

# Exhibit A

**HILMAR CHEESE COMPANY  
LETTERS OF SUPPORT**

1. Alta California
2. California Food Production & Processing Coalition
3. California State University, Stanislaus
4. Cal Western Transport
5. City of Turlock
6. Dairy Institute of California
7. Ecolab, Inc.
8. Edwards & Lien, Inc.
9. Norma N. Fernandes
10. Christopher Freeberg
11. Genske, Mulder & Company, LLP
12. *Golden By-Products, Inc. – Scrap Tire Company*
13. Hilmar Holsteins, Inc.
14. Hilmar Unified Schools
15. Hoffman Dairies
16. Merced Conference & Visitors Bureau
17. Merced County Farm Bureau/Stanslaus County Farm Bureau
18. Ed Montague
19. Pacific Cheese
20. Schmidt, Bettencourt & Medeiros, L.L.P.
21. Smokie's Firehouse

22. Success Strategies
23. Turlock Fruit Company, Inc.
24. Lloyd R. Vierra
25. Wahl, Willemse & Imfeld
26. David J. Yonan



# Alta California

August 29, 2005

Central Valley Regional Water  
Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Central Valley Regional Water Quality Control Board,

I am writing this letter on behalf of Hilmar Cheese Company as both a business owner, and more importantly, as a fellow member of this community.

First and foremost, Hilmar Cheese Company's community involvement and support is unmatched. From Visitor Center Tours and Educational Programs to gift baskets, monetary donations, and countless volunteer hours given to community events and organizations, Hilmar Cheese Company serves as a model company vital to our community and an important advocate in the dairy industry.

From an industry perspective, Hilmar Cheese Company works hand in hand with local dairy producers and industry professionals to promote and educate the public about the importance of the dairy industry to the area's economy and well-being.

Finally, as the owner and CEO of Alta California, a cattle insemination company that has been servicing this area for more than 50 years, I have witnessed first-hand the tremendous outpouring of generosity and support that Hilmar Cheese Company has given to our community and I will **continue** to support them as an important part of our community and the industry as a whole.

If you have any questions regarding this letter, please contact me at (209) 632-5836.

Sincerely,



Gerald J. Martin  
Owner/CEO Alta California

*Celebrating 50 Years of Service to the Dairy Industry.*

# CALIFORNIA FOOD PRODUCTION & PROCESSING COALITION

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114



Dear Board Members:

The California Food Production and Processing Coalition strongly supports environmental stewardship and compliance. We are greatly concerned, however, with the negative precedents being set by the proposed action against Hilmar Cheese Company and the negative effect it could have on everyone in the food production and processing industry. A highly adversarial action against any food processor is not in the best interest of the state.



We are also concerned with the precedent of fining a company for failing to comply with requirements that were neither technically nor economically feasible when adopted. Food processing companies should not be punished when, despite good faith efforts, they are unable to meet such requirements.

Equally concerning, the precedent of significantly penalizing a company that is working with regulators will not achieve increased compliance but will certainly have a chilling effect on future innovation by the industry.

DAIRY INSTITUTE

In conclusion, we cannot stress enough the precedents being set by this action will have a highly negative impact on the entire agriculture and food processing industry and the continued economic viability and growth of the Central Valley. The Regional Board Staff's approach in this matter is ill-founded and will discourage economic development and innovation in the region. We strongly encourage Board Members to reconsider the proposed action.

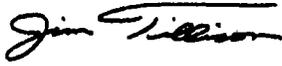
Sincerely,



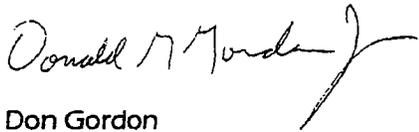
A handwritten signature in black ink, appearing to read 'Ed Yates'.

Ed Yates  
President/CEO  
California League of Food Processors





Jim Tillison  
CEO  
Alliance of Western Milk Producers



Don Gordon  
President  
Agricultural Council of California



Bill Mattos  
President  
California Poultry Federation



Rachel Kaldor  
Executive Director  
Dairy Institute of California



## CALIFORNIA STATE UNIVERSITY, STANISLAUS

801 West Monte Vista Avenue • Turlock, California 95382-0299

Development and University Relations  
September 2, 2005

(209) 667-3131  
FAX (209) 667-3026

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

To whom it may concern:

In every community there are a few key companies and organizations that make a positive impact in the lives of the people living in that community. In Stanislaus County, Hilmar Cheese is such a company.

California State University, Stanislaus is proud to have the Hilmar Cheese Company as a supporter of its students and programs. Hilmar Cheese has been a faithful supporter of higher education in the Central Valley and has provided funding that enables students to succeed in the academic and working world. They provide funding for scholarships to offer access to the university for students that otherwise may not be able to attend college.

Bill Ahlem, co-owner of Hilmar Cheese, was instrumental in the formation of the Agricultural Studies Program at California State University, Stanislaus. He gave of his time and his funds to ensure that the much-needed Ag Studies program was successful. The Ag Studies program graduated its second class of students in May, 2005.

Hilmar Cheese also hosts an annual fundraiser for the Ag Studies Program at the University called the Ag Studies Wine and Cheese event. The purpose of the event is to raise funds for the Ag program and they donate the food and the use of their building to hold the event at no charge to the university in order that more of the funds raised can be used for the students.

I have the highest personal regard for Bill Ahlem and Hilmar Cheese. I consider them a friend of the University and of our community.

Sincerely,

A handwritten signature in cursive script that reads 'Bill Ruud'.

Bill Ruud, Ph.D.  
Vice President

**THE CALIFORNIA STATE UNIVERSITY**

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830 WEST GLENWOOD AVENUE  
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Northern California Only

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General Office

1353 South 'J' Street • Phone (559) 686-0591 • Fax (559) 686-6708  
Post Office Box 898 • Tulare, California 93275  
California Call (800) 645-5875

August 26 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

To All Concerned:

My name is Ray Fonseca, I am the Vice-President and General Manager for Cal-Western Transport. Our main office is in Tulare, CA, with a terminal located in Turlock, CA. Our company has been doing business with Hilmar Cheese Company since the day they opened for business. We began hauling their milk from ranch to plant when they started. In my dealings thru the years with those involved at Hilmar Cheese, I have had nothing but admiration for the professional way in which they conduct themselves. They have always treated us, 'suppliers', more as 'partners'. That has always been the feeling they have given us, and we have always strived to live up to the trust they have in us. Mr. John Jeter has always had an open door for me anytime I had any issues to discuss. That is something that is rare in todays business world, as CEO's go. Any owner of Hilmar Cheese that I have had contact with has always been very friendly and cordial, as well as very professional in any business dealings.

I cannot see where this company would not do what is upright and expected of it. I am sure that given the opportunity, they will prove just that. Should you have any questions, do not hesitate to call me.

Sincerely,  
Cal-Western Transport

Ray Fonseca  
Vice-President, General Manager

OFFICE OF THE CITY COUNCIL  
156 S. Broadway, Suite 230  
Turlock, CA 95380  
(209) 668-5540  
TDD: (800) 735-2929  
www.turlock.ca.us



JOHN S. LAZAR  
Councilmember

August 23, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Sirs:

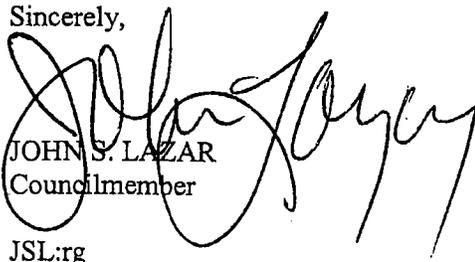
Hilmar Cheese Company has been a productive and important economic asset to our regional area since 1984. The Company was founded by local dairy families, most of whom are second and third generation members of the local Hilmar community. These families live and raise their children here and have the same concerns and desires as their neighbors to maintain a vibrant, healthy community in which to live.

