

State Water Resources Control Board

November 1, 2011

Attn: Mr. Thomas O'Neil,
Agent for Service of Process
4000 South Rose Avenue
Oxnard, California 93033

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO.
7004 1160 0002 0465 7935

COMPLAINT NO. OE-2011-0012 FOR MANDATORY MINIMUM PENALTY AGAINST CHANNEL ISLANDS MARINE RESOURCE INSTITUTE, PORT HUENEME AQUACULTURE PARK, 432 WEST HUENEME ROAD, PORT HUENEME, CA, 93041 (ORDER NO. 01-076, NPDES PERMIT NO. CA 64131, CI NO. 7854, VENTURA COUNTY)

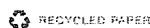
To the Agent for Service of Process:

Enclosed is Complaint No. OE-2011-0012 for Mandatory Minimum Penalty in the amount of \$33,000.00 against the Channel Islands Marine Research Institute (hereinafter Discharger) for violating waste discharge requirements contained in Regional Board Order No. 01-076 and for submitting a discharge self-monitoring report more than 30 days after the due date. Also enclosed is a copy of the State Water Resources Control Board (State Water Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before a Hearing Officer of the State Water Board will be held on this Complaint pursuant to California Water Code Sections 13323(c) and 183. Should the Discharger choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. OE-2011-0012 and return it to the Office of Enforcement by 5:00 p.m. on **1 December 2011**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **1 December 2011**, this matter will be heard before a State Water Board Hearing Officer. An agenda containing the date, time, and location of the hearing will be mailed to you at least 10 days prior to the hearing date.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov



Attn: Thomas O'Neil
Channel Islands Marine Resource Institute

- 2 -

November 1, 2011

If you have any questions regarding this matter, please contact Miss Melissa Hall at (916) 341-5773.

Sincerely,

David Boyers

David M. Boyers
Acting Director, Office of Enforcement
State Water Resources Control Board

Enclosures

cc: [via CERTIFIED MAIL RETURN RECEIPT REQUESTED
CLAIM NO. 7004 1160 0002 0465 7867]
Thomas McCormick
Channel Islands Marine Resource Institute
P.O. Box 1627
Port Hueneme, California 93044-1627

[via email only]
Ms. Ann Carroll, Office of Enforcement, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Miss Melissa Hall, Office of Enforcement, State Water Resources Control Board
Mr. Tim Regan, Office of Chief Counsel, State Water Resources Control Board
Mr. Phil Wyels, Office of Chief Counsel, State Water Resources Control Board
Mr. Andrew Choi, Los Angeles Regional Water Quality Control Board

1 DAVID BOYERS, Acting Director (SBN 199934)
2 ANN K. B. CARROLL, Staff Counsel (SBN 240452)
3 MAYUMI OKAMOTO, Staff Counsel (SBN 253243)
4 Office of Enforcement
5 State Water Resources Control Board
6 1001 I Street, 16th Floor
7 Sacramento, California 95814
8 Telephone: (916) 322-3227
9 Fax: (916) 341-5896
10 E-mail: acarroll@waterboards.ca.gov

11 Attorneys for the Prosecution Team

12 **STATE OF CALIFORNIA**
13 **STATE WATER RESOURCES CONTROL BOARD**

| | | |
|---|---|---|
| 14 In the matter of: |) | Complaint No. OE-2011-0012 |
| |) | |
| |) | Mandatory Minimum Penalty |
| |) | for |
| |) | |
| 15 Channel Islands Marine Resource |) | Violation of California Water Code § 13376 |
| 16 Institute |) | |
| |) | and |
| 17 Port Hueneme Aquaculture Park |) | |
| |) | |
| 18 432 West Hueneme Road |) | ORDER NO. 01-076 |
| 19 Port Hueneme, CA 93041 |) | (NPDES No. CA0064131) |
| |) | |

20
21 This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC)
22 Sections 13385(h) and (i) and 13385.1 is issued to the Channel Islands Marine Resource Institute
23 (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in
24 Order No. 01-076 (NPDES No. CA0064131, CI No. 7854).

25
26 **The Acting Director of the Office of Enforcement of the State Water Resources Control Board**
27 **(State Water Board) finds the following:**

- 28
29 1. The Permittee operated a facility (Facility) within the City of Port Hueneme's Aquaculture Park
30 for the propagation, display, and research of marine organisms, including fish and abalone, for
31 the enhancement of coastal marine fisheries. The Discharger was authorized to discharge
32 aquaculture wastewater generated from the display, holding, and growing of marine organisms to

1 Port Hueneme Harbor, a navigable water of the United States. The Facility is located at
2 432 West Hueneme Road, Port Hueneme, CA 93041.

