
Central Valley Regional Water Quality Control Board

21 November 2013

**CERTIFIED MAIL NO.
7013 1090 0000 6372 3772**

Henry J. Tosta
20662 San Jose Road
Tracy, CA 95304

ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0592 FOR HENRY J. TOSTA AND RESCISSION OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0564, REEVE ROAD HEIFER RANCH, 21070 REEVE ROAD, TRACY, SAN JOAQUIN COUNTY

The Executive Officer hereby rescinds Administrative Civil Liability Complaint, R5-2012-0564 which was previously issued by the Executive Officer on 19 November 2012 regarding violations of the Water Code at the Reeve Road Heifer Ranch. Enclosed is an Administrative Civil Liability Complaint, R5-2013-0592, (Complaint), issued pursuant to California Water Code (Water Code) section 13323. The Complaint proposes that civil liability in the amount of **\$310,775** be imposed on Henry J. Tosta, operator of the Reeve Road Heifer Ranch, (hereafter referred to as "Discharger") pursuant to Water Code sections 13268 and 13350 for discharging waste to groundwater and failing to comply with directives of Cleanup and Abatement Order No. R5-2012-0709.

In response to the Complaint, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) by signing the enclosed waiver (checking off the box next to item #3) and submitting it to this office by 13 December 2013. Payment for the full amount, indicating the number of this ACL Complaint, R5-2013-0592, must be submitted to: the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California, 95814, A copy of the signed waiver and check shall be sent to: David Boyers, Office of Enforcement, 16th Floor, Sacramento, California, 95814;
- Waive its right to a 90-day hearing and agree to enter into settlement discussions with the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by 13 December 2013;
- Waive its right to a 90-day hearing in order to extend the hearing deadlines by signing the enclosed waiver (checking off box next to item #5) and submitting it to this office by 13 December 2013; or
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger would like to rebut the presumption in the Complaint regarding **an ability to pay the proposed liability**, it must submit detailed financial information to the Central Valley Water Board by 14 January 2014. Information must include a balance sheet of outstanding debts and liabilities, as well as the information detailed in the attached Administrative Civil Liability Fact Sheet.

If the Central Valley Water Board does not receive a signed waiver by 13 December 2013, then a hearing on this matter will be scheduled for the **6/7 February 2014** regular meeting of the Central Valley Water Board to be held at 11020 Sun Center Drive, Suite 200, in the City of Rancho Cordova, California, 95670. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the proposed civil liability.

Attached to the Complaint is a draft public hearing procedure identifying the type of information that must be submitted in preparation for the public hearing, the hearing participants, and explaining how the public hearing will proceed. The public hearing procedures will be finalized by the Advisory Team to the Central Valley Water Board.

Payment of this assessed civil liability amount (**\$310,775**) does not absolve the Discharger from complying with the Dairy General Order or Cleanup and Abatement Order R5-2012-0709, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Dairy General Order or Cleanup and Abatement Order.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Charlene Herbst at (916) 464-4724 or charlene.herbst@waterboards.ca.gov.

Pamela C. Creedon
Executive Officer

Enclosure: Administrative Civil Liability Complaint R5-2013-0592

cc w/encl: Mr. Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Mr. David Boyers, Esq., Office of Enforcement, SWRCB, Sacramento
Ms. Vanessa Young, Esq., Office of Enforcement, SWRCB, Sacramento
Mr. Alex Mayer, Esq., Office of Chief Counsel, SWRCB, Sacramento
Mr. Ken Landau, Central Valley Water Board, Rancho Cordova
Mr. Tom Terpstra, Esq.

cc w/out encl: Mr. Lee Smith, Esq.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0592

IN THE MATTER OF

HENRY J. TOSTA

SAN JOAQUIN COUNTY

NOTICE OF HEARING TO ASSESS ADMINISTRATIVE CIVIL LIABILITY:

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), hereby gives notice that:

1. This Complaint is issued to Henry J. Tosta, operator of the Reeve Road Heifer Ranch, hereafter referred to as “Discharger”, pursuant to California Water Code (Water Code) section 13323.
2. Unless waived, a hearing on this matter will be held before the Central Valley Water Board within 90 days following issuance of this Complaint. The Discharger, or its representative(s), will have an opportunity to be heard and to contest the allegations in this Complaint and the proposed imposition of administrative civil liability. Not less than 10 days before the hearing date, an agenda for the meeting of the Central Valley Water Board at which this matter will be heard will be available on the Board’s website: <http://www.waterboards.ca.gov/centralvalley/>
3. At the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability (including an increase in the amount of the liability up to the statutory maximum) or whether to refer the matter to the Attorney General for assessment of judicial civil liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

BACKGROUND INFORMATION

4. The Reeve Road Heifer Ranch (WDID 5B39NC00152) is located at 21070 Reeve Road, Tracy, San Joaquin County (hereafter “Reeve Road Heifer Ranch” or “Heifer Ranch”). The Heifer Ranch and associated cropland are located on APN 209-300-015 and APN 209-300-016 and are owned by the Echeverria Brothers Dairy General Partnership. The Reeve Road Heifer Ranch is located to the west of the city of Tracy within the legal boundaries of the Sacramento-San Joaquin Delta. The property is comprised of a total of 118 acres of cropland and 18 acres of production area and is surrounded by cropland associated by Henry Tosta Dairy on the north and east, by Reeve Road on the west, and by West Middle Road on the south. The facility is permitted to house up to 127 mature dairy cows, but currently houses 800 support stock. Solid manure generated by

cattle is stockpiled in an area south of the unused wastewater storage lagoon. The cropland is bisected by the Main Drain canal of the Naglee-Burk Irrigation District.