Hilmar Cheese Company has a far-reaching economic impact on our regional area. In addition to supplying products to the local food processing plants, food service industries, and the restaurant/fast food trades, they rely on over 270 dairies and 120,000 cows to provide the raw milk that they process at their facility. They are a vital part of the success of many of these businesses and dairies. This, in turn, helps to employ thousands of local residents in the Merced and Stanislaus Counties.

Hilmar Cheese is also an outstanding supporter of the community. Throughout the years, the company has donated thousands of dollars and countless cheese baskets to support local schools, charitable causes and the dairy industry.

Hilmar Cheese recognizes its responsibility to the community and environment in which we live and raise our families. They are committed to fostering long-term, mutually beneficial relationships between company owners, employees, milk producers, customers and the local community, and they deserve the support of regulators and policymakers.

Sincerely,



JOHN S. LAZAR  
Councilmember

JSL:rg

# DAIRY INSTITUTE *of California*

August 24, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Board Members:

Dairy Institute is a trade association representing the manufacturers of fluid, frozen and cultured dairy products and cheese processed in California.

Since 1988, Hilmar Cheese Company has been a leading member of Dairy Institute, helping to guide our legislative and regulatory policies. In addition, Hilmar Cheese Company has consistently taken leadership roles in both the processor and farmer communities; furthering the adoption of the best farm and processing plant practices by facilities in our state. The California Dairy Quality Assurance Program, the lynchpin for farmer education in environmental stewardship, food safety and animal welfare, was organized with Hilmar Cheese owners and suppliers at the helm.

The respect Hilmar Cheese Company has shown for the dairy farmers of California and the programs which govern our industry is well known. The investment the company has and is making in educating its dairy farmer partners on pressing animal health and biosecurity issues serves not only Hilmar Cheese, but the entire industry and our state's citizens as well.

Dairy Institute is grateful to have responsible and responsive members, such as Hilmar Cheese Company, as part of our organization. As California agriculture, its employees and customers face the challenges ahead, Hilmar Cheese Company will remain a valued leader in our industry and in our state.

Sincerely,



Rachel Kaldor  
Executive Director

1127 11th Street, Suite 718  
Sacramento, California 95814  
Phone 916 441-6921  
Fax 916 441-0802



Food & Beverage Division  
370 Wabasha Street N.  
St. Paul, MN 55102-1390

Thomas E Zander  
VP Dairy Sales and Services

August 22, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Sir:

This letter is to let you know of the strong working relationship we've enjoyed with Hilmar Cheese over the years. We have worked with Hilmar Cheese as it has grown from a one plant operation into the large "state of the art" complex it is today. Over the years we've witnessed Hilmar continually pushing the envelope in technological advancements. They are never content with how things were being done today, they always look to do things better.

We've brought out numerous new technologies over the years and Hilmar is always one of the first in the industry to trial, accept and implements these technologies. Hilmar has always looked at the big picture of operating a large complex and has never been overly concerned with only doing things that are cheap or easy. A specific example of this has been their embracing of our new clean-in-place (CIP) cleaners in place of the "standard" cleaners used by many in the food processing industry. Even though our new CIP cleaners are more expensive compared to traditional cleaning technologies, Hilmar choose to use them because of their positive impact on water consumption, sodium reductions and EC reductions. While many in the food industry wait until they are forced to make a change, Hilmar has always been proactively looking for solutions to future challenges. This type of forward thinking and willingness to embrace what's best in the long term is why we are so proud of our long term relationship with Hilmar Cheese.

Sincerely,

Thomas E. Zander  
Vice President Dairy Sales & Service  
Food & Beverage Division, Ecolab Inc.



## **Edwards & Lien, Inc.**

Agricultural Appraisers and Consultants

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

August 29, 2005

RE: Hilmar Cheese Company

Dear CVRWQCB;

I am writing you to express my support for Hilmar Cheese Company's efforts towards environmental stewardship and their respect for our community. I am a resident and business owner within the community boundaries of Hilmar. I have lived here for 14 years and am the President of Edwards & Lien, Inc., an agricultural appraisal and consulting firm that serves the agricultural community, state wide. I primarily selected Hilmar as my home and business location due to its agricultural based, small community charm with good schools, being nestled in the heart of the state.

Through the years, my increased community involvement, business dealings, school, sports, and 4-H club activities have brought my family and me closer to many of the local owners, managers and employees, and their families. These personal positive experiences have shown nothing but the utmost respect and support, financial or otherwise, for our community. These people live here utilizing the same resources and breathing the same air that all of us do, they are not out to harm their neighbors or especially their own families just for profit.

From my perspective, Hilmar Cheese is on the forefront of promoting environmental stewardship in the general dairy industry with their producer incentive program offered through the state Dairy Quality Assurance Program. As an appraiser, when I see that a producer has gone through this program with his/her facility it defines their respect for neighbors and provides environmental sustainability to their operation (this creates "value" in this environmentally challenged industry).

Knowing the people involved in Hilmar Cheese makes it difficult for me to believe they maliciously degrade the groundwater underlying this area and emit putrid odors into our air out of pure greed. This implication continues in many of the news articles written, since sparked by the malicious unfounded attack earlier this year in the Sacramento Bee. As you are aware, this eventually contributed to the demise of Chuck Ahlem as Undersecretary of Agriculture, whom also formally served on your board contributing to the overall damage. Rapid growth, failure in wastewater handling systems in the face of increasing discharge requirements (moving target) all contributed to this concern.

Based on personal conversations with owners and employees, in addition to the numerous informative letters written to each community member, Hilmar Cheese has, and is continues to develop and employ new technology mitigating the wastewater discharge concerns at significant cost. Isn't it time to stop the pain and come to terms with losses on both sides and look to the future with remedies being offered by new technology in place and/or proposed? Please accept my opinion with an open mind as I am writing as a concerned citizen, and Hilmar resident.

Respectfully Submitted,

Randal H. Edwards, ARA

August 31, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Please consider this letter in support of Hilmar Cheese and the individuals that are associated with the company. The individuals and the company have been very supportive of the community and surrounding area for many years.

They have provided employment opportunities, supported churches, non-profit organizations and fund raising groups with time and money.

They have always been a real asset to the area and we hope they will continue to be.

Sincerely



Norma N. Fernandes

cc: M. Catherine George  
Lori T. Okun  
State Water Resources Control Board

Jack Del Conte  
Bert Van Voris  
Central Valley Regional Water  
Quality Control Board

Mark Fogelman  
Steeffel, Levitt & Weiss

Christopher Freeberg  
P.O. Box 123, Hilmar, Ca. 95324  
(209)667-1058

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, Ca 95670-6114

August 27, 2005

Re: Hilmar Cheese Company

Dear Mssrs:

G.K. Chesterton in 1923 wrote: "Modern man is staggering and losing his balance because he is being pelted with little pieces of alleged fact which are native to the newspapers; and, if they turn out not to be facts, that is still more native to newspapers."

Times have not changed, have they?! Between the biased "reporting" and the political maneuvering of legislators and State departments such as yours, this writer has had enough of it. I ask you kindly and charitably, as a citizen, to cease your bravado attacks against individuals and firms such as the Hilmar Cheese Company.

I have lived and worked in Hilmar since 1978. And, as an "outsider" arriving in a tight-knit rural community it can pose as an obstacle for a business or individual to be accepted. I found it quite the opposite! Within my first few days in Hilmar, a fellow came into my office < he was not even one of my clients> and graciously welcomed me and my wife to Hilmar and encouraged us to call upon him or his family if we were ever in need of anything. His name was Bill Ahlem.

As with Bill Ahlem, I have gotten to know his brothers and sisters and their extended families, friends and farming associates. I have witnessed their cheese plant "ideas" from the beginning to the present: in the early '80's listening to them about the feasibility of such a venture over a morning coffee; and after completing that first phase, the lift it gave our community in a difficult economic time; and then the continuing, state-of-the-art growth of the cheese plant providing hundreds of local citizens with great jobs; and I have watched and listened to the difficulties they have faced and have been present occasionally to view and discuss solutions to such problems.