3
4 2. The Discharger discharged aquaculture wastewater to Discharge Point No. 002 to Port Hueneme
5 Harbor, a water of the United States, at Latitude 34° 08' 36" North, Longitude 119° 13' 48", a
6 navigable water of the United States. Aquaculture wastewater may contain pollutants that can
7 degrade water quality and impact beneficial uses of water, and which are defined as wastes under
8 the Porter-Cologne Water Quality Control Act (CWC Section 13000 *et seq.*).

9
10 3. On 24 May 2001, the Regional Water Quality Control Board, Los Angeles Region (Regional
11 Water Board) adopted Order No. 01-076, which served as National Pollutant Discharge
12 Elimination System renewed Order No. 97-137 (NPDES Permit No. CA0064131) and served as
13 Waste Discharge Requirements for the Facility.

14
15 4. Order No. 01-076 (Effluent Limitations I.B.1. and 7.) contained effluent limitations for pH and
16 total suspended solids:

17

| Constituent | Unit of Measure | Discharge Limitations (Instantaneous Minimum) | Discharge Limitations (Instantaneous Maximum) |
|-------------|-----------------|---|---|
| pH | s.u. | 6.5 | 8.5 |

18

| Constituent | Unit of Measure | Discharge Limitations (30-Day Average) | Discharge Limitations (Daily Maximum) |
|------------------------|-----------------|--|---------------------------------------|
| Total Suspended Solids | mg/l | 50 | 75 |

19
20
21
22

23 5. Thirteen (13) effluent limit violations of Order No. 01-076 were noted in the Discharger's self-
24 monitoring reports for the fourth quarter of 2002; the first, second, and third quarters of 2003;
25 and the second quarter of 2004. The violations are specifically identified in Exhibit "A" to this
26 Complaint. Exhibit "A" is attached hereto and incorporated herein by reference.

27
28 6. Order No. 01-076 includes, per Requirements and Provisions 2, a monitoring and reporting
29 program (MRP). The MRP, at Reporting Requirements I.A, requires submittal of first quarter
30 (January – March) monitoring reports by 15 April of each year. The first quarter 2004
31 monitoring report was due 15 April 2004 and received 40 days late on 25 May 2004. This
32 violation is specifically identified in Exhibit "A" to this Complaint.

- 1 7. Discharges from the Facility were last reported by the Discharger for the week ending
2 4 September 2004. In a monitoring report transmittal letter dated 28 September 2004, the
3 Discharger reported that the Facility's "seawater pumps and resulting discharge stopped for
4 most of September" and that "[p]umping and discharge [were] presently stopped." In a letter
5 dated 19 November 2004, the Discharger notified the Regional Water Board that it had ceased
6 operations in the beginning of September 2004 and terminated its lease of the Facility site and
7 requested termination of Order No. 01-076. Order No. 01-076 was subsequently transferred to
8 Stellar Biotechnologies, Incorporated in February 2005.
- 9
- 10 8. On 29 October 2009, the Director of the State Water Board Office of Enforcement (State Water
11 Board) issued the Discharger Offer to Participate in Expedited Payment Program (EPP) No.
12 SWB-2008-0083a, which included a Notice of Violation notifying the Discharger of six (6)
13 effluent violations subject to a mandatory minimum penalty.
- 14
- 15 9. A review of the record verified the six (6) effluent violations identified in the 22 September 2009
16 Notice of Violation as subject to mandatory minimum penalties. Further review of the record
17 identified seven (7) additional effluent violations, of which four (4) are subject to mandatory
18 minimum penalties, and one (1) late reporting violation subject to a mandatory minimum penalty.
19 The violations identified in the 22 September 2009 Notice of Violation, the seven (7) additional
20 effluent limitation violations, and the one (1) additional late reporting violation are specifically
21 identified in Exhibit "A".
- 22
- 23 10. Any discharge containing pollutants violating the effluent limitations set in the waste discharge
24 requirements is prohibited by CWC Section 13376.
- 25
- 26 11. CWC Section 13385(h) requires the Water Boards to assess a mandatory minimum penalty of
27 three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC Section
28 13385(h)(2) "*a serious violation is defined as any waste discharge that violates the effluent*
29 *limitations contained in the applicable waste discharge requirements for a Group II pollutant by*
30 *20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part*
31 *123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."*