5. On 3 May 2007, the Central Valley Water Board adopted the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (hereinafter "Dairy General Order") and a Monitoring and Reporting Program (hereinafter "MRP") that accompanied the Dairy General Order. The Dairy General Order and the MRP contained reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007. The Dairy General Order was a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's August 8, 2008 request and (2) have not expanded operations since October 17, 2005.
6. On 26 September 2011, the Discharger received a NOV for its failure to submit annual reports for calendar years 2008 through 2010 and a waste management plan by the due dates required by the Dairy General Order. On 25 October 2011 the Discharger responded to the NOV by submitting a letter indicating its intent to close the facility from the Dairy General Order along with the required Closure Plan. In response, on 1 May 2012, Central Valley Water Board staff conducted an inspection. Staff noted that the old manure lagoon had not been cleaned out as required for closure. Staff toured the rest of the facility and found evidence of the disposal of dead animals in the production area, including several dead calves and a decomposing cow skull, as well as numerous cow bones. North of the production area, in Heifer Ranch cropland, staff observed a large area of disturbed soil and two mature dairy cows buried in a shallow pit grave in land immediately adjacent to the Main Drain canal of the Naglee-Burke Irrigation District. Land adjacent to the burial area was dry, but the burial pit itself was full of water that appeared to be groundwater. During the inspection, Mr. Tosta told staff that the cows in the pit died on or around 25 April 2012 on the Henry Tosta Dairy and that 4-6 cows were buried in this manner at this location each month for 5-6 years. Given the shallow groundwater levels in this area, it is likely that the cows buried on the Reeve Road Heifer Ranch were buried directly in groundwater. Additional shallow depressions indicative of burial sites were seen throughout this area.
7. On 11 June 2012 the Executive Officer of the Central Valley Water Board issued Cleanup and Abatement Order (CAO) R5-2012-0709 to the Discharger. The CAO identified several violations, including the illegal burial of dead cows at a dairy facility, a failure to maintain domestic and agricultural wells, and a failure to manage waste in compliance with the waste management practices required by the Dairy General Order. The CAO required the Discharger to clean up and abate the effects of waste discharges to surface water and groundwater at the Reeve Road Heifer Ranch in accordance with a specified time schedule in the directives outlined below.
 - a. Directive 1 - Immediately stop the burial of dead animals and properly dispose of the dead animals as required by the Dairy General Order;
 - b. Directive 2

2004 by a former employee of the Henry Tosta Dairy. The email also claimed that “[sic] Henry never had a cow properly removed (Talo),” and “he has buried the cows on the properties since the dairy was first put in to business. I am not trying to make this out of something it is not, but I’m telling you...there has got to be 1000’s of buried cows out there. Mostly on the reeves road [Heifer Ranch].”

10. Staff used horizon features to identify the location where the photos submitted by Rebecca Hammond were taken. This area was identified as north of the wastewater lagoon and south of the burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District. On 3 July 2012 staff inspected the area and noted that the cropland in this vicinity was covered in weathered cow bones.
11. On 28 June 2012 Central Valley Water Board staff performed a quick inspection of the Reeve Road Heifer Ranch burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District and noted that the mounds of dirt and pits with dead cows inside them had been leveled.
12. On 3 July, 2012 staff conducted an inspection to verify compliance with the directives in the CAO. Western Dairy Design presented staff with an iPhone photograph of a receipt from Foothill Landfill, as well as a collection of rough notes. Staff reviewed these materials, but informed Western Dairy Design and Mr. Tosta that submission of an unverified receipt from a landfill was not sufficient to satisfy CAO Directive 2.
13. On 6 July 2012 Western Dairy Design submitted a status report, dated 21 June 2012, to the Central Valley Water Board. This report summarized the work that had been performed on the Reeve Road Heifer Ranch to date. The report described the excavation of the dead cows from the burial area adjacent to the Main Drain canal and collection of water quality samples, but did not contain information about the number of dead cows removed and disposed of at the Foothill Landfill. The 6 July 2012 report noted that “Mr. Tosta has verbally agreed to perform the cleanup [of the Reeve Road Heifer Ranch manure lagoon] as described [by the CAO]...I would estimate this work to be completed by the week of 23-27 July 2012.”
14. On 17 July 2012 staff performed a follow up inspection of the Reeve Road Heifer Ranch to assess compliance with the CAO. No progress had been observed regarding the removal of the manure containing animal remains from the area south of the wastewater lagoon as required by Directive 4 of the CAO. Staff reminded Mr. Tosta that the manure containing animal remains must be removed and properly disposed of at a landfill as required by the CAO. Mr. Tosta was also reminded of the continuing accrual of potential civil penalties stemming from a failure to meet the requirements of the CAO.
15. On 20 July 2012 the Central Valley Water Board received a report titled “Comprehensive Report - Dead Animal Removal – Reeve Road Heifer Ranch”, dated 18 July 2012, from Western Dairy Design. The report detailed the removal of decomposed cow carcasses from “an area 35 feet wide, 425 feet long, and 7 to 8 feet deep...along the south bank road of the Naglee-Burk Drain.” The report estimated that “8 to 12 animals were recovered from this excavation.” However, later in the report, a single receipt from Foothill Landfill is included in the report; the receipt has a

handwritten note stating, "Henry Tosta CAO Reeve Road Heifer Ranch: Carcass bone and composted residue soil from 2 cows." The report also contained laboratory results from groundwater samples collected on 25 June 2012 (lab sheets state the collected and received dates were 24 June 2012, a Sunday).