In every case I have seen the men and women of Hilmar Cheese Company take the initiative to do the right thing first and foremost. Who are the first leaders of the dairy industry to organize and promote innovative environmental policies for a dairy operation, especially in protection of water supplies? THEY ARE. Who have been the leaders of agriculture in trying to find workable solutions to helping the Air Quality in California? THEY ARE. Who is going to arrive at the solution for the current water "problem"? THEY WILL.

The caveat for the solution being, if the Central Valley Regional Water Quality Control Board continues to press for a "fine" --- of ANY size --- against the Hilmar Cheese Company < or against any firm who is trying to work in good faith through your State bureaucracy and inane/self-serving/ and unwarranted 'environmental' protagonists> then one not only delays the act of solution but wastes more financial resources and man-power energies that can be utilized for the solution in an equitable manner.

I strongly urge you to move-on and promote a better working relationship with firms like Hilmar Cheese Company and amicably resolve any issues through a workable, prompt, action-plan. I also believe the Board should waive any and all "fines" or "fees" that have blown this situation out-of-proportion.

Please feel free to contact me should you have any questions about my position that is stated in this letter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Freeberg", with a long, sweeping horizontal line extending to the right.

Christopher J. Freeberg

Cc: M. Catherine George; Mark Fogelman, Esq.; Lori T. Okun; Jack Del Conte; Bert Van Voris; Janice Tanaka (5)

# GENSKE, MULDER & COMPANY, LLP

*Certified Public Accountants*

GARY B. GENSKE, CPA  
PAUL M. MULDER, CPA  
WAYNE T. CUNNINGHAM, CPA  
DAVID J. BEAL, CPA  
PETER E. HOEKSTRA, CPA  
ROBERT O. BURROUGHS, CPA  
BRADFORD O. CARR, CPA  
ALBERT L. NUNES, CPA  
BRUCE J. MILES, CPA  
PAUL V. ANEMA, CPA

4701 Sisk Road, Suite 201 • Modesto, California 95356  
Telephone (209) 523-3573 • Fax (209) 574-0224

www.genskemulder.com

WINSTON D. VILLOCINO, CPA  
TONY H. CHIANG, CPA  
GLENN M. HOAGLAND, CPA  
CARLA R. NUNES, CPA  
JOEL BUSSARD, CPA  
ELAINE VANDER VEEN, EA

August 17, 2005

Central Valley Region Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

My name is Robert Burroughs and I am a CPA and a partner in the accounting firm of Genske, Mulder & Co., LLP. I have three other partners in the Modesto office, and together we are the accountants for approximately one hundred and forty dairies in the Northern San Joaquin Valley. I am writing this letter in support of Hilmar Cheese Company.

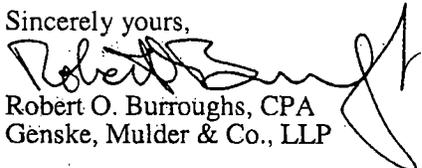
We do not do business with Hilmar Cheese Company directly, but because so many of our clients sell milk to Hilmar Cheese Company, we have dealt indirectly with the company since we opened our office in Modesto, California in 1992. Our clients' experiences with Hilmar Cheese Company have revealed it as a business with a passion for quality and a commitment to integrity. In less than twenty years' time, Hilmar Cheese Company has:

- built a business that is one of the largest employers in the area;
- created new standards in milk pricing for dairymen;
- invested a large amount of capital in order to relate to the surrounding community in a positive way;
- maintained such a standard of quality in the products they manufacture that they never lack for customers.

In my view, the twelve dairymen who started Hilmar Cheese Company became one of this country's greatest success stories of the last twenty-five years by setting positive long-term goals and, with the application of a great deal of skill and a lot of hard work, achieving those goals. And they did it with a business that, rather than treading on the backs of the people around them, has worked hard at creatively meeting the needs of its neighbors, employees, customers, and shippers. The bottom line is that they have made a very positive impact on the quality of life in this area.

If I can be of any further assistance, please do not hesitate to call me at 209-523-3573.

Sincerely yours,



Robert O. Burroughs, CPA  
Genske, Mulder & Co., LLP

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Rancho Cucamonga • Modesto • Visalia • Costa Mesa

Members: American Institute of Certified Public Accountants & California Society of Certified Public Accountants

# **Golden BY-PRODUCTS, INC. - Scrap Tire COMPANY**

**Permitted Recycler & Hauler**

P.O. BOX 1, 13000 NEWPORT ROAD  
Phone: 209-668-4855  
www.goldenscraptide.com

BALLICO, CA 95303  
Fax: 209-667-4854  
[info@goldenscraptide.com](mailto:info@goldenscraptide.com)

August 29, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

To Whom It May Concern:

Our company and its owners wish to offer support for the Hilmar Cheese Company and its owners through their upcoming processes with the Central Valley Regional Water Quality Control Board.

As a fellow Merced County business, we are affiliated with Hilmar Cheese Company through various local philanthropic organizations, personally with many of the owners and staff, and as a customer to their delicious deli and beautiful gift shop and patron to their highly educational and technological visitor center. Hilmar Cheese Company is without a doubt the leading company in not only Merced County but likely in the entire state with such diverse involvement, contribution and action for education and support of the local community and its industry. The owners and staff involvement in organizations such as California Women for Agriculture, local and state Farm Bureaus, state and federal dairy boards, local and state leadership programs, as just a few examples of the infiltration their company has in our community and the agriculture industry. The positive economic impact of Hilmar Cheese is so incredibly expansive that it would be difficult to calculate its value.

Their visitor center is designed first and foremost as a hands-on learning center where thousands of school children visit each year to learn about the process of cheese making and many more benefits of California agriculture. The amount of money invested alone in education by Hilmar Cheese Company, considering the technology and magnitude of the program they have available for children and the public is unprecedented. Not to mention that they don't even make their own brand of cheese for the retail market, which means all of the public relations and education that they invest encourages the generic purchasing of all cheese and other dairy and ag products. As compared to a typical brand name company (ie Coke or Pepsi), where all of the advertising dollars spent are directly tied to the sale of anything with that brand name alone.

Our company is familiar with the potential that exists when private businesses work together with local and state agencies to develop policy and take actions to benefit the state, region and industry. We strongly encourage the Regional Water Quality Control Board and other local and state agencies to work toward collaboration with leading companies like Hilmar Cheese to develop long term solutions to the many environmental issues that face our state today with its rampant growing population. It is only then that we will attain the necessary balance between the economical and environmental needs of our state and region.

Thank you for your consideration of our position.

Sincerely,

  
Jana Nairn



## ***Hilmar Holsteins, Inc.***

*Registered Holsteins*

Franklyn Matheron & Sons

Phone: 634-7523

21859 Crane Ave., Hilmar, California 95324

August 26, 2005

To Whom It May Concern;

As life long dairyman and resident of the Hilmar area, we have watched the Hilmar Cheese Company grow through hard work and many challenges. We are not producers of Hilmar Cheese Company, but recognize their commitment to the dairy industry that is so important to our community and state.

Hilmar Cheese Company is very community oriented; they support youth, church, and civic activities in Hilmar and else where.

We support our neighbor Hilmar Cheese Company.

Sincerely,

Duane Matheron

Barbara Matheron



# *Hilmar Unified Schools*

7807 LANDER AVENUE, HILMAR, CALIFORNIA 95324

PHONE (209) 667-5701

Board: Randy Avilla Ellie Jorritsma Dan Machado Tima Seward Jeff Strom Dale Wickstrom Scott Wickstrom

Superintendent: David A. Miller, Ph.D.

