

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0515

IN THE MATTER OF

ORIGINAL SIXTEEN TO ONE MINE, INC.
SIXTEEN TO ONE MINE
SIERRA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to the Original Sixteen to One Mine, Inc. (Discharger) pursuant to California Water Code (Water Code) section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint proposes administrative civil liability pursuant to Water Code sections 13268 and 13385. The allegations in this Complaint are based on violations of Waste Discharge Requirements (WDRs) Order R5- 2015-0002 (NPDES CA0081809) and Time Schedule Order (TSO) R5-2015-0035.

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

BACKGROUND

1. The Discharger owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine. The Facility discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Fork Yuba River, Yuba River, Feather River, and Sacramento River, a water of state and the United States.
2. Discharges from the Facility were regulated by the Central Valley Water Board under Waste Discharge Requirements (WDRs) Order R5-2002-0043, which was adopted on 1 March 2002 and amended on 30 April 2003.
3. On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 (NPDES CA0081809), which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes. WDRs Order R5-2015-0002 became effective on 16 April 2015. A minor modification letter was issued on 10 September 2015 to correct an error in the monitoring report due dates.
4. On 17 April 2015, the Board issued TSO R5-2015-0035. When the discharge complies with the interim effluent limits in the TSO for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel, then the Discharger is protected from mandatory minimum penalties (MMPs) for these constituents. However, if the discharge exceeds the interim limits, then protection is lost and the Discharger is subject to MMPs. The interim limits are in effect until 16 April 2020. This Complaint considers the protection from MMPs provided by the TSO.

PREVIOUS ENFORCEMENT ACTIONS

5. Between February 2006 and January 2007, the Discharger did not submit twelve monitoring reports as required by WDRs R5-2002-0043. Failure to submit these monitoring reports resulted in 78 serious violations of Water Code section 13385 and 13385.1. The Central Valley Water Board referred these violations to the Attorney General whom ultimately filed a lawsuit against the Discharger.

6. On 11 February 2015, a Stipulated Final Judgement was entered into by and between the State of California, ex. rel. California Regional Water Quality Control Board, Central Valley Region, and Original Sixteen to One Mine, Inc. (Case No. 7019) to resolve the outstanding violations. The settlement required the Discharger to pay \$237,083 in monthly installments. The Discharger is currently paying the monthly installments and has made each payment on time and in accordance with the agreed upon payment schedule. Additionally, the Discharger agreed to file a Report of Waste Discharge and obtain an NPDES permit, pursuant to Water Code sections 13263 and 13377 covering discharges to Kanaka Creek from Sixteen to One Mine and agreed to fully comply with each and every term of the NPDES permit.
7. On 29 April 2016, the Central Valley Water Board adopted Administrative Civil Liability (ACL) Order R5-2016-0021. The ACL Order charged the Discharger with civil liability in the amount of \$6,000, which represented the sum of the statutory MMPs for effluent limitation violations that occurred at the Facility from 16 April 2015 through 30 September 2015. The Discharger was invoiced on 28 April 2016 and was to pay the \$6,000 civil liability in full by 28 May 2016. As of 13 March 2017, the Discharger has paid \$1,000 of the civil liability; therefore, a \$5,000 balance is currently outstanding.

CURRENT ENFORCEMENT ACTION

8. This Complaint alleges the Discharger has failed to submit multiple technical and progress reports required by WDRs Order R5-2015-0002 and TSO R5-2015-0035. These delinquent reports are required to develop actions that, when implemented, will bring the Discharger into compliance with the WDRs and TSO and ensure continued compliance with the effluent limits. Failure to submit these reports subjects the Discharger to discretionary penalties, which is described in detail in Attachment A to this Complaint. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
9. This Complaint also assesses mandatory minimum penalties for effluent violations that occurred during the period from 1 October 2015 through 31 December 2016. These violations are specifically identified in Attachment B to this Complaint as subject to MMPs. Attachment B to this Complaint is attached hereto and incorporated herein by this reference.

VIOLATIONS OF WDR ORDER R5-2015-0002 AND TSO R5-2015-0035 FAILURE TO SUBMIT TECHNICAL AND PROGRESS REPORTS

10. WDRs Order R5-2015-0002 and TSO R5-2015-0035 require the Discharger to submit multiple technical and progress reports. The Discharger has a history of not submitting reports, submitting late reports, and/or submitting incomplete reports. Between adoption of the WDRs on 5 February 2015 and the TSO on 17 April 2015 and issuance of this Complaint, the Discharger has been issued five Notices of Violation. In addition, Board staff sent multiple emails regarding the late and incomplete reports and has discussed the violations with the Discharger and his potential consultants, as described below.
11. WDRs Provision VI.C.2.a.i requires the submittal of a *Toxicity Reduction Evaluation (TRE) Work Plan* within 90 days of the effective date of the WDRs Order. The effective date of the WDRs Order was 16 April 2015. Therefore, the *TRE Work Plan* was due on 15 July 2015. The *TRE Work Plan* was required to "outline the procedures for identifying the source(s) of, and reducing or eliminating effluent toxicity" and be developed in accordance with U.S. EPA whole effluent toxicity (WET) Guidance Documents. The Discharger has not submitted the *TRE Work Plan* as of 13 March 2017.