- 16.** Groundwater underneath the Reeve Road Heifer Ranch has designated beneficial uses of municipal and domestic water supply (MUN), agricultural water supply (AGR), industrial service supply (IND), and industrial process supply (PRO). Two water quality samples taken at approximately 18 feet below soil surface in a burial pit after the cow carcasses were removed contained nitrate as nitrogen at 30mg/L and 21.9 mg/L, respectively. The maximum contaminant level (MCL) for nitrate as nitrogen in drinking water is 10mg/L. In addition, the samples contained total coliform greater than 2419.6 MPN/100mL. According to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, 4th Edition (Basin Plan), for drinking water the Most Probable Number (MPN) of coliform organisms over any seven-day period shall not exceed 2.2/100mL. The water samples also contained E.coli at 156.5 MPN/100mL; any positive result for E.coli is a cause for concern according to the US Environmental Protection Agency's Primary Drinking Water Regulations, because E.coli only comes from human and animal fecal waste. Ammonia was present in the samples at 5.2 mg/L. While ammonia is of greater concern in surface water because of effects on aquatic life, the concentration of ammonia in the samples is in excess of the taste and odor threshold of 1.5 mg/l. The results from these limited samples indicate nitrate in excess of the MCL, total coliform in excess of the Basin Plan standard, ammonia at levels that would affect the taste and odor of the water, and the presence of E.coli indicating impacts from human and/or animal fecal waste. These results indicate that the disposal of dead animals at this location has unreasonably affected groundwater quality, resulting in exceedances of water quality objectives and, therefore, causing degradation and pollution of groundwater in violation of Prohibition A.4. of the Dairy General Order. Because the water quality samples in this report confirmed pollution of groundwater from the Discharger's activities, the Discharger was required to submit a Groundwater Remediation Plan by 27 August 2012 in accordance with Directive 4 of the CAO.
- 17.** On 23 July 2012 the Central Valley Water Board received a request from Mr. Tosta for an extension of the deadlines under Directive 4 in the Cleanup and Abatement Order to 15 October 2012 for the completion of work required to remove the Reeve Road Heifer Ranch from the Dairy General Order. The request stated "the reason is that there are no farmers willing to accept manure until they are able to apply it, which will be after the corn is harvested." The Executive Officer did not grant this extension request because disposal of manure containing animal remains on farm fields, as proposed by Mr. Tosta, would not meet the requirements of Directive 4 of the CAO. On 15 August 2012 staff left a phone message with Western Dairy Design explaining that the 23 July 2012 request for extension of the CAO had not been granted.
- 18.** During the 26 July 2012 inspection, staff confirmed that the wastewater storage lagoon was cleaned down to native soil and that the manure scraped from the lagoon had been stacked on top of the existing manure piled south of the lagoon. On a subsequent inspection on 5 September 2012, staff walked along the top of the manure piles and observed that much of this material was comprised of dirt and manure, but numerous

cow bones were protruding out of the pile. Staff explained to Mr. Tosta and Mr. Avila in the field that manure containing animal remains must be disposed of at a landfill that accepts those materials and cannot be applied to land.

19. On 31 July 2012 staff received a phone call from David Avila of Western Dairy Design regarding the pile of manure containing animal remains on the Reeve Road Heifer Ranch. Mr. Avila explained that Mr. Tosta wanted to land apply the commingled manure rather than sending it to a landfill. Staff again explained to Mr. Avila that land application would not meet the requirements of the CAO or the Dairy General Order since manure containing animal remains must be properly disposed of at a landfill.
20. On 5 September 2012 staff performed a follow-up inspection of the Reeve Road Heifer Ranch to assess compliance with the CAO and did not observe any further progress regarding removal of the manure containing animal remains. Staff again explained that comingled manure that has been exposed to mammalian tissue must go to a landfill. Mr. Tosta indicated that he understood this restriction and would comply with this requirement.
21. On 14 September 2012 the Central Valley Water Board issued a letter titled "Status of Compliance with Cleanup and Abatement Order R5-2012-0709 Reeve Road Heifer Ranch" to the Discharger. The letter detailed the outstanding requirements and lack of compliance with the CAO, including: (1) the failure to timely submit a proof of legal disposal of animal carcasses; (2) failure to submit a Groundwater Remediation plan by 27 August 2012; and (3) failure to properly dispose of the pile of manure containing animal remains stacked south of the wastewater lagoon. The letter informed the discharger of the maximum potential penalty for violations to date, and requested immediate compliance with the CAO.
22. On 3 October 2012, Western Dairy Design submitted two emails on behalf of the Discharger. The first email requested replacement of certain pages of the 6 July 2012 Cleanup and Abatement Plan. The second email requested replacement of certain pages of the 18 July 2012 Comprehensive Dead Animal Removal Report. Staff reviewed these submissions in context of the original 6 July 2012 and 18 July 2012 reports but concluded that they did not change the Discharger's compliance status with the CAO.
23. Staff conducted inspections of the Reeve Road Heifer Ranch on 10 October 2012, 7 December 2012, 7 January 2013, 5 March 2013, 17 September 2013, 23 October 2013, and 15 November 2013. The pile of manure containing animal remains stacked next to the lagoon was not removed during this period.
24. Representatives of the Echevarria Dairy General Partnership submitted a cleanup plan for the pile of manure containing animal remains from the area south of the Reeve Road Heifer Ranch wastewater lagoon on 5 November 2013.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

- 25.** Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
- 26.** Pursuant to Water Code section 13350, subdivision (a), any person or entity who (1) violates a cleanup and abatement order hereafter issued by a Regional Water Board; or (2) in violation of a Waste Discharge Requirement issued by a Regional Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative civil liability pursuant to Water Code section 13350, subdivision (e), on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs.
- 27.** Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. Pursuant to Water Code section 13268 any person failing or refusing to furnish technical or monitoring program reports may be subject to an administrative penalty imposed by a regional board in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

THE ASSISTANT EXECUTIVE OFFICER OF THE CENTRAL VALLEY WATER BOARD ALLEGES:

