

1 Neal E. Costanzo SBN 122352  
2 Michael G. Slater SBN 247302  
3 Costanzo & Associates  
4 A Professional Corporation  
5 575 E. Locust Avenue, Suite 115  
6 Fresno CA 93720  
7 Telephone: (559) 261-0163  
8 Facsimile: (559) 261-0706

9 Attorneys for Malaga County Water District

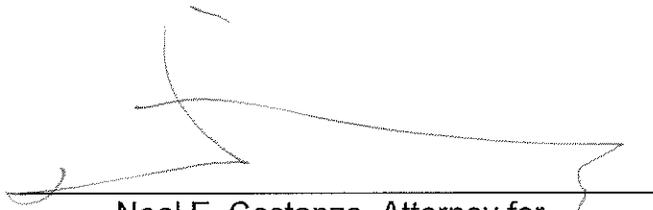
10 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**  
11 **CENTRAL VALLEY REGION**

12 ) Complaint No. R5-2016-0512  
13 )  
14 In the Matter of the Administrative Civil ) **APPLICATION OR MOTION TO STAY**  
15 Liability Complaint ) **THE ACL OR FOR AN ORDER THAT**  
16 ) **THE MATTER BE HEARD IN THE**  
17 ) **SUPERIOR COURT OR BEFORE AN**  
18 ) **ALJ AND WAIVER OF A HEARING**  
19 ) **WITHIN 90 DAYS.**  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Hearing: April 21 / 22, 2016

19 The Malaga County Water District ("District" or "Malaga"), the party against  
20 whom the Administrative Civil Liability Complaint ("ACL" or "Complaint") is directed,  
21 applies for and order of California Regional Water Quality Control Board, Central Valley  
22 Region ("CVRB" or "Board") to stay proceeding on the Complaint until the action  
23 between the District and Board in Madera County Case Number MCV071280 ("Writ  
24 Petition") is complete, or, in the alternative, for an order of the Board that the ACL be  
25 dismissed and the matter referred to the Attorney General to pursue in the Superior  
26 Court, County of Madera, as provided by the applicable sections of the Water Code.

1 This Motion or Application is based on this Motion, the Memorandum of Points and  
2 Authorities submitted herewith, and on all of the documents lodged with the Board in  
3 the matter herein.  
4

5  
6 Dated: 3-16-16



Neal E. Costanzo, Attorney for  
Malaga County Water District

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
2                                   **OF THE MOTION OR APPLICATION**

3                                   **I.**  
4                                   **INTRODUCTION**

5                                   There is currently pending, in the Madera County Superior Court, a Writ Petition  
6 filed by the District seeking to review and overturn the CVRB’s decision imposing  
7 Administrative Civil Liability in Order No. R5-2013-0527 (the “2013 ACL”). The Petition  
8 raises a number of issues including the legality or validity of CVRB’s hearing  
9 procedures relating to admission and sufficiency of evidence, the District’s right to be  
10 heard including to present evidence, cross-examine witnesses and rebut evidence, the  
11 separation and/or neutrality of the Prosecution Team, Advisory Team, Presiding  
12 Officer, and whether the doctrine of laches or estoppel applies to the CVRB. The  
13 District has, through separate submissions raised the same or similar objections in this  
14 ACL proceeding and anticipates the same response from the CVRB, Prosecution  
15 Team, Advisory Team or whoever shall ultimately make a decision or ruling on the  
16 District’s various Applications or Motions and Objections.  
17  
18

19                                   **II.**  
20                                     
21                                   **ARGEUMENT.**

22                                   **A. THE ACL SHOULD BE STAYED UNTIL THE WRIT PETITION**  
23                                   **CURRENTLY PENDING THE MADERA COUNTY SUPERIOR COURT**  
24                                   **IS CONCLUDED.**  
25

26                                   The Writ Petition will be dispositive on most, if not all of the issues raised by the  
27 ACL and would require a change in the manner in which the parties proceed in the  
28 ACL proceeding. A ruling in favor of Malaga or the Writ Petition. Because the Writ

1 Petition would be dispositive on the issues raised in the current ACL action, neither  
2 party would be prejudiced by waiting until the outcome of that Writ Petition. Further, as  
3 the Complaint admits, the alleged violations, even if they exist, have had no negative  
4 impact on the environment so that staying this action will not result in any negative  
5 impact on the environment.  
6

7 The District requests that the CVRB stay the hearing on the ACL until  
8 conclusion of the Writ Proceeding.  
9

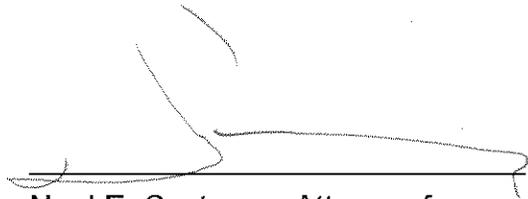
10 **B. REQUEST THAT THE ATTORNEY GENERAL PETITION THE SUPERIOR**  
11 **COURT TO IMPOSE PROPOSED LIABILITY OR ASSIGN THE ACTION TO**  
12 **AN ADMINISTRATIVE LAW JUDGE.**  
13

14 The ACL, at page 12, describes the options the Board may take following the  
15 hearing including “whether to refer the matter to the Attorney General for recovery of  
16 Judicial Civil Liability.” District assumes that this is a reference to the provisions in both  
17 Water Code §13350 and 13385 providing an alternative method to impose a civil  
18 liability by requesting the Attorney General to Petition to the Superior Court to impose  
19 such liability. Given the complexity of the issues raised in the ACL, the volume of  
20 evidence submitted by the Prosecution Team, the number and complexity of objections  
21 to the evidence and hearing procedures presented by the District, and the amount of  
22 time necessary for the District to be heard as required by the applicable statutes and  
23 the California and U.S. Constitutions, the CVRB simply does not have the practices  
24 and procedures in place to conduct a hearing in the manner required by law. The  
25 Complaint is much better suited to referral to an Administrative Law Judge or to the  
26 Superior Court. As an alternative to staying the ACL until such time as the Writ Petition  
27  
28

1 Proceeding has concluded, the District requests the CVRB refer this matter to the  
2 Attorney General to petition to the Superior Court for the imposition of the civil liability  
3 or to an Administrative Law Judge.  
4

5 Respectfully submitted,  
6

7  
8 Date: 3-11-14



Neal E. Costanzo, Attorney for  
Malaga County Water District

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28