12. WDRs Provision VI.C.2.c.i requires the submittal of a *Mining Waste Pile Characterization Study Workplan and Time Schedule (Mining Waste Pile Workplan)* by 1 June 2015. The *Mining Waste Pile Workplan* is to characterize existing mining waste piles; report on the physical and chemical characteristics of the waste that has the potential to cause pollution or contamination; evaluate the potential for the mining waste to produce acid mine drainage, discharge or leaching of heavy metals, or the release of other hazardous substances; and evaluate the potential of salt loading from the mining waste material. Staff notified the Discharger by mail that the report was overdue, provided information describing why the WDRs require this characterization, and provided a list of the analytical methods that are commonly used in such a characterization.
13. On 12 April 2016, the Discharger submitted a document titled "Mining Waste Pile & Characterization Study." Staff determined this report was materially deficient and did not meet the requirements of the WDRs because (a) it does not contain a workplan or timeline to collect and analyze samples from the mining waste piles, (b) it does not contain any other method to classify the mining waste piles in accordance with Title 27, and (c) it was not stamped by a registered professional engineer or geologist. A NOV was issued on 1 August 2016 discussing the requirements of the WDRs and explaining why the submitted document was materially deficient. As of 13 March 2017, an adequate and complete *Mining Waste Pile Workplan* has not been submitted.
14. WDRs Provision VI.C.2.c.ii requires the submittal of a *Mining Waste Pile Characterization Study Final Report* by 1 September 2016. The *Mining Waste Pile Characterization Study Final Report* was to include, at a minimum, a map identifying and classifying the mining waste piles. The Discharger has not submitted this Report as of 13 March 2017, and cannot submit it until the *Mining Waste Pile Workplan* is submitted, approved, and the field work completed.
15. WDRs Provision VI.C.3.a requires the Discharger to develop and conduct a *Pollutant Minimization Program (PMP)* when there is evidence that a priority pollutant is present in the effluent above the effluent limitation. An annual status report shall be sent to the Central Valley Water Board on 1 February 2016 and annually thereafter. The *PMP Annual Status Report* shall include at a minimum: (a) a summary of all actions undertaken pursuant to the control strategy; and (b) a description of actions to be taken in the following year. Although multiple priority pollutants are present above the effluent limitations in the WDRs (e.g., arsenic, antimony, cadmium, nickel, copper), the Discharger has not submitted the 2016 PMP Annual Status Report or 2017 PMP Annual Status Report as of 13 March 2017.
16. WDRs Attachment E.X.D.2 (Monitoring and Reporting Program) requires the Discharger to submit a report outlining *Reporting Levels (RLs)*, *Method Detection Limits (MDLs)*, and *Analytical Methods Report* for approval within 60 days of permit adoption, which occurred on 6 April 2015. This report is necessary to ensure that the laboratory detection limits are low enough to determine compliance with the effluent limits. The Discharger has not submitted this Report as of 13 March 2017.
17. TSO R5-2015-0035 requires the Discharger to submit an *Annual Progress Report* on 31 January, annually, that details the steps taken to comply with the TSO, "including documentation showing completion of tasks, construction progress, evaluation of the effectiveness of the implemented measures, and assessment of whether additional measures are necessary to meet the compliance dates." These reports are intended to show that the Discharger is making progress toward complying with the final effluent limits in the WDRs. As of 13 March 2017, the Discharger has not submitted *Annual Progress Reports* for the years 2016 and 2017.

18. As of 13 March 2017, Board Staff issued five Notices of Violation (NOVs) for the non-submittal of multiple technical and progress reports required under the WDRs and TSO. The NOVs were issued on 12 November 2015, 20 June 2016, 1 August 2016, 5 August 2016, and 14 December 2016. The NOVs informed the Discharger of the maximum liability for these delinquent reports (as of the date of each letter) and reminded the Discharger to submit these reports immediately to avoid further enforcement action. In addition, staff communicated the need for the reports with the Discharger via phone calls and an in-person meeting. Staff also discussed the delinquent reports via phone and in-person with the Discharger's potential consultant.
- a. On 12 November 2015, Board staff issued a *SMR Review and NOV Letter* for the non-submittal of three reports (*Mining Waste Pile Workplan, TRE Work Plan, and RL, MDL and Analytical Methods Report*) required by WDRs R5-2015-0002.
 - b. On 20 June 2016, Board staff issued a *SMR Review and NOV Letter* for the non-submittal of four reports (*Mining Waste Pile Workplan, TRE Workplan, RL, MDL and Analytical Methods Report, and PMP Annual Status Report*) required by the WDRs. In addition to the delinquent reports required by WDRs R5-2015-0002, the NOV notified the Discharger of the failure to submit an *Annual Progress Report* required by the TSO.
 - c. On 1 August 2016, a NOV was issued discussing the requirements of the *Mining Waste Pile Workplan* and explaining how the document that was submitted was materially deficient.
 - d. On 5 August 2016, Board staff issued a *SMR Review and NOV Letter* for the continued non-submittal of four reports (*Mining Waste Pile Workplan, TRE Work Plan, RL, MDL and Analytical Methods Report, and PMP Annual Status Report*) required by WDRs R5-2015-0002. In addition to the delinquent reports required by WDRs R5-2015-0002, the NOV notified the Discharger of the failure submit an *Annual Progress Report* required by TSO R5-2015-0035.
 - e. On 14 December 2016, Board staff issued a *SMR Review and NOV Letter* for the non-submittal of five reports (*Mining Waste Pile Workplan, TRE Work Plan, RL, MDL and Analytical Methods Report, PMP Annual Status Report, and Mining Waste Pile Characterization Report*) required by WDRs R5-2015-0002. In addition to the delinquent reports required by WDRs R5-2015-0002, the NOV notified the Discharger of the failure to submit an *Annual Progress Report* required by TSO R5-2015-0035.
19. As of 13 March 2017, the Discharger has failed to comply with WDRs Order R5-2015-0002 and TSO R5-2015-0035 by not submitting eight technical and progress reports. **Table A** below summarizes these delinquent reports, when they were due, and the number of days the reports are late.