32 ///

1 12. CWC Section 13385(i) requires the Water Boards to assess a mandatory minimum penalty of
2 three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste
3 discharge requirement effluent limitation in any period of six consecutive months, except that the
4 requirement to assess the mandatory minimum penalty shall not be applicable to the first three
5 violations within that time period
6

7 13. CWC Section 13385.1(a)(1) requires the Water Boards to assess a mandatory minimum penalty
8 of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "*a failure*
9 *to file a discharge monitoring report required pursuant to Section 13383 for each complete*
10 *period of 30 days following the deadline for submitting the report, if the report is designed to*
11 *ensure compliance limitations contained in waste discharge requirements that contain effluent*
12 *limitations.*" This section applies to violations occurring on or after January 2004.
13

14 14. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC
15 Section 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the
16 number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
17

18 **YOU ARE HEREBY GIVEN NOTICE THAT:**
19

20 15. The Acting Director of the State Water Board Office of Enforcement proposes that the Permittee
21 be assessed a mandatory minimum penalty in the amount of **\$33,000.00** for the violations cited in
22 Exhibit "A." Refer to Exhibit "A" for the calculation of the amount of mandatory minimum
23 penalty.
24

25 16. The Permittee may waive the right to a hearing and pay the recommended administrative civil
26 liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must
27 sign the waiver form attached to this Complaint and return it to the State Water Board by
28 5:00 p.m. on **1 December 2011**. If the hearing is waived, a check in the amount of **\$33,000.00**
29 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the
30 State Water Board by 5:00 p.m. on **1 December 2011**.
31

32 ///

1 17. If the State Water Board does not receive a waiver and full payment of the recommended penalty
2 by **1 December 2011**, the Complaint will be heard before the State Water Board Hearing Officer
3 pursuant to California Water Code Sections 13323(c) and 183. The Notice of Public Hearing
4 contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
5

6 18. If a hearing on this matter is held, the State Water Board will consider whether to affirm, reject,
7 or modify (*i.e.* increase the proposed civil liability above the mandatory minimum up to the
8 maximum penalty provided for by law) the proposed civil liability, or whether to refer the matter
9 to the Attorney General for assessment of judicial civil liability.
10

11 19. There are no statutes of limitation that apply to administrative proceedings. The statutes of
12 limitation that refer to "actions" and "special proceedings" and are contained in the California
13 Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City*
14 *of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin,
15 Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
16

17 20. Notwithstanding the issuance of this Complaint, the State Water Board and/or the Regional
18 Water Board shall retain the authority to assess additional penalties for violations of the
19 requirements of the Discharger's waste discharge requirements for which penalties have not yet
20 been assessed or for violations that may subsequently occur.
21

22 21. This enforcement action is exempt from the provisions of the California Environmental Quality
23 Act, California Public Resources Code Section 21000 *et seq.*, in accordance with California
24 Code of Regulations, Title 14, Section 15321.
25

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1 22. Regulations of the United States Environmental Protection Agency require public notification of
2 any proposed settlement of the civil liability occasioned by violation of the Clean Water Act
3 including NPDES permit violations. Accordingly, interested persons will be given 30 days to
4 comment on any proposed settlement of this Complaint.
5

6
7 David Boyers

8 David M. Boyers
9 Acting Director, Office of Enforcement
10 State Water Resources Control Board
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November 1, 2011
Date

