

October 25, 2005

Dear Chairman Schneider and Members of the Regional Board:

In September 2005, Central Valley Regional Water Quality Control Board ("Regional Board") Prosecution Staff ("Prosecution Staff") and dischargers Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc. (hereinafter "Hilmar") (collectively the "Parties") sought and received a suspension of discovery and the procedural schedule in connection with ACL Complaint No. R5-2005-0501 (the "ACL Complaint"). The Parties sought that suspension to turn their resources entirely to settlement negotiations. On September 9, 2005, the Parties reached a settlement agreement in concept. However, much work was required to reach a final agreement. As a result of six weeks of intense negotiations and drafting, the Parties have executed a Settlement Agreement and prepared a proposed Order Approving Settlement Agreement. The Settlement Agreement has the full support of Prosecution Staff, including Executive Officer Thomas Pinkos.

Following the submittal of written public comments on or before November 10, 2005, and the submittal of any written responses of the Parties on or before November 21, 2005, the Regional Board is scheduled to consider the Settlement Agreement and proposed Order at its next meeting. To that end, the Parties respectfully submit for the Regional Board's consideration and action at its next meeting the following documents:

- Settlement Agreement;
- Proposed Order Approving Settlement Agreement;
- Additional Information Related to Settlement of ACL Complaint No. R5-2005-0501 Against Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc.

Prosecution Staff submits that consideration of this settlement in open session, as opposed to the traditional consideration of settlements in closed session, will facilitate full, open, and robust public participation in, and scrutiny of, the Settlement Agreement. Hilmar concurs that the Board's deliberations must be in open session. The matter will come before the Regional Board as an agenda item but not as a public hearing. As such, there will be no hearing, no oaths administered, no cross examination of Hilmar and Prosecution Staff, and no evidence taken or received by the Regional Board. The Regional Board and the public will have available, to facilitate evaluation of the settlement, the allegations of the ACL Complaint and Staff Report, the Additional Information Related to Settlement, and the allegations in Hilmar's prepared direct testimony and expert reports in opposition to Prosecution Staff submittals. In addition, the entire public file for the Hilmar facility is available if a board member or member of the public desires additional information. The Settlement Agreement, proposed Order, ACL Complaint, Staff Report, Additional Information document, and Hilmar prepared direct testimony and expert reports, along with this cover letter, will be posted directly or by link on the Regional Board's web site not later than October 26, 2005.

While Prosecution Staff, including the Executive Officer, recommend approval of this Settlement Agreement as being appropriate, proper, and in the public interest, rejection of the settlement is a possible outcome. If the settlement is rejected, this Board will have to hear and

decide the ACL Complaint on the merits. The Parties' belief and understanding is that any questioning of the Parties regarding the settlement will be designed to establish whether the proposed settlement is appropriate, proper, and in the public interest. The Parties reserve their rights to engage in final discovery, and submit additional testimony and briefing that was suspended as a result of the settlement process, should the settlement be rejected and a hearing schedule reestablished. Examples of remaining activities that will need to take place before any hearing of the ACL Complaint on the merits include, without limitation, the following: Prosecution Staff anticipates seven to ten days of additional depositions, including expert depositions, and expert rebuttal of Hilmar's reports. Hilmar anticipates responding to Prosecution Staff's responsive testimony, and may request (to the extent necessary) revisions to the procedural schedule to allow the taking of further depositions and discovery, the preparation and submittal of prepared reply testimony, and the preparation and submittal of a pre-hearing brief marshalling the facts contained in the testimony. Hilmar also reserves the right to submit and obtain rulings on a variety of anticipated pre-hearing motions. Should the Regional Board reject the settlement, the Parties will be prepared to address the amount of time needed for a revised discovery, briefing, and hearing schedule.

The Parties look forward to the Regional Board's consideration of the Settlement Agreement at its next meeting.

Respectfully submitted,

PROSECUTION STAFF OF THE CENTRAL  
VALLEY REGIONAL WATER QUALITY  
CONTROL BOARD

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