Table A: Delinquent Reports Required under the WDRs and TSO

Reports	Due Date	Received	Status	End Date of Violation Under this Complaint	Days Late
Mining Waste Pile Characterization Study Workplan and Time Schedule	6/1/2015	4/12/2016	Materially Deficient	9/1/2016 ¹	458

Table A: Delinquent Reports Required under the WDRs and TSO

Reports	Due Date	Received	Status	End Date of Violation Under this Complaint	Days Late
TRE Work Plan	7/15/2015	Not Received	Delinquent	3/13/2017	607
RL, MDL, and Analytical Methods Report	4/6/2015	Not Received	Delinquent	3/13/2017	707
Pollutant Minimization Program Annual Status Report	2/1/2016	Not Received	Delinquent	2/1/2017 ²	366
Mining Waste Pile Characterization Report	9/1/2016	Not Received	Delinquent	3/13/2017	193
Pollutant Minimization Program Annual Status Report	2/1/2017	Not Received	Delinquent	3/13/2017	40
TSO-Annual Progress Report	1/31/2016	Not Received	Delinquent	1/31/2017 ²	366
TSO-Annual Progress Report	1/31/2017	Not Received	Delinquent	3/13/2017	41
				Total Days	2,778

¹ The end date for the work plan is the due date for the final report.

² The end date for an annual progress report is the due date for the next year's progress report.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

20. Water Code section 13268, subdivision (a)(1) states: *Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267... is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).*
21. Water Code section 13268, subdivision (b)(1) states: Civil liability may be administratively imposed by a regional board ...for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
22. WDRs Order R5-2015-0002 and TSO R5-2015-0035 require that reports be submitted pursuant to Water Code section 13267. As outlined in Finding 20, the Discharger has failed to submit nine (9) technical and progress reports that contained information required by WDRs Order R5-2015-0002 and TSO R5-2015-0035. As of 13 March 2017, the reports are a total of 2,778 days late.
23. **Maximum Discretionary Civil Liability:** Per Water Code section 13268, subdivision (b)(1) the maximum administrative civil liability that may be assessed for not submitting the technical and progress reports required by WDRs Order R5-2015-0002 and TSO R5-2015-0035 is one thousand dollars (\$1,000) per day of violation. This Complaint alleges 2,778 days of discretionary violations; therefore, the maximum civil liability for these violations is **two million seven hundred seventy eight thousand dollars (\$2,778,000).**

24. **Minimum Discretionary Civil Liability:** Pursuant to the State Water Board's Enforcement Policy, liability should be assessed to recover at a minimum ten percent more than the economic benefit of noncompliance derived from the acts that constitute each violation. The economic benefit of noncompliance is estimated to be \$4,261, and therefore the minimum civil liability for the non-submittal of reports is estimated to be \$4,687.

**MANDATORY MINIMUM PENALTIES
VIOLATIONS OF WDR ORDER R5-2015-0002 AND TSO R5-2015-0035**

25. On 2 February 2017, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 1 October 2015 through 30 September 2016. This Complaint extends the ROV period through 31 December 2016; two additional copper violations were found. These violations are specifically identified in Attachment B to this Complaint as subject to MMPs.
26. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code 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.

27. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:
- C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
- i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

28. WDRs Order R5-2015-0002, Effluent Limitations IV.A.1a., includes, in part, the following effluent limitations:

a. The Discharger shall maintain compliance with the final effluent limitations...:

Table 4. Effluent Limitation

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
Total Suspended Solids	mg/L	20	30
Antimony	µg/L	6.0	12
Arsenic	µg/L	10	20
Cadmium	µg/L	0.85	1.7
Copper	µg/L	3.1	6.3
Nickel	µg/L	21	43

29. WDRs Order R5-2015-0002, Effluent Limitations IV. A.1.e. include, in part, the following effluent limitations:

e. Iron, Total Recoverable. For a calendar year, the annual average effluent concentration shall not exceed 300 µg/L.

30. TSO R5-2015-0035, Order section 2, states in part:

The following interim effluent limitations shall be effective **immediately and until 16 April 2020...**

Parameter	Units	Interim Effluent Limitation	
		Interim Average Monthly Effluent Limitation	Interim Maximum Daily Effluent Limitation
Arsenic	µg/L	700	1000
Antimony	µg/L	35	50
Cadmium	µg/L	30	50
Copper	µg/L	10	15
Iron	µg/L	2100	2500
Nickel	µg/L	150	200

31. TSO R5-2015-0035 contains interim effluent limitations for arsenic, antimony, cadmium, copper, iron, and nickel; however, as shown in Attachment B, the Discharger exceeded the interim effluent

limit and therefore Water Code section 13385, subdivision (j) does not exempt those particular violations from MMPs.

32. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group I violations, nine (9) serious Group II violations, and one (1) non-serious violation. The one (1) non-serious violation is not subject to MMPs, as shown in Attachment B. Violations are defined as serious and are subject to MMPs under WDRs Order R5-2015-0002 because the measured concentration of Group I constituents exceeded maximum prescribed levels by 40 percent or more and Group II constituents exceeded maximum prescribed levels by 20 percent or more. The mandatory minimum penalty for these violations is **thirty three thousand dollars (\$33,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment B.

REGULATORY CONSIDERATIONS

33. Water Code 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.

34. As described above, the Discharger has failed to submit technical and progress reports as required by WDRs Order R5-2015-0002 and TSO R5-2015-0035. The Discharger has also violated WDRs Order R5-2015-0002 and TSO R5-2015-0035 by discharging waste in exceedance of permitted effluent limits.
35. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Discharger violated WDRs Order R5-2015-0002 and TSO R5-2015-0035, and seeks the imposition of administrative civil liability in accordance with Water Code sections 13268 and 13385.
36. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Sixteen to One Mine discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Yuba River, Yuba River, Feather River, and Sacramento River, a water of the United States in the Sacramento Hydrologic Basin. The Basin Plan does not specifically identify beneficial uses for Kanaka Creek, but does identify present and potential uses for the Yuba River. The designated beneficial uses of the Yuba River are municipal and domestic supply; agricultural supply, including irrigation and stock watering; hydropower generation; water contact recreation, including canoeing and rafting; non-contact water recreation; cold freshwater habitat; spawning, reproduction and/or early development, cold; and wildlife habitat. In addition, the 303(d) list of impaired waterbodies lists Kanaka Creek as impaired for arsenic.
37. Pursuant to Water Code section 13385, in determining the discretionary amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of

violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

38. Issuance of this Complaint to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2) and all applicable law.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

39. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf.
40. The recommended discretionary administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13268 and 13385, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
41. Based on consideration of the above facts, and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$199,752. Of this, \$33,000 is in mandatory minimum penalties and \$166,752 is a discretionary penalty. The specific factors considered in this penalty are detailed in Attachment A and Attachment B.
42. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's WDRs and/or TSO for which penalties have not yet been assessed or for violations that may subsequently occur.
43. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.

