

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2010-0516_____

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
WASTEWATER TREATMENT FACILITY
NAPA COUNTY

This Complaint is issued to Lake Berryessa Resort Improvement District (hereafter Discharger) pursuant to California Water Code (CWC) sections 13350 and 13385, which authorize the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0068.

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

Background

1. The Discharger owns and operates the wastewater collection, treatment and disposal system, referred to as a wastewater treatment facility or WWTF that currently serves 187 existing single-family dwellings at the Berryessa Estates Subdivision. There are a total of 339 available service connections at full build out.
2. On 25 April 2008, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order R5-2008-0068, which prescribed requirements for the discharge of domestic wastewater from the Discharger's WWTF. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply. The Discharger was previously regulated by WDRs Order 95-171 that contained similar requirements.
3. Wastewater from the community flows via gravity to three lift stations where it is pumped to a 91,000-gallon aboveground holding tank and a 21,000-gallon overflow tank. From the tanks, the wastewater pumped approximately 1.2 miles through a six-inch diameter force main into a manhole. A flow meter is located within the force main. From the manhole, wastewater gravity flows through a 10-inch pipeline to a manually operated distribution box and to three treatment ponds that are connected in series. From the third pond, wastewater gravity flows into two other ponds. A portable effluent pump is used to transfer wastewater from these ponds to the two remaining ponds (Pond Nos. 6 and 7). The wastewater in Pond No. 7 is then disinfected using calcium hypochlorite tablets to maintain a chlorine residual of at least 0.3 mg/L and a total coliform organism concentration of less than 23 MPN/100 mL. Wastewater from this pond is then applied via spray irrigation to three separate land application areas totaling approximately six acres. Runoff from the sprayfield is collected via a tailwater collection ditch and returned to Pond No. 7 via a pump system.

Chronology of Previous Major Enforcement Items

4. The Discharger has had a long history of sewage spills at this facility. On 28 December 1995, the Executive Officer issued Administrative Civil Liability (ACL) Complaint 95-516. The ACL Complaint was for a raw sewage spill to Putah Creek estimated at approximately 50,000 gallons and was in the amount of \$25,000. In addition to the monetary penalty, the Discharger was required, pursuant to CWC section 13267, to submit a plan to complete improvements to the system to prevent future unauthorized discharges of wastewater. The ACL Complaint was withdrawn in January 1996 following submittal of a revised compliance schedule.
5. In April 1996, the Discharger submitted a report titled *“Capacity Study for the Wastewater Treatment and Disposal Facilities for Lake Berryessa Resort Improvement District.”* In summary, the report concluded that the infiltration/inflow (I/I) issues at the wastewater collection system were a serious problem and could overwhelm the system’s storage and disposal capacity. The report included recommendations for studies to identify sources of I/I and to determine additional methods of wastewater disposal, such as additional ponds and sprayfields.
6. On 20 September 1996, the Board issued Cease and Desist Order (CDO) 96-233. The CDO reflected the Discharger’s revised compliance schedule (the document upon which the withdrawal of the ACL Complaint 95-516 was based) and required the Discharger to: begin an I/I study, establish a financial plan, select and design an upgrade to the wastewater facility, complete construction of the project, and submit quarterly progress reports. The final upgrade was to have been completed by 15 September 2001, and was to have resulted in compliance with the WDRs. The Discharger did not comply with the CDO. The only items submitted were an I/I study plan and a five-year financial plan, which were submitted in 1996.
7. On 4 March 2005, the Executive Officer issued ACL Complaint R5-2005-0507 to the Discharger, charging the Discharger with liability in the amount of \$400,000. The Complaint resulted from the Discharger’s violations of its WDRs and CDO, with the most significant violation being the months-long discharge of approximately 4.1 million gallons of wastewater into Stone Corral Creek, a tributary of Lake Berryessa that started on 11 January 2005. Following a hearing, the Central Valley Water Board adopted ACL Order R5-2005-0072 on 29 April 2005 in the amount of \$400,000. The matter was also referred to the Attorney General for additional discharges to surface waters. The Discharger then petitioned the ACLO to the State Water Resources Control Board, and following its dismissal, filed suit in Court. Following several months of negotiations between the Discharger, Board staff and the Attorney General’s office, the Central Valley Water Board agreed to the settlement described in Finding No. 10, below.
8. On 24 January 2007 Board staff issued a Notice of Violation (“NOV”) for a controlled discharge of partially treated wastewater to an unpermitted temporary sprayfield. The discharge totaled approximately 5.5 million gallons, and occurred over a period of 52 days during March, April, May, and June 2006. Of this, an unknown volume flowed over

