

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0576

MANDATORY PENALTY
IN THE MATTER OF

TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This Complaint is issued to the Town of Discovery Bay Community Services District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0179 (NPDES No. CA0078590).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Town of Discovery Bay Community Services District owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewerage service to the Town of Discovery Bay in Contra Costa County. Treated domestic, commercial, and industrial wastewater is discharged to Old River, a water of the United States.
2. On 4 December 2008, effective 23 January 2009, the Central Valley Water Board issued WDRs Order R5-2008-0179, which contained new requirements and rescinded Order R5-2003-0067, except for enforcement purposes.
3. On 17 December 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0595 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2009-0595) that occurred from 1 January 2009 through 31 August 2009. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0595 resolved.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 September 2009 through 28 February 2011. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
5. On 25 March 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations. On 8 April 2011, the Discharger responded requesting that the total coliform violations that occurred in January 2011 be considered a single operational upset, and treated as a single violation. However, as described in Attachment B of this Complaint, Board staff disagree that the violations should be considered a single

operational upset and have therefore retained the individual violations. The final ROV has been extended by one month and an additional violation has been added to the complaint.

6. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

7. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

8. WDRs Order R5-2008-0179 Effluent Limitations IV.A.1.e., states, in part:

- e. Total Coliform Organisms. Effluent total coliform organisms shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as a 7-day median;

9. WDRs Order R5-2008-0179 Effluent Limitations IV.A.1.g., states, in part:
- g. Electrical Conductivity.
 - i. The electrical conductivity in the discharge shall not exceed an annual average of 2,100 μ mhos/cm;
10. According to the Discharger's self-monitoring reports, the Discharger committed eight (8) non-serious violations of the above effluent limitations contained in WDRs Order R5-2008-0179 during the period beginning 1 September 2009 and ending 28 February 2011. Five of the non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **fifteen thousand dollars (\$15,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **fifteen thousand dollars (\$15,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
12. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifteen thousand dollars (\$15,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **3/4/5 August 2011**, unless the Discharger does one of the following by **6 June 2011**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifteen thousand dollars (\$15,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached

form, and returns it to the Board along with a letter describing the issues to be discussed.

3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by Frederick Moss for
PAMELA C. CREEDON, Executive Officer

6 May 2011
DATE

Attachment A: Record of Violations
Attachment B: Memorandum

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Town of Discovery Bay Community Services District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0576 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifteen thousand dollars (\$15,000)** by check that references "ACL Complaint R5-2011-0576" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 June 2011**.
- 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0576**

**Town of Discovery Bay Community Services District
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 September 2009 – 28 February 2011) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0179)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	6-Oct-10	Total Coliform	MPN/100m L	23	27	7-day median	3	887312
2	31-Dec-10	Electrical Conduct	µmhos/cm MPN/100m	2,100	2,192	Annual Avg	3	890048
3	19-Jan-11	Total Coliform	L MPN/100m	23	30	7-day median	3	892607
4	21-Jan-11	Total Coliform	L MPN/100m	23	30	7-day median	4	892608
5	24-Jan-11	Total Coliform	L MPN/100m	23	40	7-day median	4	892610
6	25-Jan-11	Total Coliform	L MPN/100m	23	30	7-day median	4	892609
7	26-Jan-11	Total Coliform	L MPN/100m	23	40	7-day median	4	892611
8	1-Feb-11	Total Coliform	L	23	35	7-day median	4	895468

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>2/28/2011</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	3
Non-serious Violations Subject to MMPs:	5
<u>Total Violations Subject to MMPs:</u>	<u>5</u>

Mandatory Minimum Penalty = (0 serious Violations + 5 Non-Serious Violations) x \$3,000 = \$15,000



Linda S. Adams
Acting Secretary for
Environmental Protection

Attachment B ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0576
California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.
Governor

TO: Victor Vasquez
Sr. Engineer
NPDES Compliance and
Enforcement Unit

FROM: Barry Hilton
WRCE
NPDES Compliance and
Enforcement Unit

DATE: 5 May 2011

SIGNATURE: _____

SUBJECT: DISCOVERY BAY COLIFORM VIOLATIONS

By letter dated 8 April 2011, the Discharger explained that the total coliform effluent violations in January 2011 occurred during start up of new ultraviolet disinfection equipment which was installed to provide redundancy in the treatment process and ensure compliance. The Discharger explained that the new system experienced operational challenges which resulted in the violations. The Discharger requested that the total coliform violations be considered a single operational upset (SOU), and treated as a single violation. The Discharger cited the State Water Board Enforcement Policy definition for SOUs, which states, in part:

In accordance with California Water Code section 13385, subdivision (f)(2), for the purposes of MMPs only, a single operational upset that leads to simultaneous violations of one or more pollutant parameters over multiple days shall be treated as a single violation. The Regional Water Board shall apply...US EPA Guidance in determining if a single operational upset occurred ... Single operational upsets include such things as an upset caused by a sudden violent storm, some other exceptional event, or a bursting tank...

Central Valley Water Board staff reviewed the effluent data and the Discharger's request and has concluded that the violations and circumstances did not meet the criteria for a SOU as set forth in US EPA Guidance. The violations were not caused by an exceptional or unforeseen event.

Furthermore, there is a discrepancy between the Enforcement Policy and CWC section 13385(f)(1) regarding SOUs. According to section 13385(f)(1), an SOU that "leads to simultaneous violations of more than one pollutant parameter" shall be considered one violation; however, the Enforcement Policy states "one or more pollutant parameters." Based on CWC section 13385(f)(1), the total coliform violations can not be considered one SOU violation because only one parameter exceeded its effluent limitations..