THE ORIGINAL SIXTEEN TO ONE MINE, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **one hundred ninety nine thousand seven hundred fifty two dollars (\$199,752)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **8/9 June 2017**, unless the Discharger does one of the following by **10 April 2017**:

- 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. In addition, submit payment for the proposed civil liability in the amount of **of one hundred ninety nine thousand seven hundred fifty two dollars (\$199,752)** to the State Water Board with a copy of the check to the Central Valley Water Board;
or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
4. 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.
 5. If this matter proceeds to hearing, the Assistant 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 and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

--Original signed by --

ANDREW ALTEVOGT, Assistant Executive Officer

13 March 2017

DATE

Attachment A: Penalty Calculation Methodology including Exhibit 1, Economic Benefit Analysis
Attachment B: Effluent Limit Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Original Sixteen to One Mine, Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0515 (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 **one hundred ninety nine thousand seven hundred fifty two dollars (\$199,752)** by check that references "ACL Complaint R5-2017-0515" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **10 April 2017**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Attn: Wendy Wyels, Rancho Cordova, California, 95670 by **10 April 2017**.
- 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 Assistant 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 – ACL Complaint No. R5-2017-0515
Specific Factors Considered for Discretionary Administrative Civil Liability
ORIGINAL SIXTEEN TO ONE MINE, INC.
SIXTEEN TO ONE MINE

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Background

The Original Sixteen to One Mine, Inc. (Discharger) discharges mine drainage from the Sixteen to One Mine (Facility) via the 21 Tunnel Portal to Kanaka Creek which has been listed as an impaired water body pursuant to Clean Water Act section 303 (d) because of arsenic. The Discharger is regulated by Waste Discharge Requirements Order (WDRs) R5-2015-0002 and Time Schedule Order (TSO) R5-2015-0035, which prescribe final and interim effluent limits and other conditions that must be met in order to discharge the wastewater.

The Discharger has failed to comply with the effluent limits in WDRs R5-2015-0002 and TSO R5-2015-0035 and is therefore subject to mandatory minimum penalties (MMPs). ACL Complaint R5-2017-0515 and Attachment B describe the calculation of MMPs. In addition, the Discharger has failed to submit eight technical reports required by WDRs R5-2015-0002 and TSO R5-2015-0035. These delinquent reports subject the Discharger to discretionary penalties, as described in this document.

**Failure to Submit Eight Technical and Progress Reports
Required by WDRs Order R5-2015-0002 and TSO R5-2015-0035**

Technical and Progress Reports Required by WDRs R5-2015-0002 and TSO R5-2015-0035

The Discharger has a history of not submitting reports, submitting late report, and submitting incomplete reports. Since the adoption of WDRs R5-2015-0002 on 5 February 2015, the Discharger has been issued five Notices of Violations (NOVs) for a total of eight late or incomplete reports. The required content of each report, as well as what was submitted, is summarized below.

1. WDRs Order R5-2015-0002 and TSO R5-2015-0035 require the Discharger to submit multiple technical and progress reports. The Discharger has a history of not submitting reports, submitting late reports, and/or submitting incomplete reports. Between adoption of the WDRs on 5 February 2015 and the TSO on 17 April 2015 and issuance of this Complaint, the Discharger has been issued five Notices of Violation. In addition, Board staff sent multiple emails regarding the late and incomplete reports and has discussed the violations with the Discharger and his potential consultants, as described below.
2. WDRs Provision VI.C.2.a.i requires the submittal of a *Toxicity Reduction Evaluation (TRE) Work Plan* within 90 days of the effective date of the WDRs Order. The effective date of the WDRs Order was 16 April 2015. Therefore, the *TRE Work Plan* was due on 15 July 2015. The *TRE Work Plan* was required to “outline the procedures for identifying the source(s) of, and reducing or eliminating effluent toxicity” and be developed in accordance with U.S. EPA whole effluent toxicity (WET) Guidance Documents. The Discharger has not submitted the *TRE Work Plan* as of 13

March 2017.