vegetated land and then entered Stone Corral Creek, Putah Creek, and ultimately Lake Berryessa. The volume of the discharge was based on monthly discharge summary reports provided by the Discharger. The Discharger indicated that the controlled discharge to the unpermitted sprayfield was necessary because of excessive rainfall and the lack of capacity in the wastewater ponds, and to avoid a possible overflow or breach in a pond berm.

9. On 16 May 2007, Board staff issued an NOV for a discharge of wastewater estimated at approximately 7,500 gallons that occurred on 13 April 2007. The spill resulted from a break in the 10-inch gravity sewer pipeline that runs from the main sewage collection tank to the wastewater ponds. The Discharger reported that none of the wastewater entered surface waters.
10. On 13 July 2007, the Executive Officer signed a Stipulated Judgment regarding Case Nos. 6CS00256 and 06AS01602 on behalf of the Central Valley Water Board. On 7 September 2007 the Stipulated Judgment was issued by the Superior Court. The terms of the Stipulated Judgment included: (a) by 10 August 2007, the Discharger must submit a complete RWD to operate a permanent sprayfield; (b) by 31 January 2008, the Discharger must submit a report showing that three of the lift stations had been upgraded; (c) by 1 March 2008, the Discharger must submit a report showing that several sewer line sections have been replaced or repaired; (d) the Discharger must pay the \$400,000 liability beginning 1 August 2009, in monthly installments of \$3,333.33 over a 10 year period; (e) by 30 August 2009, the Discharger must replace the water treatment plant to be in compliance with applicable California Department of Public Health requirements, (f) comply fully with all monitoring and reporting aspects of Revised MRP No. 96-223 or subsequent MRPs, and (g) prevent any future discharges of wastes to surface waters. The Stipulated Judgment also settled the violations noted in Findings 8 and 9.
11. As of the date of this ACL Complaint, compliance with the Stipulated Judgment is as follows:
 - a. On 27 April 2007, the Discharger submitted the RWD. Supplemental information was received on 7 August 2007, and WDRs Order R5-2008-0068 was adopted by the Central Valley Regional Water Board on 25 April 2008.
 - b. On 30 January 2008, the Discharger documented that upgrades to the three lift stations were completed, including new motors and pumps, control systems, and a mobile backup generator.
 - c. On 29 February 2009, the Discharger submitted the Sewer Line Rehabilitation Report showing that the sections of sewer pipeline identified in the Stipulated Judgment, along with additional sections, had been either repaired or replaced.
 - d. Since September 2009, the Discharger has been paying the \$400,000 liability in monthly installments of \$3,333.33.

- e. A time extension for the Discharger to replace the water treatment plant as described in the Stipulated Judgment is under consideration at this time. Replacement of the water treatment plant will significantly reduce the volume of backwash water discharged to the wastewater collection system.
- f. The Discharger has not prevented discharges of wastes to surface waters, as described in the Findings below, in violation of the Stipulated Judgment.

