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4 Attorney for Discharger  
5 DOUGLAS DAGGS as Trustee of the  
6 SYLVIA DELLAR SURVIVOR'S TRUST

7 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
8 CENTRAL VALLEY REGION

9 In the Matter of:  
10 CITY OF SACRAMENTO and SYLVIA  
11 DELLAR SURVIVOR'S TRUST, DELLAR  
12 LANDFILL  
13 Administrative Civil Liability Complaint  
14 No.: R5-2012-0516

**ACL COMPLAINT No.: R5-2012-516**  
**DOUGLAS M. DAGGS, AS TRUSTEE TO**  
**SYLVIA DELLAR SURVIVOR'S**  
**TRUST'S, STATEMENT TO**  
**ADMINISTRATIVE CIVIL LIABILITY**  
**COMPLAINT R5-2012-0516 AND**  
**SUBMISSION OF EVIDENCE FOR**  
**CONSIDERATION**

Hearing:  
Date: December 5 - 6, 2013  
Time: 08:30 a.m.

**Complaint Date: March 9, 2012**

17 Douglas M. Daggs, Trustee of the Sylvia Dellar Survivor's Trust ("Trustee"), hereby submits this  
18 statement and evidence as exhibits listed hereto to the Central Valley Regional Water Quality  
19 Control Board ("CVRWQCB") pursuant to the Hearing and Procedures governing this matter,  
20 California Code of Regulations, title 23, section 648.3 for the Administrative Civil Liability  
21 hearing currently scheduled for December 5/6, 2013 as set forth as follows:

22 1. Trustee previously served his request for reconsideration on October 16, 2013 in  
23 response to the CVRWQCB's ruling served October 8, 2013 granting the CVRWQCB's motion to  
24 quash deposition subpoenas for notices of taking depositions and deposition subpoenas for request  
25 for production of documents of CVRWQCB's staff: Wendy Wyels, Todd Del Frate, Steve  
26 Rosenbaum, John Moody, and Stephanie Young.

27 2. Trustee then served his motion for continuance of Administrative Civil Liability hearing  
28

1 currently scheduled for December 5/6, 2013 on October 28, 2013 in order to more fully address the  
2 outstanding discovery that was not provided to Trustee by the CVRWQCB due to their motion to  
3 quash.

4 3. Trustee is also serving his motion to compel concurrently with submission of this  
5 statement and evidence for consideration by the CVRWQCB in support of his disagreement with  
6 the penalties assessed to the Trustee on behalf of the Sylvia Dellar's Survivor's Trust

7 4. Trustee hereby submits this statement and evidence as a partial response as outlined in  
8 the Hearing and Procedures governing this matter, California Code of Regulations, title 23, section  
9 648.3. Trustee continues to await the CVRWQCB's resolution of outstanding discovery still to be  
10 served by the CVRWQCB staff and pending outcome of Trustee's motion to compel discovery  
11 responses. The documents requested were in the possession of the subpoenaed CVRWQCB staff  
12 and are relevant to Trustee's position disagreeing with the assessed penalties imposed by the  
13 CVRWQCB.

14 5. Although Trustee understands that the CVRWQCB's role is to ensure compliance with  
15 applicable administrative agency codes and regulations, Trustee contends that both he and the City  
16 have worked to the best of their abilities to comply with CAO R5-2008-0705 and that the delays  
17 that occurred during the parties' attempts at compliance were beyond the parties' ability to control.

18 6. Based upon the initial assesement of costs of \$2.8 million for the required construction  
19 to close the former City landfill, the City eventually ran out of funding to complete the final closure  
20 activities mandated by the CVRWQCB. Neither the City nor the Trustee possessed the ability to  
21 halt the economic downturn which drastically affected the City's shortfall in revenues that it  
22 required to pay for their share of the construction costs for compliance. In fact, the Trustee has  
23 been saddled with the burden of the bulk of the costs of compliance.

24 7. In 2011, the City with the assistance of the Trustee, appiled for and was eventually  
25 granted \$720,000 CalRecycle grant funds to assist with the construction costs of the closure. The  
26 Trust, however, did not share in these monies obtained by the City although the funds were  
27 necessary to pay the contractors to continue the construction.

28 8. Unfortunately for all parties involved, unforeseen cosntruction obstacles eventually

1 drove the cost of construction much higher than anticipated, including unforeseen and increased  
2 cost of labor associated with their contractors in order to follow the required codes and regulations  
3 for both the CVRWQCB and City's requirements for contractors who must pay employees the  
4 prevailing union wages. This contractor dispute, which occurred in Fall 2011, stalled the Trustee's  
5 ability to complete construction as mandated by the CVRWQCB and proposed schedule and the  
6 Trustee was forced to hire another qualified contractor, thus putting all construction schedules  
7 behind over six months and nearly one year.

8 9. During this time period, both the City and the Trustee submitted status reports  
9 informing the CVRWQCB of the progress of construction or delays with the reasons for the delays  
10 which were beyond the control of both the City and the Trustee.

11 10. In addition to the City encountering lack of revenue due to the economic downturn,  
12 both the City and Trustee informed CVRWQCB staff of delays that the cost of compliance  
13 increased substantially upon the discovery of Elderberry bushes, host to the federally-protected,  
14 Valley Elderberry Longhorn Beetles ("VELB"), on the Dellar Trust property. Furthermore, the  
15 City and Trust were forced to delay construction, revise the closure plan, and obtain approval from  
16 the CVRWQCB before continuing with construction again. The discovery of VELB on the Trust  
17 property required that the Elderberry bushes remain on the property and care be taken to preserve  
18 the habitat of the federally-protected bushes and VELB.

19 11. At the same time, the City and Trustee simultaneously dealt with the large homeless  
20 encampment on the Trust property which required both the City and Trustee to work with the City's  
21 police to remove the homeless population before construction could be completed or they would  
22 both incur significant and unwanted liabilities from endangering the human population who  
23 camped out on the Trust property. The delays created by taking the time to have the homeless  
24 population removed was well documented in the Sacramento Bee as well as relayed to the  
25 CVRWQCB.

26 12. The City, Trust, and CVRWQCB corresponded at great length regarding the numerous  
27 obstacles encountered in order to comply with the CAO and even met with CVRWQCB staff  
28 throughout the duration of the compliance construction process. The CVRWQCB was very well



1 **SERVICE LIST**

2 *Sent via e-mail only*

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