3. WDRs Provision VI.C.2.c.i requires the submittal of a *Mining Waste Pile Characterization Study Workplan and Time Schedule (Mining Waste Pile Workplan)* by 1 June 2015. The *Mining Waste Pile Workplan* is to characterize existing mining waste piles; report on the physical and chemical characteristics of the waste that has the potential to cause pollution or contamination; evaluate the potential for the mining waste to produce acid mine drainage, discharge or leaching of heavy metals, or the release of other hazardous substances; and evaluate the potential of salt loading from the mining waste material. Staff notified the Discharger by mail that the report was overdue, provided information describing why the WDRs require this characterization, and provided a list of the analytical methods that are commonly used in such a characterization.
4. On 12 April 2016, the Discharger submitted a document titled "Mining Waste Pile & Characterization Study." Staff determined this report was materially deficient and did not meet the requirements of the WDRs because (a) it does not contain a workplan or timeline to collect and analyze samples from the mining waste piles, (b) it does not contain any other method to classify the mining waste piles in accordance with Title 27, and (c) it was not stamped by a registered professional engineer or geologist. A NOV was issued on 1 August 2016 discussing the requirements of the WDRs and explaining why the submitted document was materially deficient. As of 13 March 2017, an adequate and complete *Mining Waste Pile Workplan* has not been submitted.
5. WDRs Provision VI.C.2.c.ii requires the submittal of a *Mining Waste Pile Characterization Study Final Report* by 1 September 2016. The *Mining Waste Pile Characterization Study Final Report* was to include, at a minimum, a map identifying and classifying the mining waste piles. The Discharger has not submitted this Report as of 13 March 2017, and cannot submit it until the *Mining Waste Pile Workplan* is submitted, approved, and the field work completed.
6. WDRs Provision VI.C.3.a requires the Discharger to develop and conduct a *Pollutant Minimization Program (PMP)* when there is evidence that a priority pollutant is present in the effluent above the effluent limitation. An annual status report shall be sent to the Central Valley Water Board on 1 February 2016 and annually thereafter. The *PMP Annual Status Report* shall include at a minimum: (a) a summary of all actions undertaken pursuant to the control strategy; and (b) a description of actions to be taken in the following year. Although multiple priority pollutants are present above the effluent limitations in the WDRs (e.g., arsenic, antimony, cadmium, nickel, copper), the Discharger has not submitted the 2016 PMP Annual Status Report or 2017 PMP Annual Status Report as of 13 March 2017.
7. WDRs Attachment E.X.D.2 (Monitoring and Reporting Program) requires the Discharger to submit a report outlining *Reporting Levels (RLs)*, *Method Detection Limits (MDLs)*, and *Analytical Methods Report* for approval within 60 days of permit adoption, which occurred on 6 April 2015. This report is necessary to ensure that the laboratory detection limits are low enough to determine compliance with the effluent limits. The Discharger has not submitted this Report as of 13 March 2017.
8. TSO R5-2015-0035 requires the Discharger to submit an *Annual Progress Report* on 31 January, annually, that details the steps taken to comply with the TSO, "including documentation showing completion of tasks, construction progress, evaluation of the effectiveness of the implemented measures, and assessment of whether additional measures are necessary to meet the compliance dates." These reports are intended to show that the Discharger is making progress

toward complying with the final effluent limits in the WDRs. As of 13 March 2017, the Discharger has not submitted *Annual Progress Reports* for the years 2016 and 2017.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, a “Moderate” factor is appropriate because failure to submit technical reports or the submission of deficient technical reports suggests the Discharger has failed to take the necessary steps to implement changes such that it will discharge wastewater in compliance with the effluent limits and other provisions of its WDRs. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation present a Substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”

Sixteen to One Mine discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to the Middle Fork Yuba River, Yuba River, Feather River, and Sacramento River, a water of the state and the United States in the Sacramento Hydrologic Basin. The Basin Plan does not specifically identify beneficial uses for Kanaka Creek, but does identify present and potential uses for the Yuba River. The designated beneficial uses of the Yuba River that could be impacted by the discharge include municipal and domestic supply; agricultural supply, including irrigation and stock watering; hydropower generation; water contact recreation, including canoeing and rafting; non-contact water recreation; cold freshwater habitat; spawning, reproduction and/or early development, cold; and wildlife habitat.

WDRs R5-2015-0002 contains requirements to submit reports to allow Board staff to evaluate whether the Discharger has taken the necessary steps to abate the ongoing pollution to Kanaka Creek. The Discharger failed to submit the following reports under WDRs R5-2015-0002: *Mining Waste Pile Characterization Study Workplan and Time Schedule*; *TRE Workplan*; *RL, MDL, and Analytical Methods Report*; *Pollutant Minimization Program Annual Status Report for 2016 and 2017*; and *Mining Waste Pile Characterization Report*. In addition, no effort was made by the Discharger to provide *Annual Progress Reports* which are required by TSO R5-2015-0035 to assure the Discharger is making diligent progress towards bringing the waste discharge into compliance. The intention behind TSO R5-2015-0035 was to require that the Discharger take short-term and long-term steps to improve its Facility such that it could reliably comply with the effluent limits of its WDRs for the protection of the beneficial uses of Kanaka Creek. The failure to submit the required reports has an ancillary effect and/or threat to beneficial uses. Without the information required by the reports in WDRs R5-2015-0002 and TSO R5-2015-0035, the Discharger is out of compliance with the actions necessary to bring the Facility back into compliance with effluent limitations in WDRs R5-2015-0002, and there is no indication that the Discharger is taking actions to come into compliance. This presents a substantial threat to beneficial uses. Therefore, a moderate potential for harm was assessed.

Deviation from Requirement

In this case, the Prosecution Team characterized the violation as a Major Deviation from the Requirement. The Enforcement Policy defines a Major Deviation from the Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” A “Major” deviation from the requirement is appropriate because the Discharger has submitted one materially deficient technical report and has not submitted seven integral technical and progress reports, which shows the Discharger’s disregard for compliance with regulatory requirements thereby rendering ineffective the Regional Board’s orders. Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the initial liability table below.

Days of Violation

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. The Prosecution Team finds that it is possible to adjust the per-day basis for civil liability for the technical reports because no economic benefit can be measured on a daily basis for these reports that are considered a one-time cost.

The table below summarizes the date each required technical report was due. The days of violation are calculated from the due date of each report through 13 March 2017, unless otherwise noted.

Reports	Due Date	Received	Status	End Date of Violation Under this Complaint	Days Late	Compressed Days
Mining Waste Pile Characterization Study Workplan and Time Schedule	6/1/2015	4/12/2016	Materially Deficient	9/1/2016 ¹	458	21
TRE Workplan	7/15/2015	Not Received	Delinquent	3/13/2017	607	26
RL, MDL, and Analytical Methods Report	4/6/2015	Not Received	Delinquent	3/13/2017	707	29
Pollutant Minimization Program Annual Status Report	2/1/2016	Not Received	Delinquent	2/1/2017 ²	366	18
Mining Waste Pile Characterization Report	9/1/2016	Not Received	Delinquent	3/13/2017	193	12
Pollutant Minimization Program Annual Status Report	2/1/2017	Not Received	Delinquent	3/13/2017	40	7
TSO-Annual Progress Report	1/31/2016	Not Received	Delinquent	1/31/2017 ²	366	18

Reports	Due Date	Received	Status	End Date of Violation Under this Complaint	Days Late	Compressed Days
TSO-Annual Progress Report	1/31/2017	Not Received	Delinquent	3/13/2017	41	7
				Total Days	2,778	138

¹ The end date for the work plan is the due date for the final report.