Chronology of Violations Since Stipulated Judgment

- 12. On 18 February 2009, Board staff issued an NOV (found as Attachment A to this Order) for an unauthorized discharge of wastewater estimated at approximately 8,000 gallons that occurred on 7 January 2009. The spill resulted from a break in the 10-inch gravity sewer pipeline that runs from the main sewage collection tank to the wastewater ponds. The spill entered a drainage swale but did not enter surface waters. The Discharger estimated that between 5,000 and 6,000 gallons of sewage were contained and pumped back into the wastewater treatment ponds.
- 13. On 17 February 2009, an estimated 20,000 gallons of raw sewage spilled from the 21,000-gallon overflow tank. The spill resulted from excessive infiltration and inflow within the collection system due to a rainstorm. The effluent pump was unable to keep up with the increased flow rate. The main sewer collection tank spilled into the overflow tank and then onto the ground. The raw sewage flowed into a drainage swale, across a gravel/dirt access road, across some natural vegetation, and into Putah Creek. The spill was stopped after the Discharger rented a portable diesel pump and connected it to the collection system. The Discharger reported that the portable pump would remain onsite during the rainy season to ensure that this type of spill did not occur again.
- 14. From 26 February through 5 March 2009, an unauthorized controlled discharge of approximately 1,630,000 gallons of partially treated wastewater occurred at the WWTF. The discharge occurred from the treatment plant's chlorine contact basin that serves the sprayfield. A portion of the discharge also occurred through the sprayfields. The Discharger stated that the wastewater was dechlorinated prior to being discharged. Runoff from the discharge entered an unnamed creek, then to Stone Coral Creek, Putah Creek and ultimately into Lake Berryessa. The Discharger stated that the controlled discharge was necessary to avoid a possible overflow or a breach in a pond berm. In addition, the Discharger stated that approximately 147,000 gallons of wastewater was removed from the main collection tank and transported to the Napa Sanitation District Wastewater Treatment Facility for disposal prior to the unauthorized discharge. The Discharger estimated that trucking this wastewater cost about \$30,000. The Discharger stated that some factors that may have contributed to the discharge include: (a) the inability to adequately dispose of the wastewater prior to the rainy season because the new sprayfields approved by WDRs R5-2008-0068 were not completed and approved until the end of August 2008, and (b), additional inflow and infiltration (I/I) issues existed within the collection system that were not identified during the Sewer Line and Lift Station

Rehabilitation Project that was completed in March 2008. Finally, the Discharger stated that it will continue to inspect and repair the sewer line to address any newly identified I/I issues.

15. On 9 June 2009, Board staff issued an NOV (found as Attachment B to this Order) for two separate wastewater spills that are described in Findings 13 and 14. The Notice of Violation requested that the Discharger submit a workplan that described proposed measures to be taken to reduce the I/I.
16. On 30 July 2009, the Discharger submitted a workplan stating that they will continue assessing the wastewater collection system zones that continue to exhibit the most I/I and will prioritize the most problematic areas for repairs. Specifically, the Discharger stated that the entire collection system would be video surveyed by 30 September 2009, and that inspection of manholes would be completed and a report submitted by 1 October 2009. In addition, the Discharger stated that the manholes in need of immediate repair were to be repaired by 31 October 2009.
17. On 10 May 2010, Board staff issued an NOV (found as Attachment C to this Order) for a controlled discharge of treated wastewater from the spray irrigation field tailwater collection ditch into an unnamed creek, then to Stone Corral Creek, Putah Creek and ultimately into Lake Berryessa. The estimated volume of wastewater released to the creek from the tailwater control ditch since the discharge began on 9 February 2010 is approximately 2,184,500 gallons. This volume is based on 35 days of discharge with the assumption that 85 percent of the total amount of wastewater that was applied to the sprayfields entered the tailwater collection ditch. The Discharger states that the discharge was necessary because the level of wastewater in four of the seven wastewater ponds was above the minimum two-foot freeboard required by the WDRs. The Discharger stated that trucking the wastewater to an offsite wastewater disposal facility was considered, however, because there was at least two additional months of wet weather remaining, the discharge could not be prevented by trucking the wastewater to an offsite disposal facility. Finally, the Discharger stated that they needed to conserve funds for additional collection system improvements.
18. To summarize, since issuance of the Stipulated Judgment on 7 September 2007, the Discharger has reported spills of 8,000 gallons of raw sewage, 20,000 gallons of raw sewage, 1,630,000 gallons of partially treated wastewater, and most recently 2,184,500 gallons of partially treated wastewater. Of these spills, an estimated 3,834,500 gallons entered surface waters tributary to Lake Berryessa. Central Valley Water Board staff issued Notices of Violation for all of the spills.

REGULATORY CONSIDERATIONS

19. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter 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.

20. Surface water drainage from the site is to Stone Corral Creek, which flows in to Putah Creek and is a tributary to Lake Berryessa.
21. The Basin Plan designates the beneficial uses of Lake Berryessa as municipal and domestic supply (MUN); agricultural supply (AGR); power generation (POW); water contact recreation (REC-1); noncontact water recreation (REC-2); warm freshwater habitat (WARM); cold freshwater habitat (COLD); spawning, reproduction and/or early development of warm freshwater aquatic organisms (SPWN); and wildlife habitat (WILD).
22. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
23. On 17 November 2009, the State Water Resources Control Board adopted a new Water Quality Enforcement Policy. However, at the time this Complaint is issued, the new policy has not yet been approved by the State Office of Administrative Law. Therefore, the Prosecution Team views the Water Quality Enforcement Policy adopted on 19 February 2002 as the controlling policy for the purposes of resolving this Complaint.