SUMMARY OF ALLEGED VIOLATIONS

- 28. Dead Cow Discharge to Ground Water:** The Discharger violated Water Code section 13350(a)(2) by burying dead cows in groundwater. The Discharger disposed of animal carcasses at the Reeve Road Heifer Ranch by placing the carcasses in groundwater, a water of the State, in violation of Dairy General Order Prohibition A.6. The Discharger disposed of animal carcasses in this manner from 1 May 2012, the date of the initial discovery inspection, until 25 June 2012, the date the carcasses were hauled to a landfill for disposal. By placing animal carcasses in groundwater in violation of the Dairy General Order, the Discharger caused waste to be deposited where it discharged to waters of the State. Liability may be assessed in accordance with Water Code section 13350(e)(1) from 1 May 2012, the date of the first inspection, until 25 June 2012, a total of **56 days**.
- 29. Violation of CAO Directives:** The Discharger violated Water Code sections 13350(a)(1) and 13267 by failing to comply with the directives of CAO R5-2012-0709 including:
- a. **Directive 2:** Failure to timely submit proof of legal disposal of animal carcasses.
 1. **Directive 2** required the Discharger to submit proof of legal disposal of animal carcasses from the area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District by 2 July 2012 as

required pursuant to Water Code section 13267.

2. The Discharger submitted a report documenting the removal of animal carcasses, including a receipt from a landfill documenting disposal of waste, on 20 July 2012. Liability may be assessed in accordance with Water Code section 13268(b)(1) from 3 July 2012 to 20 July 2012, a total of **18 days**.

b. **Directive 4:** Failure to submit a Groundwater Remediation Plan.

1. **Directive 4** of the CAO required the discharger to submit a Groundwater Remediation Plan by 27 August 2012 if groundwater quality samples indicated that waste disposal has caused pollution of groundwater as required pursuant to Water Code section 13267.
2. As described above, groundwater samples indicate levels of pollution from waste disposal from the dead animal burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District. Therefore, the Discharger was required to submit a Groundwater Remediation Plan to address high concentrations of nitrates and other constituents in groundwater at the Reeve Road Heifer Ranch. A Groundwater Remediation Plan was submitted by email to the Central Valley Water Board on 12 April 2013. The Discharger remained out of compliance with the CAO from 28 August 2012 to 12 April 2013, a total of **228 days**. Liability may be assessed in accordance with Water Code section 13268(b)(1).

c. **Directive 4:** Failure to remove and properly dispose of manure containing animal remains from the wastewater lagoon and from the area south of the wastewater lagoon.

1. **Directive 4** of the CAO required the discharger to remove all wastewater and manure from the manure lagoon and manure and bones in the area south of the wastewater lagoon and to provide documentation of proper disposal of manure containing animal remains by 29 June 2012.
2. The Discharger complied by removing the wastewater and manure from the manure lagoon. However the Discharger failed to export the manure containing animal remains from the Reeve Road Heifer Ranch to a landfill that is certified to accept this waste, therefore failing to properly dispose of this material. Central Valley Water Board staff reminded the Discharger and its agents of the requirement to dispose of manure containing animal remains at a landfill on at least six separate occasions and by letters dated 26 August 2013 and 29 October 2013. The Discharger has been out of compliance with this requirement of the CAO from 30 June 2012

through 15 November 2012, a total of **504 days**. Liability may be assessed in accordance with Water Code section 13350(e)(1).

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

- 30.** 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 administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11709.pdf.

- 31.** Maximum Civil Liability: The maximum administrative civil liability for violations of Water Code section 13350(a)(1) and (a)(2) is \$5,000 per violation per day. The maximum penalty for violation of Water Code section 13268 is \$1,000 for each day in which the violation occurs. The maximum penalty for the violations described above is **\$3,047,000**.
- 32.** Minimum Civil Liability: The minimum administrative civil liability according to the Enforcement Policy is equal to the economic benefit plus 10%. Based upon evidence received, economic benefit plus 10% is substantially less than the \$310,775 proposed liability amount.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

Based on consideration of the above facts and after applying the penalty methodology, as detailed in Attachment A, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$310,775 for the violations cited above.

If the Central Valley Water Board holds a hearing, it may choose to impose the administrative civil liability in the amount proposed, in a higher or lower amount, or it may decline to seek civil liability, or it may recommend referral of the matter to the Attorney General for enforcement. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Discharger's waste discharge requirements and/or violations of requirements of the CAO for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.)

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HENRY J. TOSTA
SAN JOAQUIN COUNTY

pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with CAO Order No. R5-2012-0709 or the Dairy General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with these orders, and/or future orders issued by the Central Valley Water Board.

21 November 2013

Date

Original signed by

Andrew Altevogt
Assistant Executive Officer
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Henry J. Tosta (Operator), hereinafter "Discharger", in connection with Administrative Civil Liability Complaint R5-2013-0592 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. (***Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of three hundred ten thousand seven hundred seventy five dollars (\$310,775).***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **\$310,775 in full**.

The Discharger shall remit payment, by check, which will contain a reference to "ACL Complaint R5-2013-0592" and will be made payable to the "State Water Resources Control Board Waste Discharge Permit Fund". Payment must be received by **13 December 2013** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **6/7 February 2014** Central Valley Water Board meeting.

I understand that payment of the **\$310,775** in full 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.

-or-

4. (***Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) 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 reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

-or-

5. (***Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. 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 Regional Water Board within 90 days after service of the complaint but reserve the ability to request a hearing in the future. 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.

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HENRY J. TOSTA
SAN JOAQUIN COUNTY

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

Penalty Methodology: Specific Factors Considered

ATTACHMENT B
Penalty Calculation for Civil Liability

Attachment A – ACL Complaint No. R5-2013-0592
Specific Factors Considered for Administrative Civil Liability
HENRY J. TOSTA
SAN JOAQUIN COUNTY

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 sections 13350, subdivision (a) and 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.