Manager of Business Services: Connie M. Lourenco

August 29, 2005

Mark Fogelman  
Steefel, Levitt & Weiss  
A Professional Corporation  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, CA 94111

Dear Mr. Fogelman:

I'm writing this letter in support of the largest and most supportive business in our town - Hilmar Cheese Company. I have known of their work for the last six years while I have served as Superintendent of the Hilmar Unified School District.

Hilmar Cheese Company has been most supportive of our schools. They have constantly provided tours of their facilities to our elementary children. Recently we had the opportunity to have a new football field installed at a reduced price, and with one phone call to Hilmar Cheese Company our District received a \$9,000 check to make this possible. The Hilmar Cheese Company has also agreed to be a major sponsor of the county-wide Academic Decathlon, which shows their interest in all of our county students.

Hilmar Cheese Company has also provided funding and supplies for our Dairy Judging Team that has won four State titles and two National titles in the last eight years. The dairies that feed into their plant have supplied countless hours and funding to help our FFA program to be one if not the top chapter in the State.

Hilmar Cheese Company is a most generous and supportive local business for the Hilmar Unified School District. They are a true partner in educating our children. I am deeply grateful for our relationship.

Sincerely,

David Miller, Ph.D., Superintendent  
Hilmar Unified School District

DM/ds

# HOFFMAN DAIRIES

Phone (559) 686-4744  
FAX (559) 686-2355  
21346 Road 140 • Tulare, CA 93274

August 29, 2005

Mark Fogelman  
Steefel, Levitt & Weiss  
A Professional Corporation  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, California 94111

Dear Mr. Fogelman:

This is in response to recent accusations against Hilmar Cheese Company being in violation of water quality issues.

Hilmar Cheese Company has been proactive on their approach to environmental issues. Their producers are equally as concerned with conserving the quality of life we now enjoy.

It seems, from what I have read, that Hilmar Cheese Company has always tried to follow the guidelines of the regulatory agencies, in this case the Regional Water Quality regulations. They produce a quality product that is marketed and accepted around the world, so compliance with various water quality issues is important to them.

Various water quality guidelines need to be based on sound science. As I understand many of the guidelines are not clearly defined and in many cases based on theory. I am sure if a company like Hilmar Cheese Company had well defined guidelines and regulations to follow, they would be in compliance.

Sincerely,



Tony M. Souza  
Partner



August 24, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Central Valley Regional Water Quality Control Board,

I am writing this letter as the Executive Director of a tourist destination in the County of Merced. The Merced Conference & Visitors Bureau and California Welcome Center is visited by over 3,500 visitors on a monthly basis. We are the only California State recognized Welcome Center in the Central Valley. Many of our visitors are on their way to Yosemite National Park, San Francisco and Los Angeles. However, one-fourth of them will explore what Merced County has to offer.

You may be aware of the agricultural economic benefits of Hilmar Cheese Company; however, Hilmar Cheese Company also contributes to our tourism economy. One of the treasures Merced County showcases is a visit to the Hilmar Cheese Company Visitor Center. It is with much enthusiasm and pride for our community, we suggest visitors experience a tour prior to their departure. In turn, the economic gains for our County by these visitors are in the millions. These visitors will spend time and money. Whether it's buying food, gas, merchandise or hotel accommodations, the County wins. On average, a day trip visitor will spend approximately \$50 per person and \$125 if they are staying overnight.

Hilmar Cheese Company also offers student field trips and supports numerous community and educational activities. In my 11 years plus in the tourism and marketing world, it is such unique welcoming attractions and community partners like Hilmar Cheese Company that benefit our community and state.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Lawson".

Leslie Lawson  
Executive Director

**Merced Conference & Visitors Bureau**

A division of The Greater Merced Chamber of Commerce

710 West 16th Street • Merced, CA 95340 • (209) 384-2791 • (800) 446-5353 • Fax (209) 384-2793



August 29, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

To Whom It May Concern:

The Merced County Annual Report of Agriculture for 2004 was just recently released. For the first time Merced County agriculture surpassed the 2 billion dollar mark in gross production with a value of \$2,365,494,000. The Stanislaus County Annual Report of Agriculture for 2004 had a value of \$1,978,434,000.

The number one commodity for both counties was milk with a value of \$742,785,000 for Merced and \$559,777,000 for Stanislaus. That is a combined total of \$1,301,562,000. Using an economic multiplier of 3, to calculate the added value of milk infused into our local economy, there is at least a \$4 billion dollar impact every year in our two counties.

Hilmar Cheese is a major employer with over 600 employees dedicated to processing our milk. It is centrally located between both counties. Hilmar Cheese has been a leader in the community and region for education for our school children as well as the general public with their emphasis on spreading the word about agriculture.

Water quality and availability is a major issue for those in agriculture. Hilmar Cheese has been a leader in the industry and the community. We are confident they will continue to be a major employer for our region and an involved stakeholder where environmental issues are concerned.

It is critical to the long-term success of California that the Central Valley Regional Water Quality Control Board work to develop and implement economical and environmentally sustainable long-term solutions for water quality issues. Those of us who have a vested concern in agriculture, scientists and regulators must work together to find solutions that will establish appropriate standards for the industry.

We urge you to continue to work with Hilmar Cheese and others in the industry and region for the benefit of all our residents.

Sincerely,

Merced County Farm Bureau  
Board of Directors  
PO Box 1232  
Merced, CA 95341-1232

Stanislaus County Farm Bureau  
Board of Directors  
PO Box 3070  
Stanislaus, CA 95353-3070

August 29, 2005

Mark Fogelman  
Steeffel, Levitt & Weiss  
A Professional Corporation  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, CA 94111

Dear Sir or Madam:

HILMAR CHEESE COMPANY

I am writing this letter to support the past handling of the waste water issues by the Water Quality Board at Hilmar Cheese Company in Hilmar, California. While past actions, or as the media would have it, inaction, have not completely solved the odor problems HCC, I believe the key here is that the Water Quality Board recognized that the cheese plant was working diligently to that end. From what I hear from employees at the cheese plant and from the media, the cheese plant has spent millions of dollars on high tech equipment to treat the waste water. HCC is pioneering the treatment of waste water in this industry. The Water Quality Board was allowing HCC to be in a leadership position with the hopes that the technology developed could be used by other companies with similar waste water issues. As far as I am concerned HCC has paid its dues in real dollars for all the research and development they have provided for the rest of the agriculture community. The action of the Water Quality Board has been one of cooperation with local industry. I hope that the Water Quality board will continue to be patient. Every new process tried takes time and time is what HCC needs to solve the problem.

The media has been critical of HCC for continuing to grow while the waste water problem went on unsolved. To this I can only say that the only way for any company to be successful is to grow. This growth provides the funds to support the expense needed to operate and to address the impact of large production on the environment. Growth has provided hundreds of quality jobs to the local economy. Many more jobs depend on the continued health of the HCC.

I live in Hilmar and have had the unpleasant experience of occasional smells created by the evaporation ponds. If this were the only agricultural odor I experienced I might be less understanding. However, this is an agricultural area where odors from many sources at different times of the year can be smelled. This is one of the compromises I have to except for living in rural America.

Sincerely,

  
Ed Montague  
Hilmar Resident



PO Box 56598; 21090 Cabot Blvd.  
Hayward, CA 94545-6598  
510-784-8811 Fax 510-784-8846

August 23, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive  
Suite 200  
Rancho Cordova, Ca 95670-6114

RE: Hilmar Cheese

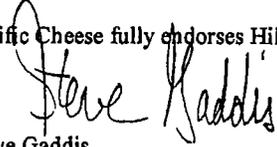
Dear Central Valley Regional Water Quality Control Board,

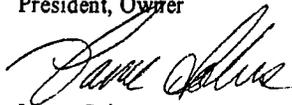
Pacific Cheese, based in Hayward, California, has been an active marketer and cheese packager in the industry since 1972. We are a direct importer of cheese, a primary supplier to national and international cheese companies as well as national marketers in retail and foodservice distribution including chain restaurant segments. In that period of time, we have considered our pioneer work in dairy-based cheese manufacturing partnerships to be a cornerstone of our success in the industry. In these vital wrap-around supply and marketing relationships, we have created partnerships with proprietary and dairy cooperatives alike. We believe these critical supply links give us a unique view into the business practices of those we have participated with.