Violations under CWC section 13350

24. Administrative civil liability may be imposed for violations of WDRs Order R5-2008-0068 pursuant to CWC section 13350(a) which states, in relevant part,
 - (a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).
25. CWC section 13350(e) states, in relevant part,
 - (e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.
 - (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
 - (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.
26. CWC section 13327 states:

In determining the amount of civil liability, the regional board ... shall take into consideration the 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 violation, and other matters as justice may require.

27. Discharge Prohibition A.2 of Order No. R5-2008-0068 states:

Bypass or overflow of untreated or partially treated waste is prohibited.

The 8,000 gallon raw sewage spill that occurred on 7 January 2009 from the broken 10-inch gravity sewer pipeline (as described in Finding 12) is a violation of Discharge Prohibition No. A.2 of the WDRs.

28. **Maximum Civil Liability for Discharge to Land:** Pursuant to CWC section 13350(e), up to ten dollars (\$10) for each gallon of waste discharged may be assessed. Therefore, the maximum penalty for this 8,000 gallon spill under section 13350 is **eighty thousand dollars (\$80,000)**.

Violations under CWC section 13385

29. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

...

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account 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 its ability to continue its 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 that justice may require.

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

30. Discharge Prohibition A.1 of WDRs Order R5-2008-0068 states:
Discharge of wastes to surface waters or surface water drainage courses is prohibited.
31. The spills to surface water described in Findings Nos. 13, 14, and 17 are a violation of Discharge Prohibition. A.1. In addition, WDRs Order R5-2008-0068 does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters, except those that are in accordance with an NPDES permit, is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.
32. **Maximum Civil Liability for Discharge to Surface Waters:** Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The Discharger spilled 20,000 gallons of raw sewage to surface waters on 17 February 2008, and 1,630,000 gallons of wastewater to surface waters over an eight day period from 26 February through 5 March 2009. In addition, over a 35 day period beginning on 9 February 2010, the Discharger spilled an estimated 2,184,500 gallons of wastewater to surface waters. Of the 3,834,500 gallons that spilled, a total of 3,826,500 gallons were discharged in excess of 1,000 gallons per spill event over a 44 day period. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallon, and at \$10,000 per day for each day of the discharge, the maximum liabilities are \$38,265,000 and \$440,000, as shown in Attachment D of this Complaint. Adding these maximum liability amounts together, the total amount of penalties that may be assessed pursuant to section 13385 is **thirty eight million seven hundred and five thousand dollars (\$38,705,000)**.
33. **Minimum Civil Liability for Discharge to Surface Waters:** Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. In general, the discharges were due to inflow/infiltration within the collection system. The estimated economic benefit to prevent the spills has not been calculated because the best method to resolve the I/I problems within the collection system is unknown. The Prosecution Team considers the economic benefit gained by non-compliance to be equivalent to the deferred costs of completing necessary upgrades to the collection system to prevent excessive I/I flows.

Total Maximum Penalty

34. Adding together the total maximum penalties that could be assessed under sections 13350 and 13385 (described in Findings 27 and 31), the maximum penalty for the discharge is **thirty eight million seven hundred and eighty five thousand dollars**

(\$38,785,000).

LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board charges the Discharger with an administrative civil liability in the amount of **three hundred and seventy five thousand dollars (\$375,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13350 and 13385, as well as the State Water Resources Control Board's 2002 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **28/29/30 July 2010**, unless one of the following occurs by **28 May 2010**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **three hundred seventy five thousand dollars (\$375,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing 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

-- original signed by Rick Moss for--

PAMELA C. CREEDON, Executive Officer

17 May 2010

Date

Attachment A: 18 February 2009 Notice of Violation
Attachment B: 9 June 2009 Notice of Violation
Attachment C: 10 May 2010 Notice of Violation
Attachment D: Table of Total Maximum Penalty Calculations
gjc/wsw: 17 May-10

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Lake Berryessa Resort Improvement District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-20100516 (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 **three hundred seventy five thousand dollars (\$375,000)** by check that references "ACL Complaint R5-2010-0516" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **28 May 2010**.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