A. Factors Considered Relating to Dead Cow Discharge to Groundwater

The following steps are used in determining administrative civil liability for the discharge of dead cows to groundwater.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5). The designated beneficial uses of groundwater for this region are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply. Impacts to beneficial uses are reasonably expected to occur from the discharge of dead cows to groundwater. The decomposition of a dead mature cow releases approximately 63 gallons of fluid¹; a 1,200 pound cow carcass contains from 24 to 36 pounds of organic nitrogen^{2,3}. The U.S. Environmental Protection Agency in the National Primary Drinking Water Regulations has set a maximum contaminant level (MCL) in drinking water for nitrogen in the form of nitrate-nitrogen of 10 mg/l. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome. The Water Quality Control Plan for the Sacramento and San Joaquin River Basins, 4th Edition (Basin Plan), for drinking water the Most Probable Number (MPN) of coliform organisms over any seven-day period shall not exceed 2.2/100 mL. While not a health threat in itself, coliform is used to indicate whether other potentially harmful bacteria may be present. Any positive result for the coliform bacteria *E.coli* is a cause for concern according to the U.S. Environmental Protection Agency's Primary Drinking Water Regulations, because *E.coli* only comes from human and animal fecal waste. Groundwater

¹ Nutsch, N. and M. Spire. 2004. Carcass Disposal: A Comprehensive Review

² Payne, J. On-Farm Mortality Composting of Livestock (Oklahoma Cooperative Extension Service BAE-1749)

³ Glanville, T. Planning Considerations for Dairy Cattle Disposal by On-Farm Burial, Department of Agricultural and Bio-systems Engineering.

samples collected from the excavation when some of the dead cows were removed contained nitrate-nitrogen at 21.9 and 30 mg/l, and total coliform greater than 2419.6 MPN/100/mL, well in excess of the MCL for nitrate-nitrogen and the Basin Plan standard for coliform. In addition, both samples contained E.coli, at 68.9 and 156.5 MPN/100mL. These concentrations are cause for serious concern, and while bacteria can attenuate as they move through soil, attenuation of nitrate-nitrogen is unpredictable. However, based on available data on the location and construction of existing supply wells in the area, staff would expect that the nitrate and bacteria in groundwater would attenuate or dilute over time without appreciable effects on local receptors. Because the nitrate-nitrogen and bacteria concentrations exceed the limits that are protective of water quality, the Prosecution Team has identified the burial of dead cows in shallow groundwater as a moderate threat to beneficial uses, where impacts are reasonably expected without appreciable or chronic effects. A score of **3** is assigned for this factor.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways. The Discharger illegally buried dead cows in several feet of groundwater, which results in the direct discharge of decomposing flesh to waters of the state. The decomposition of a dead cow releases many chemicals, including nitrogen and chloride⁴, and potential pathogens such as E.coli, salmonellae, campylobacter spp., and prions. If the cows were treated with antibiotics or other pharmaceuticals, these chemicals are released into the groundwater as well via the decomposing flesh⁵. The chemicals discharged into groundwater as a result of the illegal burial of dead cows has the potential to pose a significant threat to environmental and human health. Because the release of nitrogen, chloride, and pathogens from decomposing cow carcasses poses "a significant risk or threat to potential receptors", a score of **4** was assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, more than 50% of the discharge was susceptible to abatement. Once the source of the discharge (the dead cow carcasses) was removed from groundwater, the ongoing discharge of decomposing carcass materials would have stopped. In addition, the Discharger could have abated at least some of the impacts of the discharge of its waste if it pumped the underlying groundwater and applied it to cropland. Therefore, a factor of **0** is assigned.

Final Score – "Potential for Harm"

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 7** was calculated. The total score is then used in Step 2, below.

⁴ Freedman, R. and R. Fleming. 2003. Water Quality Impacts of Burying Livestock Mortalities.

⁵ Watanabe et al.. 2010. Use and Environmental Occurrence of Antibiotics in Free Stall Dairy Farms with Manured Forage Fields, Environ. Sci 44:6591-6600.

Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for the discharge based on a per-day basis.

Per Day Assessments for Discharge Violations

The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.31 based on the total score from Step 1 and the deviation from requirements. The deviation from requirements was determined to be major where the requirement was rendered ineffective. The burial of dead cows is a violation of Prohibition A.6 of the Dairy General Order which prohibits the burial of animal carcasses at a facility enrolled under the Dairy General Order.

The days of violation for the buried dead cows that are the subject of this enforcement action have been calculated from 1 May 2012, the date of the inspection when dead cows were first observed buried in groundwater, to 25 June 2012, the date the carcasses were hauled off to a landfill, or a total of 56 days. Therefore, the Per Day Assessment is calculated as: (0.31 factor from Table 2) x (56 days) x (\$5,000 per day). The **Initial Liability** value is **\$86,800**.

Step 3 – Per Day Assessment for Non-Discharge Violation

The Enforcement Policy states that the Central Valley Water Board shall calculate an initial liability for each non-discharge violation. In this case, this factor does not apply because all of the violations are related to the discharge of pollutants via dead animals, and the liability was determined in Step 2.

Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator’s conduct that should be considered for modification of the initial liability amount: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

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. The Discharger was given a multiplier value of **1.5**. The Discharger was notified in 30 June 2007 of the Dairy’s enrollment under the Dairy General Order and was provided with a copy of the Dairy General Order. Additionally, the Discharger’s Waste Management Plan for the Dairy identifies a renderer for the disposal of dead cows from the Dairy. Nonetheless the Discharger buried dead cows from the Dairy at the Reeve Road Heifer Ranch. Prohibition A6 of the Dairy General Order prohibits the disposal of dead animals on property except in certain very limited emergency circumstances. The Discharger disposed of his cattle in a manner in violation of the Dairy General Order.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. The Discharger did cooperate with the Cleanup and Abatement Order R5-2012-0709 (CAO) directive where the

Discharger removed between eight and twelve cows and properly disposed of them by the required deadline. However, the Discharger did not cleanup the dead cows voluntarily and was ordered to do so under the CAO. Additionally, the Discharger has not taken actions to clean up or remediate the contaminated soil and water. On balance, the cleanup and cooperation multiplier factor has been set at **1.0**, which neither increases nor decreases the proposed liability.

