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February 2, 2018

VIA U.S. MAIL & EMAIL

Philip G. Wyels
Assistant Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: RESPONSE OF JAMES G. SWEENEY AND AMEILA M. SWEENEY TO
PETITION OF ASOCIACION DE GENTE UNIDA POR EL AGUA AND
ENVIRONMENTAL LAW FOUNDATION (REISSUED [sic] WASTE
DISCHARGE REQUIREMENTS GENERAL ORDER NO. R5-2013-0122
FOR EXISTING MILK COW DAIRIES), CENTRAL VALLEY
REGIONAL WATER QUALITY CONTROL BOARD: ACTIVATION OF
PETITION **SWRCB/OCC FILE A-2283(b)**

Dear Mr Wyels:

James G. Sweeney and Amelia M. Sweeney submit their response in opposition to the purported “activation” of the Petition of Asociacion de Gente Unida por el Agua and Environmental Law Foundation regarding Waste Discharge Requirements General Order No. R5-2013-0122 for Existing Milk Cow Dairies (General Order). This Petition is designated by your office as “SWRCB/OCC File A-2283(b)” and will be referred to as the “Petition.”

The Petition is time barred, and should be dismissed. The General Order was adopted on October 3, 2013. Under Water Code § 13320, the last day to file the Petition was Monday, November 4, 2013, as the thirtieth day after October 3, 2013 was November 2, 2013—a Saturday. The Petition is dated November 5, 2013 so even if filed on that day it was filed a day late. Therefore, the Petition should be dismissed for violation of Water Code § 13320 as being time barred.

The General Order was adopted without due process. The Notice about the Tentative General Order was first posted on the Regional Board's website on or about August 9, 2013 at an obscure, difficult-to-find location. One would have to stumble through numerous web pages to stumble across the Notice and the Tentative General Order and its Attachments.

No written notice regarding the proposed General Order was mailed to the Sweeneys or other dairy owners and operators. The only reason the Sweeneys learned of the proposed General Order, and the 30-day comment period ending September 9, 2013, was because one of the Regional Board staff members called these events to the Sweeney’s attention on August 12, 2013.

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The Regional Board has a list of mailing addresses and email addresses for the dairy owners subject to their jurisdiction. Prior to adoption of the 2007 General Order, the Regional Board notified dairy owners and operators by registered mail of the proposed Order and its pending adoption. But in the case of the 2013 General Order, no attempt was made to give actual notice to the dairy owners/operators intended to be regulated. Thus, under the holding of Mullane v. Central Hanover Bank & Trust Company (339 U.S. 306 (1950)), the Regional Board denied due process to all dairymen and dairy organizations when it failed to give notice of the comment period and of the date of the proposed adoption of the General Order by a method "reasonably calculated" to inform them of the proceedings.

Very truly yours,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By: 
RAYMOND L. CARLSON

PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a; FRCP 5(b)

I am employed in the County of Kings, State of California. I am over the age of 18 years and not a party to the within action. My business address is 111 E. 7th St., Hanford, CA 93230.

On February 2, 2018, I served the following document(s): Reply of James G. Sweeney and Amelia M. Sweeney to Letter dated December 21, 2017 from Philip G. Wyels re SWRCB/OCC File A-2283(b) on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

(By Mail) I deposited such envelope in the United States mail at Hanford, California. The envelope was mailed with postage thereon fully prepaid.

(By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Hanford, California, in the ordinary course of business.

(By Overnight Delivery) I deposited such envelope in the Federal Express/UPS Next Day Air/U.S. Mail Express Mail depository at Hanford, California. The envelope was sent with delivery charges thereon fully prepaid.

(By Personal Service) I caused such envelope to be hand delivered to the offices of the addressee(s) shown above.


(By Electronic Mail) I caused such documents to be sent to the indicated recipients via electronic mail to the e-mail address(es) as stated herein.

(By Facsimile) I caused each document to be delivered by electronic facsimile to the offices listed above.

(State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 2, 2018 at Hanford, California.



JUDY SCOTT

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Dairy CARES
c/o Theresa Dunham

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