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

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

(Print Name and Title)

(Signature)

(Date)

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0516
CONSIDERATION OF FACTORS PURSUANT TO CWC SECTION 13385**

California Water Code (CWC) section 13385 states: *“In determining the amount of any liability imposed under this section, the regional board...shall take into consideration the 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 violation, and other matters as justice may require...”* In preparing the Administrative Civil Liability Complaint, Central Valley Water Board staff considered the following:

Nature and Extent of Violations: The Discharger has violated Waste Discharge Requirements (WDRs) Order R5-2008-0068 by discharging 3.8 million gallons of raw sewage and partially treated wastewater to surface waters. In January 2009, an estimated 8,000 gallons of raw sewage was released from a broken gravity sewer pipeline. This spill did not reach surface waters. The second spill took place in February 2009 when 20,000 gallons of raw sewage spilled into surface waters. Between late February and early March 2009, over 1.6 million gallons of partially-treated wastewater flowed into a tributary of Lake Berryessa. The last set of spills took place between February and April 2010, when almost 2.2 million gallons of partially-treated wastewater entered a tributary of Lake Berryessa. The Discharger violated Discharge Prohibition Nos. A.1 and A.2 of its WDRs as specified below:

- Discharge Prohibition No. A.1 of the WDRs states: *“Discharge of wastes, effluent, or injection water to surface waters or surface water drainage courses is prohibited.”*
- Discharge Prohibition No. A.2 of the WDRs states: *“Bypass or overflow of untreated or partially treated effluent is prohibited.”*

In addition to the WDR violations, the Discharger also violated the September 2007 Stipulated Judgment that required the Discharger to, among other things, prevent any future discharges of waste to surface waters. This Stipulated Judgment was the result of large spills, totaling nearly 10 million gallons, that occurred in 2005 and 2006.

Circumstances: For the larger spills totaling 3.8 million gallons, the Discharger was aware of the potential to spill because it knew it had not achieved adequate storage capacity in its pond system prior to the 2008/2009 rainy season. The Discharger had completed its Sewer Line Rehabilitation Project in 2008, but additional improvements to the collection system were needed to reduce the inflow and infiltration (I/I). The Discharger stated that the most reasonable action to reduce its I/I was to continue to evaluate the collection system and conduct the necessary repairs. The Discharger completed additional I/I work in the fall of 2009, and provided a water balance showing that it had enough capacity to store all wastewater and I/I generated during a 50-year annual rainfall year. However, the winter of 2010 was less than a 5-year annual return event, and the Discharger spilled almost 2.2 million gallons. Therefore, the Discharger’s I/I problem is much worse than assumed. The Discharger was also required by the Stipulated Judgment to replace its drinking water plant by August of 2009. If it had done so, it would have significantly reduced the volume of backwash water discharged to the wastewater treatment plant, thereby allowing more capacity for domestic wastewater.

Gravity: The Discharger failed to prevent the discharge of waste to highly accessible surface waters and creeks which are tributaries to Lake Berryessa, which has a high level of beneficial use including domestic water supply and recreation. Potential health risks from bacteria and viruses resulting from raw or inadequately treated wastewater are a serious concern for humans and wildlife habitat. In addition, the Discharger violated the Stipulated Judgment issued in 2007 for similar spills.

Toxicity: The 3.8 million gallons of partially treated wastewater that spilled into surface waters was partially dechlorinated prior to the discharge, and the 20,000 gallons of raw sewage flowed into surface waters during a rainstorm, therefore, the degree of toxicity from these discharges appears to be low. In addition, because there were no fish kills and Lake Berryessa would be expected to provide some dilution, the discharge would be considered low toxicity.

Susceptibility of the Discharge to Cleanup: Due to the circumstances of the spills, once the larger spills entered surface waters, there was no practical way to clean up to avoid water quality impacts or impacts to beneficial uses. The smaller spill was contained to land and was largely cleaned up.

Degree of Culpability: The Discharger was aware of the prohibition against discharges to surface waters. It appears that the Discharger did not make the necessary improvements to the collection system to reduce inflow/infiltration. The Discharger is keenly aware of the potential penalty for wastewater system spills, as it was issued an ACL Order in 2005 in the amount of \$400,000 for wastewater spills. That ACL Order evolved through the legal processes into the Stipulated Judgment. It appears that the only immediate action that the Discharger took prior to the 1,630,000 gallon spill was remove approximately 147,000 gallons of wastewater from the main collection tank and transport it to the Napa Sanitation District Wastewater Treatment Facility for disposal at a cost estimated at approximately \$30,000. The Discharger elected not to transport any wastewater to the Napa Sanitation District during the 2010 spills.