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 Henry Tosta has a history of violations of water quality laws. On 25 July 2013 the Central Valley Water Board adopted Order No. R5-2013-0095 imposing an administrative civil liability in the amount of \$685,000 for the Discharger's noncompliance at the Henry Tosta Dairy for the discharge of manure to groundwater and violations of a cleanup and abatement order. Staff, therefore, assessed a multiplier value of **1.1**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for the violation is determined by multiplying the Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability Amount: This value is calculated as the Initial Liability (\$86,800) X Adjustment Factors **(1.5) (1.0) (1.1)** and is equal to **\$143,220**.

B. Factors Considered Relating to Violation of CAO Directive 2: Submittal of Legal Proof of Disposal of Animal Carcasses

The following steps are used in determining administrative civil liability for the failure to timely submit proof of legal disposal of illegally buried carcasses by 2 July 2012. A report with narrative and photographs documenting removal of animal remains was received by the Central Valley Water Board on 20 July 2012.

Because this is a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not addressed.

Step 3 – Per Day Assessment for Non-Discharge Violation

The per-day factor for the violation is 0.35. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

a. The Potential for Harm for the violation is determined to be moderate. The purpose of the proof of legal disposal via a comprehensive report is to document that the illegally buried animals have indeed been removed and do not pose an ongoing threat to water quality. Delay in the submittal of the report results in ongoing questions about the method and thoroughness of removal activities and whether the discharge has ceased and the waste properly hauled to the appropriate landfill.

b. The Deviation from Applicable Requirements is moderate. The Discharger's submission was 18 days late; therefore the effectiveness of the requirement was only partially achieved.

The length of the violation is alleged from 3 July 2012 (the day after the report was due) to 20 July 2012 (the date the Central Valley Board received from the Discharger a report and receipt from the landfill) for a total of 18 days date. Therefore the Per Day Assessment is calculated as (0.35 factor from Table 3) x (18 days) x (\$1,000 per day). **The Initial Liability value is \$6,300.**

Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the initial liability amount: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

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. The Discharger was given a multiplier value of 1.3. Evidence does not support a finding of negligent or intentional behavior, justifying a 1.5; or of inadvertent behavior, justifying a lower multiplier. The Discharger was aware of the need for the timely submittal of the comprehensive report but failed to submit the report on time in accordance with the deadlines in the CAO.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. A report was submitted by representatives of the Echeverria General Partnership, although it was not timely. The report was ultimately submitted not long after the deadline. The Discharger was assessed a neutral multiplier value of **1.0**.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. For the reasons stated above, staff assessed a multiplier value of **1.1**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for the violation is determined by multiplying the Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability Amount: This value is calculated as the Initial Liability (\$6,300) X Adjustment Factors **(1.3) (1.0) (1.1)** and is equal to **\$9,009**.

C. Factors Considered Relating to Violation of CAO Directive 4: Failure to Submit a Groundwater Remediation Plan

Because this is a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not addressed.

Step 3 – Per Day Assessment for Non-Discharge Violation

The per-day factor for the violation is **0.40**. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

a. The Potential for Harm for the violation is determined to be moderate. The CAO directed the discharger to collect groundwater samples and determine if the illegal burial of dead animals has caused pollution of groundwater. Groundwater samples indicated pollution as described in the Complaint. Therefore a groundwater remediation plan was required under the CAO. For the period of time the plan had not been submitted, the plan cannot be approved or implemented, and groundwater impacts will remain unremediated.

b. The Deviation from Applicable Requirements is moderate. The Discharger submitted the Groundwater Remediation Plan approximately eight months late; therefore the effectiveness of the requirement was only partially achieved.

The length of the violation is alleged from 28 August 2012 (the date the groundwater remediation plan was due) through 12 April 2013 (the date that a groundwater remediation plan was received), a total of 228 days. Therefore, the Per Day Assessment is calculated as (0.4 factor from Table 3) x (228 days) x (\$1,000 per day). **The Initial Liability value is \$91,200.**

Step 4 – Adjustment Factors

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the initial liability amount: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Day Violations

For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a plan is a one-time violation that does not result in an economic benefit that can be measured on a daily basis. Therefore, an adjustment can be made. The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-

day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = (.4) X (13 days of violation) X (\$1,000) = \$5,200

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. The Discharger was given a multiplier value of **1.4**. The CAO clearly stated the requirement to submit the groundwater remediation plan if groundwater sampling indicated groundwater pollution. The Status letter issued by staff on 14 September 2012 states that staff's evaluation of groundwater data received from the Discharger's consultant on 20 July 2012 indicates negative impacts to groundwater from dairy operations and states that a plan for the remediation of the groundwater was required by 27 August 2012. The plan was not received until 12 April 2013, approximately eight months after the due date in the CAO.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. Because the remediation plan was not submitted until 12 April 2013, the Discharger was given a higher factor than a neutral score of 1.0. Instead, the Discharger is given a multiplier value of **1.1**.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. For the reasons stated above, Staff assessed a multiplier value of **1.1**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for the violation is determined by multiplying the Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability Amount: This value is calculated as the Revised Initial Liability (**\$5,200**) X Adjustment Factors (**1.4**) (**1.1**) (**1.1**) and is equal to **\$8,808.80**.

D. Factors Considered Relating to Violation of CAO Directive 4: Failure to Remove and Properly Dispose of the Manure Containing Animal Remains from the Area South of the Wastewater Lagoon

Because this is a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not addressed.