Effluent Limitation Violations Requiring Mandatory Minimum Penalties

| # | Violation Number | Violation Date* | Parameter | Pollutant Group | Exempted from MMP? | Limitation Period | Limit | Result/Average | Units | % Over Limit | Date 180 Days Prior | Serious** Violation? | Effluent Violations in Past 180 Days | Mandatory Fine? | Penalty |
|----|------------------|-----------------|------------------------|-----------------|--------------------|-------------------|-------|----------------|-------|--------------|---------------------|----------------------|--------------------------------------|-----------------|---------|
| 1 | 910945 | 14-Nov-2002 | Total Suspended Solids | I | No | Daily | 75 | 90 | mg/l | 20 | 18-May-2002 | No | 0 | No | \$0 |
| 2 | 911014 | 14-Nov-2002 | Total Suspended Solids | I | No | 30-day | 50 | 90 | mg/l | 80 | 18-May-2002 | Yes | N/A | Yes | \$3,000 |
| 3 | 910950 | 24-Nov-2002 | pH | OEVI | No | Instantaneous | 8.5 | 8.8 | s.u. | N/A | 28-May-2002 | No | 2 | No | \$0 |
| 4 | 238755 | 12-Mar-2003 | Total Suspended Solids | I | No | Daily | 75 | 160 | mg/l | 113 | 13-Sep-2002 | Yes | N/A | Yes | \$3,000 |
| 5 | 238756 | 12-Mar-2003 | Total Suspended Solids | I | No | 30-day | 50 | 160 | mg/l | 220 | 13-Sep-2002 | Yes | N/A | Yes | \$3,000 |
| 6 | 238758 | 12-May-2003 | Total Suspended Solids | I | No | Daily | 75 | 230 | mg/l | 207 | 13-Nov-2002 | Yes | N/A | Yes | \$3,000 |
| 7 | 238757 | 12-May-2003 | Total Suspended Solids | I | No | 30-day | 50 | 230 | mg/l | 360 | 13-Nov-2002 | Yes | N/A | Yes | \$3,000 |
| 8 | 227262 | 11-Jul-2003 | Total Suspended Solids | I | No | Daily | 75 | 190 | mg/l | 153 | 12-Jan-2003 | Yes | N/A | Yes | \$3,000 |
| 9 | 911015 | 11-Jul-2003 | Total Suspended Solids | I | No | 30-day | 50 | 190 | mg/l | 280 | 12-Jan-2003 | Yes | N/A | Yes | \$3,000 |
| 10 | 911016 | 17-Jul-2003 | Total Suspended Solids | I | No | 30-day | 50 | 130 | mg/l | 160 | 18-Jan-2003 | Yes | N/A | Yes | \$3,000 |
| 11 | 911017 | 24-Jul-2003 | Total Suspended Solids | I | No | 30-day | 50 | 100 | mg/l | 100 | 25-Jan-2003 | Yes | N/A | Yes | \$3,000 |
| 12 | 227263 | 31-Jul-2003 | Total Suspended Solids | I | No | 30-day | 50 | 90 | mg/l | 80 | 1-Feb-2003 | Yes | N/A | Yes | \$3,000 |
| 13 | 910967 | 20-Jun-2004 | pH | OEVI | No | Instantaneous | 6.5 | 6.3 | s.u. | N/A | 23-Dec-2003 | No | 0 | No | \$0 |

Total Penalty: \$30,000

* Violation occurs on sample date or last date of averaging period.
 ** For Group I pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 40%.
 For Group II pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 20%.
 Mandatory penalties effective 1 January 2000.

Violation review period beginning 1 April 2001 and ending 31 December 2004

| | |
|--|----|
| Group I Violations Subject to MMPs: | 11 |
| Group II Violations Subject to MMPs: | 0 |
| Other Effluent Violations Subject to MMPs: | 2 |
| Total Violations Subject to MMPs: | 13 |
| Violations Exempt from MMPs: | 0 |
| Total Effluent Violations: | 13 |

Group I Violations Assessed MMP: 10
 Group II Violations Assessed MMP: 0
 Other Effluent Violations Assessed MMP: 0
 Total Violations Assessed MMP: 10

Report Violations Requiring Mandatory Minimum Penalties

| # | Violation Number(s) | Report Description | Report Due Date | Received Date | Days Late | 30-Day Periods Late | Mandatory Penalty |
|---|---------------------|--------------------|-----------------|---------------|-----------|---------------------|-------------------|
| 1 | 910968 | First Quarter 2004 | 15-Apr-2004 | 25-May-2004 | 40 | 1 | \$3,000 |

Total Penalty: \$3,000

Mandatory Minimum Penalty = (10 Serious Violations + 0 Non-Serious Violations + 1 Serious Late Reporting Violation) x \$3,000 = \$33,000

Report Violations Requiring Mandatory Minimum Penalties

| # | Violation Number(s) | Report Description | Report Due Date | Received/Current Date | Days Late | 30-Day Periods Late | Mandatory Penalty |
|----|---------------------|--------------------|-----------------|-----------------------|-----------|---------------------|-------------------|
| 1 | 910968 | First Quarter 2004 | 15-Apr-2004 | 25-May-2004 | 40 | 1 | \$3,000 |
| 2 | | | | | | | |
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Total Penalty: \$3,000

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. OE-2011-0012

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Channel Islands Marine Research Institute (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. OE-2011-0012 (hereinafter the "Complaint"). I am informed that California Water Code Section 13323, subdivision (c), states that, "any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served [with the complaint]."