Notification of Violation: The Discharger notified Central Valley Water Board staff, Napa County Environmental Management, and the California Emergency Management Agency of the spills. The Discharger provided appropriate notification of the spills in accordance with the Standard Provisions and Reporting Requirements.

Degree of Cooperation: The Discharger has been cooperative in providing required spill reports per the WDRs and the Standard Provisions and Reporting Requirements. In general, written spill reports have been complete and submitted in accordance with requirements set forth in the Standard Provisions and Reporting Requirements. However, the Discharger has not been adequately cooperative in making the upgrades to the collection system to prevent the spills from occurring in the first place.

Prior History of Violations: See the Findings of the ACLC for the previous enforcement and chronology of recent violations. There have been four major spill events since 2005: 4.1 million gallons of partially treated wastewater spilled to Lake Berryessa in 2005, 5.5 million gallons of partially treated wastewater spilled to the Lake in 2006, 1.6 million gallons of partially treated wastewater spilled in 2009, and approximately 2.2 million gallons of treated wastewater in 2010. On average, the Discharger is spilling about one-third of its permitted annual flow each year.

Economic Benefit: Pursuant to under CWC section 13385(e), the minimum liability is equal to the economic benefits that the Discharger received from the acts that constitute the violation. Approximately 20,000 gallons of raw sewage, 1,630,000 gallons of partially treated wastewater, and 2,184,500 gallons of treated wastewater spilled to surface waters resulted from I/I problems. The estimated economic benefit was not calculated because the exact method to resolve the I/I problems within the collection system is unknown; however, any economic benefit would be probably be a small amount and would simply be the interest on a loan to complete the work. The Discharger is still expected to identify the I/I issues and complete the necessary improvements to prevent unauthorized discharges.

The Discharger could have completed construction of its sprayfields earlier and perhaps reduced or eliminated the amount of wastewater spilled. Again, the economic benefit would have been minimal. The Discharger possibly could have continued to truck wastewater to another disposal facility. The Discharger paid about \$30,000 to haul 147,000 gallons of wastewater prior the 1,630,000 gallon spill. Based on that price of 20 cents/gallon, the estimated cost to haul the entire spill volume in both 2009 and 2010 is \$760,000. However, the technical feasibility of hauling this amount of wastewater is uncertain due the availability of trucks, the hauling distance, and the flow rate of the spill.

Other Matters as Justice May Require

- a. **Staff Costs:** Staff costs to generate and process this ACL Complaint to date are estimated to be \$150 x 130 hours = \$19,500. This amount assumes that the ACLC will be settled without significant negotiations or further economic analysis.
- b. **Ability of the Discharger to Pay:** Lake Berryessa Resort Improvement District serves 187 homes. The Napa County Board of Supervisors serves as the Resort Improvement District's Board of Directors. Because the Discharger has a limited income base, in the past it has issued bonds and been loaned money by Napa County to make improvements to the treatment facility and the collection system. The Discharger recently received an ARRA grant for the full cost to replace the drinking water treatment plant.

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2010-0516

ISSUED TO
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
WASTEWATER TREATMENT FACILITY
NAPA COUNTY

SCHEDULED FOR 28/29/30 JULY 2010

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

Background

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to Lake Berryessa Resort Improvement District, alleging that Lake Berryessa Resort Improvement District violated CWC sections 13350 and 13385 by discharging waste in violation of Waste Discharge Requirements Order R5-2008-0068.

The Complaint proposes that an administrative civil liability in the amount of \$375,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 28/29/30 July 2010 meeting.