² The end date for an annual progress report is the due date for the next year's progress report.

Initial Liability

$$(0.55 \text{ Per Day Factor from Table 3}) \times (138 \text{ days}) \times (\$1,000/\text{day}) = \$75,900$$

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean-up or cooperate with regulatory authority after the violation, and the violator's compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior.

On 11 February 2015, the Discharger and the Board entered a Stipulated Final Judgment. As a term of the Stipulated Final Judgment, the Discharger was to file a Report of Waste Discharge and obtain an NPDES permit, pursuant to Water Code sections 13263 and 13377 covering discharge to Kanaka Creek from Sixteen to One Mine and agreed to fully comply with each and every term of the NPDES permit, yet as evidenced by the eight outstanding technical and progress reports, it has failed to do so.

The Discharger knew of the requirements of WDRs R5-2015-0002 as evidenced by the 14 October 2014 comment letter submitted by the Discharger prior to issuance of the WDRs. The Discharger did not comment on the reporting requirements, but instead focused on the arsenic effluent limitations. On 2 February 2015, the Discharger also submitted an infeasibility analysis requesting additional time to comply with effluent limitations for arsenic and electrical conductivity, which led to issuance of TSO R5-2015-0035. Therefore, the Discharger knew of the requirements of the WDRs and TSO, yet failed to comply.

Additionally, the Discharger received five (5) Notices of Violation, which reminded the Discharger which technical and progress reports were overdue, and which were due in the near future. Despite knowledge of the requirements and upcoming due dates, the Discharger failed to submit the required reports. Therefore, it is appropriate to use a culpability multiplier of 1.3 for this adjustment factor.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Since issuance of WDRs R5-2015-0002, Board staff has issued five Notices of Violation relating to the late or inadequate technical and progress reports. These letters outlined the due dates of the reports and explained the potential discretionary penalties that the Board could assess if the Discharger continued to not submit technical reports in accordance with WDRs R5-2015-0002 and TSO R5-2015-0035. To date, the Discharger has made no attempt to submit the outstanding eight technical and progress reports.

On 2 September 2016, Central Valley Water Board staff met with the Discharger's potential consultants of Kleinfelder, a geotechnical engineering firm, regarding the status of compliance with WDRs R5-2015-0002. Board staff and Kleinfelder discussed the Discharger's history and requirements to submit missing technical reports, and the need to begin working on a project to comply with the effluent limits in the WDRs. Board staff stated that we would recommend holding off on discretionary penalties if the Discharger begins submitting outstanding technical reports, and if the Discharger begins to work on a project to treat the mine water. Kleinfelder stated that they will take on the Discharger as a client and help him come into compliance as long as the Discharger is financially capable of paying for their service. However, the Discharger did not retain Kleinfelder and no further progress was made towards submitted the outstanding technical reports.

Thus, the Discharger was given a multiplier value of 1.3.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger has a history of violations. This includes a prior Stipulated Final Judgment as well as administrative civil liabilities assessing mandatory minimum penalties for effluent violations of WDRs R5-2015-0002.

As discussed in the Complaint, on 11 February 2015, the Discharger and the Board entered a Stipulated Final Judgment in the amount of two hundred thirty seven thousand eighty three dollars (\$237,083) to resolve 78 serious violations for failing to submit monitoring reports subject to mandatory minimum penalties under Water Code section 13385 and 13385.1.

On 29 April 2016, the Board adopted Administrative Civil Liability Order R5-2016-0021 against the Discharger in the amount of \$6,000 in mandatory minimum penalties for effluent violations from the Facility. Although the entire penalty was due within 30 days of adoption, to date, the Discharger has only paid \$1,000 of the penalty.

Based on this repeated and lengthy history of violations, a multiplier value of 1.3 is appropriate for this factor.

Step 5 - Determination of Total Base Liability Amount

The total base liability is the initial liability, multiplied by the culpability factor, multiplied by the cleanup and cooperation factor, and multiplied by the history of violation factor.

<u>Total Base Liability</u> $\$75,900 \times 1.3 \times 1.3 \times 1.3 = \$166,752$

Step 6 - Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed administrative civil liability and continue in business.

The Discharger currently submits financial statements quarterly (Form 10-Q) and annually (Form 10-K) to the Securities Exchange Commission (SEC) pursuant to the Securities Exchange Act of 1934. These unaudited financial statements are publically available and detail the company's income, assets, liabilities, shareholder's equity, and cash flow. The financial statements may also include general statements by company management as to the current financial health of the company and relevant markets. As a preliminary financial analysis, the Prosecution Team completed a cursory review of annual financial statements submitted to the SEC from 2011 to 2015, and three available quarterly financial statements submitted for fiscal year 2016.

A review of annual income statements reveals that revenue in 2015 was approximately equal to the revenue in 2011 to 2014 combined. Revenues for the first three quarters of 2016 indicate lower annual revenue than 2015, but substantially higher revenue than previous years. Future revenue for the company depends, in part, on the company's sales outlook. Management stated in the third quarter 2016 submission that "demand for the Sixteen to One gold-in-quartz gemstone exceeds supply". This indicates positive future revenue streams for the company. Although operating profit has fluctuated from 2011 to present, expenses do not appear to be routine, and may not be representatives of future earnings. For example, significant expenses for legal and accounting services were reported for 2015, however, these expenses relate to a settlement with the Regional Board for previous violations. Excluding these expenses, the company had an operating profit for 2015 in excess of \$360,000.