Step 3 – Per Day Assessment for Non-Discharge Violation

The per-day factor for the violation is 0.55. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

a. The Potential for Harm for the violation is determined to be moderate. The Discharger placed dead cows in an area south of the lagoon at the Heifer Ranch and covered the cows with manure. When the lagoon at the Heifer Ranch was cleaned out, as required by the CAO, the removed manure, which also contained animal remains, was added to the pile of manure containing animal remains south of the wastewater lagoon. Land application of manure containing residues from mammalian tissue is not allowed because pathogens that are resistant to decomposition may be present, including prions responsible for Transmissible Spongiform Encephalopathy (TSE). Prions are very resistant to degradation, heat, and normal sterilization processes. While TSE is rare, should prions be present in a cow placed in the manure, prions could be transferred to the soil when the manure is land applied. The disease can be transmitted at very low exposure levels⁶ and is fatal to humans. Because of the severity of the impacts of TSE, should the disease-causing prions be present, this material must be discharged to a landfill that is permitted to accept this material.

b. The Deviation from Applicable Requirements is major. The Discharger has failed to remove the manure containing animal remains. By adding manure from the lagoon to the piled manure containing animal remains, the total volume of material requiring landfill disposal has actually increased from the amount at the time of issuance of the CAO. The Discharger has been repeatedly informed of the requirement to haul this material to an appropriate landfill; this requirement was reiterated in letters dated 14 September 2012, 26 August 2013, and 29 October 2013. The Discharger has rendered the requirement ineffective, therefore warranting a major deviation from requirements.

The length of the violation is alleged from 30 June 2012 (the day after the manure and animal remains were to be removed per the CAO) through 15 November 2013, the date of the last inspection by staff, for a total of 504 days late. Therefore the Per Day Assessment is calculated as (0.55 factor from Table 3) x (504 days) x (\$5,000 per day). The Initial Liability value is \$1,386,000.

Step 4 – Adjustment Factors

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the initial liability amount: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Day Violations

For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if

⁶ Federal Register 21 CFR 589, 25 April 2008, p 22725, Department of Health and Human Services, Food and Drug Administration, Substances Prohibited From Use in Animal Food or Feed.

any, resulting from the violation. The failure to remove the manure and animal remains does not result in an economic benefit that can be measured on a daily basis. Therefore, an adjustment can be made. The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = (.55) X (22 days of violation) X (\$5,000) = **\$60,500**

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. The Discharger was given a multiplier value of **1.5**. The CAO issued to the Discharger clearly stated the requirement to remove the manure and animal remains by 29 June 2012. The Status letter sent to the Discharger on 14 September 2012, and additional letters sent on 26 August 2013 and 29 October 2013, reminded the Discharger that the removal had not been done. The manure and animal remains have not been removed as of 14 November 2013. Despite repeated attempts by staff to reach out to and remind the Discharger of the outstanding violation, the Discharger has failed to comply with the requirements of the CAO. Staff assessed the Discharger's behavior as intentional and therefore, assessed a multiplier of 1.5.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated 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. Because the manure and animal remains have not been removed, because the Discharger and the Discharger's consultant have repeatedly questioned the need to remove the material to a landfill without taking any steps towards removal, and because actions taken at the Heifer Ranch have only increased the amount of material requiring landfill disposal, the Discharger was given the maximum multiplier value of **1.5**.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. For the reasons stated above, Staff assessed a multiplier value of **1.1**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability Amount: This value is calculated as the Revised Initial Liability (**\$60,500**) X Adjustment Factors (**1.5**) (**1.5**) (**1.1**) and is equal to **\$149,737.50**

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

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. Below is an initial analysis of the Discharger's financial situation, which may be revised based on the submission of additional information by the Discharger. As part of the cost of doing business, the Discharger is liable for compliance with the Dairy General Order at the Reeve Road Heifer Ranch and for penalties the Central Valley Water Board assesses for failing to comply with the Dairy General Order.

Besides the available income that may be generated from operations at the Reeve Road Heifer Ranch, the Discharger owns and operates a 1,196 cow dairy in the immediate area. The dairy is an ongoing business that potentially generates profits that may be used to pay the assessed penalty. The Discharger owns an additional five parcels of land in the vicinity of the Heifer Ranch, together with a restaurant/bar in a neighboring community. Public records show that the Discharger is the legal property owner of the following parcels.

APN 229-060-15 (agricultural); APN 239-270-06 (residential); APN 209-290-06 (agricultural); APN 209-290-07 (agricultural); APN 209-300-18 (agricultural); APN 239-160-02; APN 239-160-16 (dairy); APN 239-160-15 (agricultural); APN 212-090-01 (agricultural); APN 239-270-02 agricultural); APN 209-300-18 (agricultural); APN 249-020-06; APN 229-060-16 (agricultural); APN 229-060-17 (agricultural)

Based on the information publicly available and without additional information provided by the Discharger, the Discharger has the available assets to pay the proposed administrative civil liability amount and continue in business.

Step 7 – Other Factors as Justice May Require

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

Step 8 – Economic Benefit

The Enforcement Policy requires that the Economic Benefit of Noncompliance be estimated for every violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Discharger realized a gain by not expending the resources to comply with water quality laws, including the Dairy General Order and the Cleanup and Abatement Order. The Discharger has realized an economic benefit of noncompliance of \$4,795. The economic benefit of noncompliance is estimated by calculating the time value of the delayed expenditures, net of taxes, and inflation using the U.S. Environmental Protection Agency's BEN model⁷.

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USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding

The economic benefit of noncompliance of \$4,334, for the disposal of manure containing animal remains does not take into account the actual cost of disposing of the waste. Additionally, the total economic benefit of noncompliance of \$4,795 does not consider the benefit derived from an illegal competitive advantage by operating without complying with its permit and/or the requirements of the Cleanup and Abatement Order.