Purpose of Hearing

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

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

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

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

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been proposed by the Central Valley Water Board's Prosecution Team, and will become final on 20 May 2010 if no objections are received. This Hearing Procedure is subject to further revision by the Central Valley Water Board's Advisory Team or the Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 20 May 2010, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

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

Hearing Participants

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

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

1. Central Valley Water Board Prosecution Team
2. Lake Berryessa Resort Improvement District

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **24 May 2010**, by the Advisory Team attorney

(contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **28 May 2010**. The parties will be notified by 5 p.m. on **2 June 2010** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

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

Emel Wadhwani, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3622; fax: (916) 341-5199
ewadhwani@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Wendy Wyels, Environmental Program Manager
Rick Moss, Assistant Executive Officer
Anne Olson, Senior Water Resources Control Engineer
Guy Childs, Engineering Geologist
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone (Wendy Wyels): (916)464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5189; fax: (916) 341-5199
ppulupa@waterboards.ca.gov

Discharger:

Donald Ridenhour
Napa County Department of Public Works
1195 Third Street, Room 201
Napa, CA 94559-3092

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Kenneth Landau and Emel Wadhvani. Members of the Prosecution Team are: Pamela Creedon, Rick Moss, Wendy Wyels, Guy Childs, Anne Olson, and Patrick Pulupa. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

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

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

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **30** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations,

and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on **7 July 2010**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

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

Submission of Evidence and Policy Statements

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

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

The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list or attached copy of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff. The Prosecution Team shall provide an electronic copy to Kenneth Landau and Emel Wadhvani of all documents cited in the complaint or Staff Report no later than the due date under Important Deadlines, below.

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

Rebuttal: Any designated party that would like to submit evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies of their rebuttal information to Kenneth Landau and one electronic copy of the information to Emel Wadhvani so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

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

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

By **13 July 2010** the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **13 July 2010**. Interested persons do not need to submit written comments in order to speak at the hearing.

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

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, in Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above).

Questions

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

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

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

13 May 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
20 May 2010	Objections due on proposed Hearing Procedure – <i>Hearing Procedure becomes final if no objections</i>
24 May 2010	Deadline for submission of request for designated party status.
28 May 2010	Deadline for opposition to request for designated party status.
28 May 2010	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
2 June 2010	Advisory Team issues decision on requests for designated party status, if any.
2 June 2010	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
22 June 2010	Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.
22 June 2010	Prosecution Team submits an electronic copy to Emel Wadhvani and Kenneth Landau of all documents cited in the complaint or Staff Report, unless previously submitted.
2 July 2010	All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
7 July 2010	Requests for additional hearing time (see Hearing Time Limits, above).
13 July 2010	Interested persons' comments are due.
13 July 2010	Prosecution Team's deadline to submit Buff Sheet.
28/29/30 July 2010	Hearing



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

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

Arnold
Schwarzenegger
Governor

17 May 2010

Donald Ridenhour
Napa County Department
of Public Works
1195 Third Street, Room 201
Napa, CA 94559-3092

CERTIFIED MAIL
7009 1410 0002 1421 7607

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0516, LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, NAPA COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) sections 13350 and 13385. The Complaint charges Lake Berryessa Resort Improvement District (Discharger) with civil liability in the amount of **three hundred and seventy five thousand dollars (\$375,000)** for violations of Waste Discharge Requirements (WDRs) Order R5-2008-0068. The violations are associated with wastewater spills to surface waters of Lake Berryessa.

The Discharger may:

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

If the Central Valley Water Board does not receive a signed waiver by **28 May 2010**, a hearing will be scheduled for the **28/29/30 July 2010** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedure, which has been proposed by the Board's Prosecution Team. This procedure will become final if no objections are received by **5 p.m. on 20 May 2010**. Any objections to the Hearing Procedures must be received by Emel Wadhvani, whose contact information is listed in the Hearing Procedures.

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

California Environmental Protection Agency

not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

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

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

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

For your information, we have attached a description of the factors that were considered, pursuant to California Water Code section 13385, in assessing this civil liability.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Guy Childs at (916) 464-4648 or gchilds@waterboards.ca.gov.

--original signed by--

WENDY S. WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACL Complaint R5-2010-0516
Hearing Procedures
Waiver Form
Attachment – Consideration of Factors

cc w/o enc: Russell B. Hildreth, Office of the Attorney General, Sacramento
Kenneth Greenberg, USEPA, Region 9, San Francisco
Kenneth Landau, Central Valley Water Board, Rancho Cordova
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Ruben Oropeza, Napa County Environmental Management, Napa
Felix Riesenber, Napa County Public Works, Napa
Janice Killion, Office of County Counsel, Napa
Helene Franchi, Office of County Counsel, Napa
Roberta Larson, Somach Simmons, Sacramento