In terms of assets, the Discharger reported "inventory" as a current asset valued at over \$400,000 as of the third fiscal quarter ending September 30, 2016. "Inventory" is described in the "Notes to the Financial Statements" as gold bullion, specimens, and jewelry. The value for bullion and specimens is determined by the market price of gold. Jewelry is valued as the market price for the gold content plus the cost of labor. However, the Discharger states under "Management's Discussion and Analysis of Plan of Operation" that the company's current strategy of selling gold specimens "produces revenue significantly greater than selling gold into the spot market". This is also assumed to be true for the company's jewelry sales. Therefore, the Prosecution Team believes that the Discharger's inventory is significantly undervalued.

Furthermore, the Discharger values the mining property at approximately \$278,000 based on assertion that "estimates of ore reserves cannot be calculated". Because the Discharger has extracted minerals valued in far excess of this, and based on the stated expert estimate that "less than twenty percent of the ore deposit has been mined", this valuation is considered grossly underestimated.

Based on the review of available SEC filings, the Prosecution Team believes that the Discharger has sufficient income generation potential and available assets to pay the administrative civil liability as proposed and continue in business. Further, non-public, financial disclosures, including audited financial information, would be required of the Discharger to perform a more detailed financial analysis, should they disagree with this preliminary analysis.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require,” and could be added to the liability amount. The Central Valley Water Board incurred over \$37,500 (250 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. The Prosecution Team, in its discretion, is not recommending an increase in the Total Base Liability amount in consideration of these costs incurred as the proposed liability amount serves as a sufficient general and specific deterrent against future violations.

Step 8 – Economic Benefit

The Enforcement Policy (p. 21) states that the economic benefit shall be estimated for every violation. “Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.” The violations described herein have associated delayed and avoided expenses that have benefited the Discharger. The attached Exhibit 1, hereby incorporated by this reference, details the labor costs associated with preparing the technical and progress reports subject to this Complaint. These costs total \$73,200. The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total present value of the economic benefit of noncompliance. Assumptions of the BEN financial model are detailed in the attached Exhibit 1. Based on specific assumptions within the model, the total present value of the economic benefit of noncompliance was determined to be approximately four thousand two hundred sixty one dollars (\$4,261).

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts must be determined for comparison to the proposed liability.

Maximum Liability Amount: The maximum penalty is the sum of the statutory penalties for failure to submit technical reports. The failure to submit technical reports is a violation of Water Code section 13268 subject to a maximum penalty of \$1,000 per day per violation. The Discharger failed to submit technical and progress reports for a total of 2,778 days. Thus, the maximum penalty is \$1,000 per day for 2,778 days, or \$2,778,000.

Minimum Liability Amount: The minimum liability is equal to the economic benefit of noncompliance plus 10%, which is estimated to be \$4,687.

Step 10 – Final liability Amount

The proposed discretionary administrative civil liability amount, considering allowed adjustments, is \$166,752. Note that the ACL Complaint also proposes \$33,000 in mandatory minimum penalties, for a total liability of \$199,752.

Exhibit 1: Economic Benefit Analysis

Economic Benefit Analysis

Original 16 to 1 Mine

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
1 - Mining Waste Pile Characterization Study Workplan and Time Schedule	\$ 12,000	ECI	1/1/2015	Y	6/1/2015	6/8/2017	6/8/2017	7.40%	\$ 850
2 - TRE Workplan	\$ 6,000	ECI	1/1/2015	Y	7/15/2015	6/8/2017	6/8/2017	7.40%	\$ 417
3 - RL, MDL, and Methods Report	\$ 2,400	ECI	1/1/2015	Y	4/6/2015	6/8/2017	6/8/2017	7.40%	\$ 188
4 - Pollutant Minimization Program Annual Status Report (2015)	\$ 1,200	ECI	1/1/2015	N	2/1/2016	6/8/2017	6/8/2017	7.30%	\$ 793
5 - Complete and Submit Final Mining Waste Pile Characterization Study	\$ 48,000	ECI	1/1/2015	Y	9/1/2016	6/8/2017	6/8/2017	7.30%	\$ 1,195
6 - Pollutant Minimization Program Annual Status Report (2016)	\$ 1,200	ECI	1/1/2015	Y	2/1/2017	6/8/2017	6/8/2017	7.30%	\$ 13
7 - TSO - Annual Progress Report (2015)	\$ 1,200	ECI	1/1/2015	N	1/31/2016	6/8/2017	6/8/2017	7.30%	\$ 793
8 - TSO - Annual Progress Report (2016)	\$ 1,200	ECI	1/1/2015	Y	1/31/2017	6/8/2017	6/8/2017	7.30%	\$ 12

Income Tax Schedule:	Corporation	Analyst:	Bryan Elder	Total Benefit: \$	4,261
USEPA BEN Model Version:	Version 5.6.0 (April 2016)	Date/Time of Analysis:	3/9/2017 13:24		

Assumptions:

- 1 Mining Waste Pile Characterization Study Workplan and Time Schedule assumes 80 hours of labor by a competent person(s) at \$150 per hour.
- 2 TRE Workplan assumes 40 hours of labor by a competent person(s) at \$150 per hour.
- 3 RL, MDL, and Methods Report assumes 16 hours of labor by a competent person(s) at \$150 per hour.
- 4 Pollutant Minimization Program (PMP) Annual Status Reports assume 8 hours of labor by a competent person(s) at \$150 per hour.
- 5 Completion and Submittal of the Final Mining Waste Pile Characterization Study assumes 320 hours of labor by a competent person(s) at \$150 per hour.
- 6 Annual Progress Reports required by the TSO assume 8 hours of labor by a competent person(s) at \$150 per hour.
- 7 Non-compliance dates are those indicated in the NPDES permit or TSO.
- 8 Progress and status reports for 2015 are considered avoided costs as they are no longer relevant to current site conditions. All other actions are considered delayed, as they are still required by the permit and TSO.
- 9 Compliance date (irrelevant for avoided costs) and penalty payment date is assumed to be June 8, 2017.
- 10 The discharger is considered a for-profit corporation and it is assumed that compliance expenses are tax deductible.