- (Check here if the Discharger waives the hearing requirement and will pay the recommended liability.)*
- a. I hereby waive any right the Discharger may have to a hearing before the State Water Resources Control Board Hearing Officer.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$33,000.00** by check that references "ACL Complaint No. OE-2011-0012" made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the State Water Board by **1 December 2011** or this matter will be placed on the State Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the State Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Director of the State Water Board Office of Enforcement may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the State Water Board, and that the State Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

**HEARING OF THE
STATE WATER RESOURCES CONTROL BOARD**

1001 "I" Street
P.O. Box 100
Sacramento, California 95814
(916) 341-5272

ACLC No. OE-2011-0012

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY

| <u>DISCHARGER</u> | <u>DISCHARGE LOCATION</u> | <u>RECEIVING WATERS</u> |
|--|--|--------------------------------|
| CHANNEL ISLANDS MARINE RESOURCE INSTITUTE | 432 WEST PORT HUENEME ROAD PORT HUENEME, CA 93041 | PORT HUENEME HARBOR |

Administrative Civil Liability Complaint (ACLC) No. OE-2011-0012 alleges that the Channel Islands Marine Resource Institute (Discharger) violated waste discharge requirements contained in Regional Water Board Order No. 01-076 by failing to comply with effluent limits and failing to timely submit its first quarter 2004 self-monitoring report. As stated in the ACLC, State Water Board staff, represented by the State Water Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$33,000.00 be assessed against the Channel Islands Marine Resource Institute for these violations.

Pursuant to Water Code Section 13323(c) and Section 183, a member of the State Water Board will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the State Water Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: 18/19 January 2012
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
* Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the, proposed order, comments received, and other information about the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling Mr. Hugh Marley of the Los Angeles Regional Board at (213) 620-6375. Comments received, the Prosecution Team's proposed Hearing Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in Section V below) so that it is received by 5:00 p.m. on **29 December 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to Section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with Section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the State Water Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Channel Islands Marine Research Institute
2. State Water Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Officer identified in Section VIII below so that it is received by 5:00 p.m. on **5 December 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall include a statement explaining why the party or parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the State Water Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the State Water Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Melissa Hall, Senior Water Resource Control Engineer from the State Water Board's Office of Enforcement. Ann Carroll, Staff Counsel from the State Water Board's Office of Enforcement, will advise the Prosecution Team prior to and at the hearing. Neither Ms. Carroll nor the members of the Prosecution Team will be advising the State Water Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the Hearing Officer (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Melissa Hall, PE
RCE No. 67654
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
(916) 341-5773
MHall@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals by Parties.

Not later than **5 December 2011**, the Prosecution Team will send the parties a preliminary Hearing binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

The Channel Islands Marine Resource Institute is required to submit:

- 1) Any additional documents or evidence the Channel Islands Marine Research Institute wants the Hearing Officer to consider,
- 2) A summary of any legal and technical arguments and testimony the Channel Islands Marine Research Institute intends to present, and
- 3) A statement regarding how much time the Channel Islands Marine Research Institute needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 p.m. on 19 December 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Officer. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Officer and the parties a final Hearing binder no later than **9 January 2012**. An agenda containing the date, time, and location of the hearing will be mailed to the Channel Islands Marine Research Institute at least 10 days prior to the hearing date.

B. Submittals by Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Officer to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing binder, and fully considered by the Hearing Officer in advance of the hearing, any such written materials must be received by **5:00 p.m. on 19 December 2011**. If possible, please submit written comments in Word format electronically to the Case Manager. Interested persons should be aware the State Water Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing

proceeds as scheduled, the Hearing Officer will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Officer generally will be conducted in the following order:

- Opening statement by Hearing Officer
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Officer
- Deliberations (in open or closed session)
- Announcement of recommendation to the State Water Board

While this is a formal administrative proceeding, the Hearing Officer does not generally require the cross-examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Officer after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 p.m. on 19 December 2011** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the State Water Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Hearing Officer, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section VI.A and VI.B, above, or it may be excluded from consideration by the Hearing Officer. The Hearing Officer will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING OFFICER

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, State Water Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the State Water Board, Hearing Officer, or Hearing Officer Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Officer Advisors.

The Hearing Officer will be advised before and during the hearing by a technical advisor Tim Regan, Senior Staff Counsel, and/or Phil Wyels, Assistant Chief Counsel. None of these individuals has exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Officer as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing by **5:00 p.m. on 19 December 2011** to the Legal Advisor to the Hearing Officer:

Tim Regan
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5172
TRegan@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to Section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in Section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Officer, as set forth in Section C.2, by **5:00 p.m. on 19 December 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS ABOUT NOTICE

Questions about notice may be directed to the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Officer as described above.

Date: 1 November 2011