The Discharger should have considered requesting protection from MMPs under CWC Section 13385(j)(D). Effluent violations resulting from the operation of a new or reconstructed wastewater treatment unit may be exempted from mandatory penalties if the Discharger meets the requirements of CWC section 13385(j)(D), which includes the submittal of an operations plan in advance of the start up of operation. However, the Discharger did not submit an operations plan for the new ultraviolet disinfection system. In addition, this section allows an exemption for the first 30 days of start-up. Board staff understand that the violations which took place in January 2010 occurred more than 30 days after the initial operation of the ultraviolet disinfection system.

To summarize, the total coliform violations are not properly classified as a "single operational upset" and the Discharger did not request protection from MMPs under CWC 13385(j)(D). Therefore, the total coliform violations have been retained as individual violations.



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Acting Secretary for
Environmental Protection

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114
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Edmund G. Brown Jr.
Governor

6 May 2011

Virgil Koehne, General Manager
Town of Discovery Bay
1800 Willow Lake Road
Discovery Bay, CA 94505

CERTIFIED MAIL
7010 1670 0002 0652 6089

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0576 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT, WASTEWATER TREATMENT PLANT, CONTRA COSTA COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order R5-2008-0179 (NPDES No. CA0078590) by the Town of Discovery Bay Community Services District (Discharger) at its wastewater treatment plant. The Complaint charges the Discharger with administrative civil liability in the amount of **fifteen thousand dollars (\$15,000)**, which represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations (identified in Attachment A of the Complaint) that occurred from 1 September 2009 through 28 February 2011.

On 25 March 2011, Central Valley Water Board staff issued a draft Record of Violations (ROV). On 8 April 2011, the Discharger responded and requested that the January 2011 total coliform violations be considered single operational upset and treated as a single violation. Board staff disagree that the violations should be considered a single operational upset and have therefore retained the individual violations. The final ROV has been extended by one month and an additional violation has been added to the complaint.

Pursuant to CWC section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver **by 6 June 2011**, a hearing will be scheduled for the **3/4/5 August 2011** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board

California Environmental Protection Agency

Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by David Coupe, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 20 May 2011**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

Original signed by

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACLC R5-2011-0576
Hearing Procedures
Waiver Form

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento
Ellen Howard, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ken Landau, Central Valley Water Board Advisory Team, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Contra Costa Environmental Health Division, Concord
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Jae Kim, Tetra Tech, Fairfax, VA

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2011-0576

ISSUED TO
TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

SCHEDULED FOR 3/4/5 August 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) sections 13323 to Town of Discovery Bay Community Services District (Discharger), alleging violations of CWC section 13385 for discharges from the Discharger's wastewater treatment plant that exceeded permitted effluent limitations.

The Complaint proposes that an administrative civil liability in the amount of \$15,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 3/4/5 August 2011 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at: <http://www.waterboards.ca.gov> or will be made available upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 20 MAY 2011 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Town of Discovery Bay Community Services District

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **26 May 2011**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to

present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **6 June 2011**. The parties will be notified by 5 p.m. on **16 June 2011** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

David Coupe, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 327-4439; fax: (916) 341-5199
dcoupe@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Frederick Moss, Assistant Executive Officer
Wendy Wyels, Environmental Program Manager
Victor Vasquez, Senior Water Resources Control Engineer
Barry Hilton, Water Resources Control Engineer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Ellen Howard, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5677; fax: (916) 341-5896
ehoward@waterboards.ca.gov

Discharger:

Mr. Virgil Koehne
General Manager
Town of Discovery Bay Community Services District
1800 Willow Lake Road
Discovery Bay, CA 94505
Phone: (925) 634-1131
e-mail: vk1800todb@sbcglobal.net

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Mr. David Coupe. Members of the Prosecution Team are: Ms. Pamela Creedon, Mr. Frederick Moss, Ms. Wendy Wyels, Mr. Victor Vasquez, Mr. Barry Hilton, and Ms. Ellen Howard. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Ellen Howard is an attorney with the State Water Resources Control Board's Office of Enforcement and has not advised the Central Valley Water Board on any matter. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to this Hearing Procedure; requests for modifications to this Hearing Procedure; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **25** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations,

and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on **15 July 2011**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Case in Chief: The Prosecution Team, the Discharger and each other designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list or attached copy of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff.

The Prosecution Team shall submit one hard copy and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Kenneth Landau and David Coupe must receive all submissions no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

Rebuttal: Any designated party that would like to submit written evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies and one electronic copy of their rebuttal information to Kenneth

Landau and one electronic copy of the information to David Coupe so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: By **21 July 2011**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **21 July 2011**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA. This file shall be considered part of the official administrative record

for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

(Note: The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

All required submissions must be received by 5:00 p.m. on the due date.

6 May 2011	Prosecution Team issues ACL Complaint to Discharger and Advisory Team and publishes Public Notice
20 May 2011	Objections due on proposed Hearing Procedure
26 May 2011	Deadline for submission of request for designated party status.
6 June 2011	Deadline for opposition to request for designated party status.
6 June 2011	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
16 June 2011	Advisory Team issues decision on requests for designated party status, if any.
16 June 2011	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
6 July 2011	Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.
6 July 2011	Prosecution Team submits an electronic copy to Kenneth Landau and David Coupe of all documents cited in the complaint or Staff Report, unless previously submitted.
15 July 2011	Requests for additional hearing time (see Hearing Time Limits, above).
18 July 2011	All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
21 July 2011	Prosecution Team's deadline to submit the buff sheet
21 July 2011	Interested persons' comments are due.
29 July 2011	If <i>new</i> rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal.
3/4/5 August 2011:	Hearing