Our business relationship with Hilmar Cheese spans its lifetime as a company. As a dairy-based ownership group we saw them as one of the critical, strategic links to the future of our business. Through twenty years of successful change and expansion (something truly notable as a proprietary cheese company), we have not seen Hilmar Cheese's core values change. From the beginning of our history together, fair play and honesty were an intrinsic part of the way ownership and management conducted business. As we saw them more completely, this was inherently who they were. Hilmar Cheese's ethical character and practice has never wavered in our experience. They have viewed success through a prism of high-minded corporate citizenship, believing that their success depended on their contributions not only to the bottom line, but to the employees, dairymen, and community that they depended on. You only need to look to the dairy community to see the long-term affirmation of those practices. The creation of the Visitor and Education Center was a dream that was expressed at the very inception of our relationship. The fulfilling of that vision was always about the contribution back to the community and industry that had been so supportive of Hilmar Cheese.

Hilmar Cheese's metamorphosis from a small cheese plant to industry innovator and leader is one Pacific Cheese has participated in and observed as an essential part of our business.

Pacific Cheese fully endorses Hilmar Cheese.

  
Steve Gaddis,  
President, Owner

  
Lance Solus  
Executive Vice President

Pacific Cheese Co., Inc.

RECEIVED  
MAY 10 2005  
2:25 PM

**Schmidt, Bettencourt & Medeiros, L.L.P.**  
Certified Public Accountants

*Michael F. Schmidt, C.P.A.*  
*An Accountancy Corporation*

*Carol L. Medeiros, C.P.A.*

**COPY**

August 29, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Re: Hilmar Cheese Company

To Whom It May Concern:

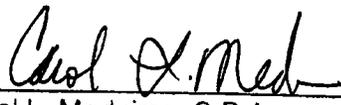
I am Hilmar Cheese Company's Certified Public Accountant and have been working with them since 1986. In my 20 years of association with Hilmar Cheese Company, I have watched the business grow and with that growth, the generosity that they have given back to the surrounding community. They personally touch the lives of the local citizens in so many ways. They employ a large part of the population and trade with many of the local dairies and small businesses. Colleagues and friends inform me that Hilmar Cheese Company contributes to the local schools, churches and athletic programs, to mention a few.

I respect the leadership that I have observed in the operations of Hilmar Cheese Company and appreciate the positive impact that they have had on the surrounding area. I am grateful for this opportunity to offer my support and am confident that my feelings are shared by many of the neighboring individuals and businesses.

Very truly yours,

SCHMIDT, BETTENCOURT & MEDEIROS, L.L.P.  
Certified Public Accountants

By

  
\_\_\_\_\_  
Carol L. Medeiros, C.P.A.

CLM/sat

865 Geer Road - Turlock, CA 95380  
Phone 209-668-4857 - Fax 209-669-0995  
[www.sbm-cpa.com](http://www.sbm-cpa.com)



August 21, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Central Valley Regional Water Quality Control Board:

In reference to Hilmar Cheese Company, I have lived in this area my whole life and from the beginnings of Hilmar Cheese Company I have been friends with all original owners who started and continue to be involved in their company. These men and women are all of religious backgrounds, helping their fellow parishioners pass on their traditions to their children, grandchildren and friends. I also own several businesses in the town of Hilmar and I am currently acting Fire Chief. Without the support of the owners and employees of Hilmar Cheese Company this town wouldn't be what it is today.

Sincerely,

A handwritten signature in black ink that reads "Dennis Morais". The signature is written in a cursive style with a large initial "D".

Dennis Morais  
Owner  
Smokie's Firehouse Restaurant

8155 N. Lander Avenue  
Hilmar, CA 95324

*Success Strategies  
3340 Setrok Drive  
Modesto, CA 95356  
209.988.8960 Phone  
209.543.8489 FAX*

August 26, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Gentlemen:

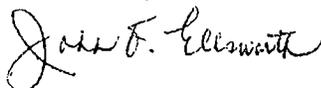
I am writing you to offer my fullest support for both the owners and the management team at Hilmar Cheese Company. I believe they are of the highest caliber of people in our society today and elicit outstanding character in all of their activities.

I have had the honor to be working with many of the owners since 1994 and have always found them to be honest individuals who seek long term solutions that are best for everyone, including their community and the Central Valley of California. They have impressed me as being on the leading edge of technology in their industry, consistently using innovation for the benefit of all of us.

As a Loan Officer previously and now as a Finance & Strategy Consultant, I have always been impressed by their high level of innovation. Additionally, I believe that they have demonstrated a unique ability to blend their creative approach to business and problem solving with a neighborly outreach to the community. This has been clearly demonstrated many times by their generous giving back to society since the inception of their company over 20 years ago.

Thank you in advance for the opportunity to share my thoughts with you regarding Hilmar Cheese Company.

Sincerely,



John F. Ellsworth, President & CEO

Cc: M. Catherine George, Senior Staff Counsel  
Mark Fogelman, Attorney at Law  
Lori T. Okun, Senior Staff Counsel  
Jack Del Conte, Assistant Executive Officer  
Bert Van Voris, Supervising Engineer  
Janice Tanaka, Executive Assistant

U.S. LICENSE NO. 199270

# TURLOCK FRUIT COMPANY INC.

BRANDS

*King O' The West*  
*Peacock . . .*  
*Sycamore . . .*

GROWERS • PACKERS • SHIPPERS

MAIN OFFICE:

P.O. Box 130 - Tel. 634-7207 - L.D. 634-6609 - Area Code 209  
TURLOCK, CALIFORNIA 95381  
email: tfc@kowitz.com

HONEYDEWS  
MIXED MELONS  
CANTALOUPE

August 31, 2005

Mark Fogelman  
Steeffel, Levitt & Weiss  
A Professional Corporation  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, Ca 94111

Dear Mark Fogelman:

I am writing on behalf of the owners of Hilmar Cheese Co. I have known the Clauss and Ahlem families for many years. They are well respected in the community and have shown leadership in the area. They are solid people with the best of motives for themselves and the community.

The economic boost given to the local economy by the development of Hilmar Cheese has been of great value.

This is a local homegrown industry that is vital. We need to assist them in any way possible.

Yours truly,

  
Donald J. Smith

DJS/b



FAX: (209) 632-4273



August 27, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670-6114

Members of the Board, and to Whom It May Concern:

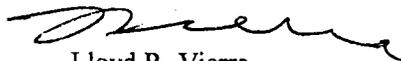
Regarding: Hilmar Cheese Company and its Owners

I have known most of the owners of Hilmar Cheese Company and/or their families for well over forty years. I have known John Jeter Manager of Hilmar Cheese Company since they began making high quality Cheese, which is a great source of protein to feed a hungry world. They are people of VERY high integrity and morals. They have always been innovative of new ways to protect the environment and the surroundings. After all they do live in the Community. **THEY ARE INDUSTRY LEADERS IN QUALITY OF PRODUCT, INNOVATIVE ENVIRONMENTAL RESEARCH AND MILK PROCUREMENT PRICING FOR THEIR PRODUCERS.** They support so many charities like youth, service and church groups with generous donations. Many of the donations go to feed the ill, elderly and poor. Although I know that at times success can create jealousy, the truth is **"THESE ARE GOOD COMMUNITY MINDED NEIGHBORS"**. Anything less than what I have stated is untrue.

They have been leaders in their Milk payment system by offering bonus payment plans to their shippers for higher quality and higher component milk. Their policies have been a huge benefit not only to their Milk Producers, but for the consumers and community as well.