**ATTACHMENT B TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0515
MANDATORY MINIMUM PENALTIES**

The Original Sixteen to One Mine

RECORD OF VIOLATIONS (1 October 2015 – 31 December 2016) MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program R5-2015-0002 and TSO R5-2015-0035)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>WDRs Limit</u>	<u>TSO Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
*	30-Apr-15	Antimony	µg/L	6	35	62.3	Monthly Average	2	998936
1	17-Dec-15	TSS	mg/L	30	NA	41	Daily Maximum	3	1003210
2	31-Dec-15	Arsenic	µg/L	10	700	883	Monthly Average	2	1008352
3	31-Dec-15	Antimony	µg/L	6	35	41.1	Monthly Average	2	1008346
4	31-Dec-15	TSS	mg/L	20	NA	41	Monthly Average	1	1003251
5	31-Dec-15	Cadmium	µg/L	0.85	30	30.2	Monthly Average	2	1008347
6	31-Dec-15	Iron	µg/L	300	†	486	Annual Average	1	1008349
7	31-Jul-16	Antimony	µg/L	6	35	49.3	Monthly Average	2	1016605
8	29-Sep-16	Antimony	µg/L	12	50	60	Daily Maximum	2	1016612
9	30-Sep-16	Antimony	µg/L	6	35	60	Monthly Average	2	1016606
10	30-Sep-16	Nickel	µg/L	21	150	153	Monthly Average	2	1016611
11	13-Dec-16	Copper	µg/L	6.3	15	115.9	Daily Maximum	2	1021050
12	31-Dec-16	Copper	µg/L	3.1	10	115.9	Monthly Average	2	1021051

* Supporting violations addressed in ACLO R5-2016-0021.

† Time Schedule Order (TSO) R5-2015-0035 contains interim iron limitations based on a maximum daily effluent limit (2500 µg/L) and an average monthly effluent limit (2100 µg/L) averaging period. Protection from MMPs was lost for iron because the effluent concentration exceeded both of the TSO's effluent limitations in December 2015 with a sample concentration of 3,050 µg/L. Two additional iron samples were collected during 2015, which were non-detect (ND) and 486 µg/L. Since a ND value exists in the data set, the annual average is calculated by taking the median value of the three results, which is 486 µg/L.

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 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/16</u>
Group I Serious Violations:	2
Group II Serious Violations:	9
Non-Serious Violations Not Subject to MMPs:	1
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	11

**Mandatory Minimum Penalty = (2 Group I Serious Violations) + (9 Group II Serious Violations) x \$3,000
= \$33,000**

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2017-0515

ORIGINAL SIXTEEN TO ONE MINE, INC.
SIXTEEN TO ONE MINE
SIERRA COUNTY

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

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Original Sixteen to One Mine, Inc. for the violations charged in the ACL Complaint. The Board has scheduled a hearing to consider the matter on the following date:

8/9 June 2017
Central Valley Water Board Offices
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may assess the proposed civil liability, assess a higher or lower amount, decline to assess any liability, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The Meeting Agenda will be posted at least ten days before the meeting on the Board's website, at the following address:

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

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

The Board Chair has approved this Hearing Procedure for the adjudication of ACL matters. Objections to this Hearing Procedure must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Board's Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Board Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

I. Hearing Participants

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Original Sixteen to One Mine, Inc.

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person's interest. The Board's Advisory Team will promptly respond to all timely requests for Designated Party status.

II. Hearing Time Limits

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Central Valley Water Board Prosecution Team: **40 minutes**
2. Original Sixteen to One Mine, Inc. : **35 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

III. Documents in Evidence and Availability of Board Files

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. The file is available to the public and may be inspected or copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: 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 Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties' (including the Discharger's) Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

Printing and Page Limitations: For each Designated Party, including the Board's Prosecution Team, the Board has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Board Members will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Board Members. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The Draft ACL Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

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

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Board Members, which must be received by the Advisory Team at

Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

V. Miscellaneous Matters

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: <http://www.waterboards.ca.gov>. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

VI. Questions

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

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM	
<p>Pamela Creedon, Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4839 Pamela.Creedon@waterboards.ca.gov</p>	<p>Stephanie Yu, Attorney III State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 341-5157 Stephanie.Yu@waterboards.ca.gov</p>
BOARD PROSECUTION TEAM*	
<p>Wendy Wyels, Environmental Program Manager 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4835 Wendy.Wyels@waterboards.ca.gov</p>	<p>Kailyn Ellison, Attorney State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 445-9557 Kailyn.Ellison@waterboards.ca.gov</p>
DISCHARGER	
<p>Michael M. Miller Original Sixteen to One Mine, Inc. P.O. Box 909 Alleghany, CA 95910 Phone: (530) 287-3223 mmeistermiller@gmail.com</p>	

*The Board’s Prosecution Team also includes: Andrew Altevogt, Kari Holmes, and Ayda Soltani.

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the “Primary Contacts” table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

13 March 2017	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint and Hearing Procedure.
20 March 2017	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request “Designated Party” status. <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
10 April 2017	<ul style="list-style-type: none"> ▪ Discharger’s deadline to submit 90-Day Hearing Waiver Form. <p>If the Prosecution Team accepts the waiver, all the following deadlines may be revised.</p>
19 April 2017	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”
9 May 2017	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.” ▪ Interested Persons’ written statements are due. <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
16 May 2017	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. <p>Hard copies of rebuttal documents must be submitted to the Prosecution Team.</p> <ul style="list-style-type: none"> ▪ If a Designated Party’s submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Board Members by this date. ▪ Deadline to submit requests for additional time.
18 May 2017	<ul style="list-style-type: none"> ▪ All Designated Parties may submit responses to written statements submitted by Interested Persons. ▪ Prosecution Team submits Summary Sheet. ▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Board Members so that they are <u>received by</u> the Advisory Team by this date.
8/9 June 2017	Board Hearing

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399).

During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;

5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.

3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.