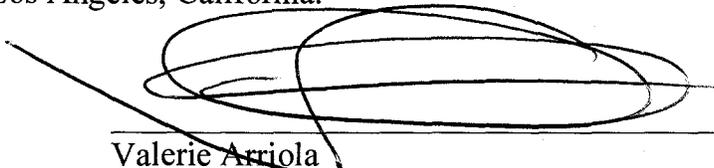
15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the  
16 document(s) to be sent from e-mail address varriola@sheppardmullin.com to the persons  
17 at the above e-mail addresses. The document(s) were transmitted at \_\_\_\_\_ a.m./p.m. I  
18 did not receive, within a reasonable time after the transmission, any electronic message or  
19 other indication that the transmission was unsuccessful.

20 **BY MAIL:** I am "readily familiar" with the firm's practice of collection and  
21 processing correspondence for mailing. Under that practice it would be deposited with the  
22 U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles,  
23 California in the ordinary course of business. I am aware that on motion of the party  
24 served, service is presumed invalid if postal cancellation date or postage meter date is  
25 more than one day after date of deposit for mailing in affidavit.

26 Andrew Choi  
27 Case Manager  
28 California Regional Quality Control Board - Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, California 90013

29 I declare under penalty of perjury under the laws of the State of California that the  
30 foregoing is true and correct.

31 Executed on July 9, 2012, at Los Angeles, California.

32   
33 Valerie Arriola