As an Ex Banker I know the lenders concerns when they read about an over zealous Press or Governmental Agency. This creates fear and also weakens the "Job Providers" financially. **This is a REAL THREAT TO PROVIDING CREDIT to Farmers/Dairymen and Food Processors. No Credit, No Operating Capital or Research= No Profits, No Jobs, No Food, A Lower Tax Base to finance Government Agencies Etc. This=Disaster!**

Yours truly



Lloyd R. Vierra,  
68 Linden Ave. Gustine, California 95322

**WAHL, WILLEMSE & IMFELD**  
CERTIFIED PUBLIC ACCOUNTANTS

August 26, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Sirs and Madame's:

I am writing this letter in support of Hilmar Cheese Company and its owners.

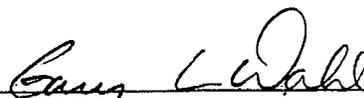
It has been my pleasure to have known most of the owners of Hilmar Cheese Company for many years; some for more than 25 years. During this time, I have had many opportunities to witness numerous interactions with associates and their community, on both a personal and professional level. As I have stated before and will restate here, I have always admired how they instinctively rally around friends, family and community in times of need. I have witnessed their unselfish acts through their church involvement and community involvement and feel they have always acted with the highest integrity.

The owners of Hilmar Cheese Company are collectively considered to be among the most reputable individuals in the Hilmar area and have continually worked for the good of the community. In my opinion, they would never knowingly commit any act that would cause harm to the surrounding community or property. They have diligently worked toward finding the appropriate solutions to their water issues from the very beginning and have always worked well with the proper authorities. Contrary to the negative publicity presented, I feel they have consistently sought workable solutions and have not been deterred when those solutions did not operate as expected.

Hilmar Cheese Company is Hilmar's premier business and has supported the surrounding community from its inception. As a professional, I can see no logical reason for the owners to purposely do harm to their friends and neighbors. Their owners, employees, suppliers and customers work, live, worship and raise their children in Hilmar and the surrounding areas. It makes no rational sense for the company to deliberately wound the proverbial hand that feeds it.

In my opinion, Hilmar Cheese has always been good for the community and will continue to strive to be a good steward of the responsibilities placed on it by its very existence in Hilmar.

Sincerely,

  
Gary L. Wahl, C.P.A.

319 E. Main Street, Turlock, California 95380

Phone: (209) 669-0880 ■ Fax: (209) 669-0992 ■ E-Mail: wwi@inreach.com

**David J. Yonan.**  
**3301 Golf Links Road**  
**Ceres, Ca 95307**

Tel: 209-538-6435

August 29, 2005

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Dear Sir,

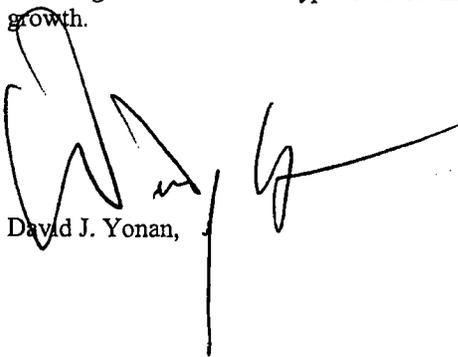
I am writing to you in regards to my personal knowledge and experiences with the management and owners of Hilmar Cheese Company.

Hilmar Cheese has been a leader in developing steps to improve environmental stewardship in their business. In fact, Chuck Ahlem helped create and implement the Dairy Quality Assurance program which actually pays producers for environmental stewardship.

Owners and managers of Hilmar Cheese have fostered and invested in needed research for solutions to environmental challenges in the overall industry. They (Hilmar Cheese) have independently led the way on such issues and are industry leaders with respect to environmental Stewardship.

Overall, Hilmar Cheese has consistently driven up output (milk production) and productivity by growing their business and has added to competitiveness of cheese production in the West.

I have consistently found management to owners to be of the highest caliber in respect to morals and values in all business dealings. They are the type of people that we would be proud to call our friends and neighbors and in no way should they be penalized punitively. We need to encourage business of this type to invest in the San Joaquin Valley and help promote economic growth.

  
David J. Yonan,

# Exhibit B

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2005 JUN 17 PM 12: 28

MARY ANN MORAN

BY: \_\_\_\_\_  
DEPUTY CLERK

1 STEEFEL, LEVITT & WEISS  
2 MARK FOGELMAN (BAR NO. 50510)  
3 CRAIG BLOOMGARDEN (BAR NO. 110241)  
4 One Embarcadero Center, 30th Floor  
5 San Francisco, CA 94111  
6 Telephone: (415) 788-0900  
7 Facsimile: (415) 788-2019  
8 [mfogelman@steeffel.com](mailto:mfogelman@steeffel.com)  
9 [cbloomgarden@steeffel.com](mailto:cbloomgarden@steeffel.com)

6 DOWNEY BRAND LLP  
7 MELISSA A. THORME (BAR NO. 151278)  
8 NICOLE E. GRANQUIST (BAR NO. 199017)  
9 555 Capitol Mall, Tenth Floor  
10 Sacramento, CA 95814-4686  
11 Telephone: (916) 444-1000  
12 Facsimile: (916) 444-2100  
13 [mthorme@downeybrand.com](mailto:mthorme@downeybrand.com)  
14 [ngranquist@downeybrand.com](mailto:ngranquist@downeybrand.com)

11 Attorneys for Petitioner/Plaintiff  
12 Hilmar Cheese Company

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO

16 Hilmar Cheese Company,  
17 Petitioner/Plaintiff,  
18 v.  
19 California Regional Water Quality Control  
20 Board for the Central Valley Region,  
21 Respondent/Defendant.

CASE NO. **CF-05-505398**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF (C.C.P. §1085;  
§1060**

22 Petitioner HILMAR CHEESE COMPANY ("Hilmar") hereby petitions this Court for a  
23 preemptory writ of mandamus, pursuant to California Code of Civil Procedure ("C.C.P.") section  
24 1085 directing Respondent CALIFORNIA REGIONAL WATER QUALITY CONTROL  
25 BOARD, CENTRAL VALLEY REGION ("Regional Board") to invalidate or modify certain  
26 provisions of a Water Quality Control Plan that was adopted by Respondent in a manner contrary  
27 to law. Further, Hilmar seeks declaratory relief under C.C.P. section 1060 stating that the Water  
28 Quality Control Plan provisions challenged herein are null, void, and without legal effect.

1 **PARTIES**

2 1. Petitioner/Plaintiff Hilmar is now, and at all times relevant hereto has been, a  
3 privately held corporation organized and existing under the laws of the State of California.  
4 Hilmar is a cheese-making business that provides for the collection, treatment, and disposal of its  
5 own wastewater, the regulation of which is overseen by the Respondent.

6 2. Respondent/Defendant Regional Board is a public agency of the State of  
7 California created by the Legislature in California Water Code sections 13200 *et seq.* The  
8 Regional Board has the responsibility for adopting basin plans and waste discharge requirements  
9 (“WDRs”) in compliance with applicable state law within its geographical jurisdiction. *See* Cal.  
10 Water Code §§13240-13247; 13263. The Regional Board issued WDRs for Hilmar’s wastewater  
11 treatment facility based upon provisions contained in the applicable Water Quality Control Plan,  
12 which are being challenged herein.

13 **PROCEDURAL AND FACTUAL BACKGROUND**

14 3. The Respondent Regional Board has responsibility for adopting water quality  
15 control plans or “basin plans” for the relevant geographic region within its jurisdiction. Cal.  
16 Water Code §13240; §13200(g). Basin plans, by definition, consist of a designation or  
17 establishment for the waters within a specified area of all of the following: 1) beneficial uses of  
18 the waters to be protected; 2) water quality objectives; and 3) a program of implementation  
19 needed for achievement of water quality objectives. Cal. Water Code §13050(j).

20 4. The provisions of the basin plan applicable to Hilmar’s discharge, entitled “Water  
21 Quality Control Plan for the Sacramento River Basin and San Joaquin River Basin - Third  
22 Edition” (“Basin Plan”), became effective for State law purposes after approval by the State  
23 Water Resources Control Board in February of 1995 and by the Office of Administrative Law on  
24 May 9, 1995.

25 5. Subsequent revisions (the Fourth Edition of the Basin Plan) were approved under  
26 State law in September of 1998, and approved by the U.S. Environmental Protection Agency for  
27 federal law purposes on May 26, 2000. The Fourth Edition of the Basin Plan superseded the  
28 previous versions.

1                                   **JURISDICTION, EXHAUSTION, TIMELINESS, AND VENUE**

2           6.     This Court has jurisdiction pursuant to C.C.P. sections 1085 and 1060.

3           7.     Hilmar has no other plain, speedy, and adequate remedy in the ordinary course of  
4 law. C.C.P. §1086. Thus, directly proceeding to judicial review of the issues is appropriate.

5           8.     No specific statute of limitation has been prescribed by the Legislature for the type  
6 of challenge presented here (challenges to basin plan provisions under C.C.P. section 1085). In  
7 California Trout, Inc. v. State Water Resources Control Board, et al. (1989) 207 Cal. App.3d 585,  
8 628 *citing* Estate of Hume (1918) 179 Cal. 338, 342-343, the California Court of Appeal  
9 determined that the general statute of limitations in C.C.P. section 343 *did not apply* to a similar  
10 C.C.P. section 1085 challenge. Stated simply, *no statute of limitation applied* to petitioner's  
11 challenge, as any statute of limitation would impermissibly preclude judicial review. California  
12 Trout, Inc., 207 Cal. App.3d at 628; *see also* Howard Jarvis Taxpayers Assn. v. City of La Habra  
13 (2001) 25 Cal.4th 809, 821-822 (affirming the "continuous accrual" theory for mandamus actions  
14 under C.C.P. section 1085, and finding that claims should not be barred for violations of an  
15 ongoing, continuing nature).

16           9.     The analyses in the California Trout and Howard Jarvis Taxpayers Assn. cases  
17 apply equally to this case. Hilmar's Petition presents a challenge to basin plan provisions that, by  
18 their very existence, each day continually and prospectively violate state law and regulatory  
19 mandates. No statute of limitation prevents remediation of this unlawful situation. California  
20 Trout, Inc., Cal. App.3d at 628; Howard Jarvis Taxpayers Assn., 25 Cal.4th at 825.

21           10.    Venue for this action properly lies in the Superior Court of California in and for  
22 the County of San Francisco pursuant to C.C.P. section 401(1) since the Attorney General has an  
23 office in that location.

24                                   **STANDARD OF REVIEW**

25           11.    C.C.P. sections 1085 through 1094 establish procedures for traditional mandamus  
26 proceedings. *See* C.C.P. §§1085-1094. Traditional mandate proceedings are the proper vehicle  
27 for reviewing quasi-legislative actions.

28           12.    Amendment of a basin plan is considered a quasi-legislative action because it

1 establishes standards of general applicability. *See e.g., Yost v. Thomas* (1984) 36 Cal.3d 561,  
2 570. When reviewing a quasi-legislative decision, such as amending a basin plan, the court shall  
3 overturn the agency's decision if it is arbitrary, capricious, entirely lacking in evidentiary support,  
4 or unlawfully or procedurally unfair. *See, e.g., Fullerton Joint Union High School Dist. v. State*  
5 *Bd. of Education* (1982) 32 Cal.3d 779, 786.

## 6 FIRST CAUSE OF ACTION

### 7 (Petition for Writ of Mandamus)

8 13. When adopting a basin plan, the Regional Board must comply with state law  
9 requirements, including the requirements of the Porter Cologne Water Quality Control Act  
10 ("Porter Cologne Act," Cal. Water Code §13000 *et seq.*) and any state policy for water quality  
11 control. Cal. Water Code §13240.

12 14. Under the Porter Cologne Act, the California Legislature found and declared that  
13 activities affecting water quality "shall be regulated to attain the highest water quality which is  
14 *reasonable*, considering all demands being made and to be made on those waters and the total  
15 values involved, beneficial and detrimental, economic and social, tangible and intangible." *See*  
16 Water Code §13000 (emphasis added). This section sets the baseline for state policy and  
17 imposes an overriding requirement on the Regional Boards that all water quality regulation be  
18 *reasonable* considering all circumstances.

19 15. The Regional Boards must establish the beneficial uses of each of the "waters of  
20 the state" (including groundwater) in its region. Cal. Water Code §13050(e). Uses of water may  
21 include, as appropriate, drinking water supply, recreation, power generation, navigation, the  
22 preservation of fish and wildlife, and other uses. Cal. Water Code §13050(f).

23 16. The Regional Board must also adopt "such water quality objectives . . . as in its  
24 judgment will ensure the *reasonable* protection of the beneficial uses and the prevention of  
25 nuisance." Cal. Water Code §13241 (emphasis added); §13050(h). These water quality  
26 objectives and the uses to which they apply must be included in basin plan.

27 17. Water Code section 13241 requires the Regional Board to consider various  
28 economic, social, and environmental factors that must be considered prior to adopting water

1 quality objectives. Cal. Water Code §13241. The factors a Regional Board is statutorily  
2 mandated to consider include:

- 3 (a) Past, present, and probable future beneficial uses of water.
- 4 (b) Environmental characteristics of the hydrographic unit under consideration, including  
5 the quality of water available thereto.
- 6 (c) Water quality conditions that could reasonably be achieved through the coordinated  
7 control of all factors which affect water quality in the area.
- 8 (d) Economic considerations.
- 9 (e) The need for developing housing within the region.
- 10 (f) The need to develop and use recycled water.

11 Cal. Water Code §13241(a)-(f).

12 18. In addition to the designation of uses and the establishment of water quality  
13 objectives, basin plans must include a plan for implementation of the water quality objectives,  
14 and specifically must include a description of the actions that are necessary to achieve the  
15 objectives, including recommendations for appropriate action by any entity, public or private, a  
16 time schedule for these recommended actions to be taken, and a description of surveillance to be  
17 undertaken to determine ultimate compliance with the water quality objectives. Cal. Water Code  
18 §§13050(j), 13242.

19 19. Through the application of these statutory provisions, the Regional Board is  
20 required to consider the economic cost of the proposed water quality objectives to determine if  
21 this cost is reasonable, particularly in light of the actual uses involved, the water quality available  
22 in the area, and the environmental benefit to be obtained, or whether another lesser cost objective  
23 exists that would still reasonably protect the actual and probable future beneficial uses. These  
24 considerations were ignored by the Regional Board when adopting the water quality objectives in  
25 the Basin Plan. Such a failure was arbitrary, capricious, and unlawful.

26 20. Specifically, the Regional Board's Basin Plan contains narrative water quality  
27 objectives applicable to groundwater for "Toxicity" and "Chemical Constituents." These  
28 objectives violate, or fail to fully comply with the mandatory statutory requirements contained in,  
Water Code sections 13241, 13242, 13240, 13244, and 13000.

1           21.     The Toxicity objective states that “ground waters shall be maintained free of toxic  
2 substances in concentrations that produce detrimental physiological responses in human, plant,  
3 animal or aquatic life associated with designated beneficial use(s). This objective applies  
4 regardless of whether the toxicity is caused by a single substance or the interactive effect of  
5 multiple substances.” *See* Basin Plan at III-10.00.

6           22.     The Chemical Constituents objective states that “ground waters shall not contain  
7 chemical constituents in concentrations that adversely affect beneficial uses.” *See* Basin Plan at  
8 III-10.00. This objective also states that at a minimum, ground waters designated for use as  
9 domestic or municipal supply (“MUN”) shall not contain concentrations of chemical constituents  
10 in excess of the Maximum Contaminant Levels (“MCLs”) in effect at the time the chemical  
11 constituents objective was adopted *and including any prospective, future changes to the MCLs*  
12 *contained in Title 22. See* Basin Plan at III-10.00.

13           23.     Drinking water MCLs are specified in Title 22 of the California Code of  
14 Regulations. *See* 22 C.C.R. §64400.70. These MCLs do not apply to regulate the quality of  
15 surface waters directly or to regulate wastewater discharges, but rather apply only to treated water  
16 supplied by community water systems to the public for drinking water purposes. Thus, the MCLs  
17 set forth in Title 22 of the California Code of Regulations were intended only to apply as goals  
18 for drinking water treatment facilities to meet at the tap or point-of-use. *See* 22 C.C.R. §64431  
19 and §64444.

20           24.     Notwithstanding the limited uses for which MCLs were intended, the Regional  
21 Board incorporated primary and secondary<sup>1</sup> drinking water MCLs by reference into the Basin  
22 Plan, through the Chemical Constituents objective, to create new water quality objectives.

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<sup>1</sup> Secondary MCLs are set for substances that may adversely affect the *taste, odor, or appearance* of drinking water, and are directly related to consumer “acceptance” or “dissatisfaction” with the drinking water provided through a community water system. *See* 22 C.C.R. §64449(a). If a secondary MCL for a constituent contained in Table 64449-A is exceeded, an investigation by the Department of Health Services (“DHS”) is commenced and a study by the water supplier is required to determine actual consumer acceptance or dissatisfaction with the drinking water that does not meet the particular MCL. *See* 22 C.C.R. §64449(d). In addition, DHS is permitted to waive the requirement to meet secondary MCLs based upon consumer acceptance or economic considerations. *See* 22 C.C.R. §64449 (e)(1) and (2).

1           25.    As previously stated, Water Code section 13241 requires the Regional Board to  
2 consider the social, environmental and economic impacts of water quality objectives prior to  
3 adoption. *See* Cal. Water Code §13241(a)-(f). Furthermore, Water Code section 13242 requires  
4 that the Regional Board adopt an implementation plan for meeting the adopted objectives and a  
5 timeline for doing so. *See* Cal. Water Code §13242. Finally, under Water Code section 13240,  
6 basin plans and the objectives contained therein must be reviewed and revised periodically. *See*  
7 Cal. Water Code §13240.

8           26.    No evidence exists in the administrative record for the Basin Plan and its  
9 amendments to indicate that the Regional Board complied with Water Code section 13241 when  
10 it initially adopted the water quality objectives for Toxicity, or for Chemical Constituents and the  
11 corresponding MCLs in effect at the time that this objective was adopted. Furthermore, the Basin  
12 Plan contains no implementation plan, which is specifically designed to address implementation  
13 of the Toxicity and Chemical Constituents objectives for groundwater, that meets the  
14 requirements of the Porter Cologne Act. Cal. Water Code §13242; §13000.

15           27.    Moreover, no evidence exists in the administrative record for the Basin Plan and  
16 its amendments to indicate that the Regional Board has met its statutory mandate to review and  
17 revise these objectives as required under Water Code section 13240. Although the Regional  
18 Board makes priority lists for its activities in the next three year period, this action does not  
19 constitute a review and revision as required by law. Cal. Water Code §13240; *see also accord*  
20 33 U.S.C. §1313(c)(1)(requiring a triennial review of all state beneficial uses and water quality  
21 objectives utilized as federal water quality standards).

22           28.    Additionally, by using a *prospective*, incorporation-by-reference method of  
23 adopting water quality objectives for ground water basins designated MUN,<sup>2</sup> or by relying on an  
24 ever-changing list of Water Quality Goals compiled by the Regional Board to interpret the

25 <sup>2</sup> *See accord* Office of Administrative Law, *Notice and Decision Re: Approval and Partial*  
26 *Disapproval of a Rulemaking Action on the Adoption of the Policy for the Implementation of*  
27 *Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (File No.  
28 00-0317-15)(Apr. 28, 2000). This decision determined that prospective incorporation-by-  
reference “is of dubious validity.” *Id.* at 6.

1 Toxicity objective, the Regional Board abdicated its responsibility to consider the factors  
2 contained in Water Code sections 13241 and to develop an implementation plan under Water  
3 Code section 13242 each time a new or more stringent MCL was or is incorporated into Title 22,  
4 and each time one of the Water Quality Goals is utilized as a *de facto* numeric water quality  
5 objective.

6 29. Furthermore, through the use of the prospective, incorporation-by-reference  
7 method of adopting water quality objectives for ground water basins designated MUN, the  
8 Regional Board failed to comply with the applicable public notice and participation requirements  
9 of the Water Code. *See* reference in footnote 2 at 7; *see also* Cal. Water Code §13244.

10 30. Finally, by utilizing this short-cut method of adopting water quality objectives, the  
11 Regional Board failed to comply with the Porter Cologne Act's requirement to provide for  
12 reasonable water quality regulation. Cal. Water Code §13000.

13 31. For each of these reasons, the Chemical Constituents and Toxicity water quality  
14 objectives applicable to groundwater are arbitrary, capricious, and unlawful. As such, this Court  
15 should issue a peremptory writ of mandate invalidating the Chemical Constituents and Toxicity  
16 objectives for groundwater and directing the Regional Board to remove these objectives from the  
17 Basin Plan forthwith.

## 18 SECOND CAUSE OF ACTION

### 19 (Declaratory Relief)

20 32. The allegations set forth in Paragraphs 1 through 31 above, inclusive, are realleged  
21 and incorporated herein by reference.

22 33. An actual and present controversy has arisen and now exists between Hilmar and  
23 Defendant Regional Board relating to the validity of application of the challenged Basin Plan  
24 provisions by the Defendants to Hilmar's wastewater for which Hilmar desires a declaration of  
25 rights. A declaratory judgment is necessary in that Hilmar is for the first time being exposed to  
26 severe potential liability for permit conditions based upon the challenged Basin Plan provisions.

27 34. For the reasons alleged herein, Hilmar contends that the challenged Basin Plan  
28 provisions were adopted in a manner contrary to law and, therefore, should be declared null, void,

1 and without legal effect. Hilmar is informed and believes and thereon alleges that Defendant  
2 Regional Board disputes these contentions made by Hilmar.

3 35. Therefore, Hilmar seeks a judicial determination that the challenged Basin Plan  
4 provisions are invalid and not legally binding as these provisions were adopted in a manner  
5 contrary to the requirements of the California Water Code, including but not limited to Water  
6 Code sections 13241 and 13242.

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**PRAYER FOR RELIEF**

9

Petitioner/Plaintiff Hilmar respectfully requests that the Court grant the following relief:

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1. A peremptory writ of mandate under C.C.P. section 1085 directing the Regional Board  
11 to vacate and remove the contested provisions of the Regional Board's Basin Plan;

12

2. A declaration that the contested provisions of the Regional Board's Basin Plan are  
13 null, void, and of no legal effect;

14

3. An order requiring Respondent/Defendant to pay Petitioner/Plaintiff's cost of suit and  
15 attorney's fees; and,

16

4. Any other relief that the Court deems just and appropriate.

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DATED: June 17, 2005

STEEFEL, LEVITT & WEISS

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By: Craig S. Bloomgarden  
CRAIG S. BLOOMGARDEN

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DATED: June 16, 2005

DOWNEY BRAND LLP

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By: Melissa A. Thorme  
MELISSA A. THORME

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Attorneys for Petitioner/Plaintiff  
Hilmar Cheese Company

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**VERIFICATION**

I, MELISSA A. THORME, declare:

1. I am a partner at Downey Brand LLP, one of the special counsel for Hilmar in this matter. I am authorized to make this Verification on behalf of Hilmar.

2. I have read the Verified Petition for Writ of Mandate. The facts stated in the Petition are either true and correct based on my personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this Verification on this 16th day of June, 2005 at Sacramento, California.

  
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