Final adjusted liability

The final adjusted liability is **\$310,775**.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: \$3,047,000

Minimum Liability Amount: the minimum liability is the lowest amount allowed by statute and by policy. The Enforcement Policy requires that, at a minimum, the assessed penalty must be equal to the economic benefit plus ten percent. The economic benefit of non-compliance plus ten percent is an estimated amount of **\$5,274**. The Adjusted Total Base Liability Amount is greater than economic benefit plus ten percent, and therefore, no adjustment is necessary based on the economic benefit analysis.

Below is a table with the minimum and maximum amounts allowed by statute. The proposed liability amount for each violation falls within the minimum and maximum allowable amounts.

Violation	Statute	Minimum	Maximum	Proposed
Dead Cow Discharge to Groundwater	Water Code sections 13350(e)(1) and 13350(e)(1)(A)	\$28,000	\$280,000	\$143,220
Violation of CAO Directive 2: Submittal of Legal Proof of Disposal of Animal	Water Code section 13268	--	\$18,000	\$9,009

required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs. BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or “cash flows,” as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

Carcasses				
Violation of CAO Directive 4: Failure to Submit a Groundwater Remediation Plan	Water Code section 13268	--	\$229,000	\$8,808.80
Violation of CAO Directive 4: Failure to Remove and Properly Dispose of the Comingled Manure and Animal Remains from the Wastewater Lagoon and from the Area South of the Wastewater	Water Code sections 13350(e)(1) and 13350(e)(1)(B)	\$50,400	\$2,520,000	\$149,737.50

Step 10 – Final Liability Amount

Liabilities imposed by the Regional Water Board are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability should fully eliminate any economic advantage obtained from noncompliance, fully eliminate any unfair competitive advantage obtained from noncompliance, bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation, deter the specific Discharger from committing further violations, and deter similarly situated persons in the regulated community from committing the same or similar violations. The methodology outlined in the Enforcement Policy is a process for arriving at a liability amount consistent with these objectives.

The final proposed liability amount of **\$310,775** is consistent with the methodology in the Enforcement Policy and with the objectives outlined above. .

Penalty Calculation for Civil Liability, Henry J. Tosta
Reeve Road Heifer Ranch
Attachment B

Penalty Calculation Methodology Worksheet - Version Date: 6/24/2010
 Password for Workbook Protection: enforcement

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item **3 = Moderate**
 Select Item **4 = Discharged material poses significant risk**
 Select Item **> 50% of Discharge Susceptible to Cleanup or A**
 Select Item **Major**

Select Item **Potential Harm for Discharge Violations**
 Select Item **Characteristics of the Discharge**
 Select Item **Susceptibility of Cleanup or Abatement**
 Select Item **Moderate**

Discharger Name/ID: **Henry J Tosta, Reeve Road Heifer Ranch, Tracy, San Joaquin County**

		Dairy General Order Violation: Dead Cow Discharge to Groundwater		CAO Directive 2: Submittal of Legal Proof of Disposal		CAO Directive	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	7				
	Step 2	Per Gallon Factor (Generated from Button)	0.31				
		Gallons					
		Statutory / Adjusted Max per Gallon (\$)					
		Total		\$ -			
Non-Discharge Violations	Step 3	Per Day Factor (Generated from Button)	0.31				
		Days	56				
		Statutory Max per Day	5000.00				
		Total		\$ 86,800		\$ -	
		Initial Amount of the ACL		\$ 86,800.00		\$ 6,300.00	
Add'l Factors	Step 4	Culpability	1.5	\$ 130,200.00	1.3	\$ 8,190.00	1.4
		Cleanup and Cooperation	1	\$ 130,200.00	1	\$ 8,190.00	1.1
		History of Violations	1.1	\$ 143,220.00	1.1	\$ 9,009.00	1.1
	Step 5 Total Base Liability Amount		\$ 310,775.30				
	Step 6	Ability to Pay & to Continue in Business		\$ -			
	Step 7	Other Factors as Justice May Require		\$ -			
Staff Costs			\$ -				
	Step 8	Economic Benefit		\$ 4,795.00			
	Step 9	Minimum Liability Amount		\$ 5,274.50			
		Maximum Liability Amount		\$ 3,047,000			
	Step 10	Final Liability Amount		\$ 310,775.30			

Penalty Day Range Generator				Penalty Day Range Generator			
Start Date of Violation=		5/1/12		Start Date of Violation=		7/3/12	
End Date of Violation=		6/25/12		End Date of Violation=		7/20/12	
Maximum Days Fined (Steps 2 & 3) =		56		Maximum Days Fined (Steps 2 & 3) =		18	
Minimum Days Fined (Steps 2 & 3) =		7		Minimum Days Fined (Steps 2 & 3) =		4	
		Days				Days	

Penalty Calculation for Civil Liability, Henry J. Tosta
Reeve Road Heifer Ranch
Attachment B

Potential Harm for Discharge Violations
 Characteristics of the Discharge
 Susceptibility of Cleanup or Abatement
 Major

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

4: Submission of Groundwater Remediation Plan	CAO Directive 4: Proper Disposal of Comingled Manure and Dead Animal Remains	Violation 5
\$ -	\$ -	\$ -
		0
\$ -	\$ -	\$ -
	0.55	
	22	
	\$ 5,000	
\$ 5,200.00	\$ 60,500.00	\$ -
\$ 5,200.00	\$ 60,500.00	\$ -
\$ 7,280.00	\$ 90,750.00	\$ -
\$ 8,008.00	\$ 136,125.00	\$ -
\$ 8,808.80	\$ 149,737.50	\$ -

296

1480000

Penalty Day Range Generator	Penalty Day Range Generator
Start Date of Violation= 8/28/13	Start Date of Violation= 6/30/12
End Date of Violation= 4/12/13	End Date of Violation= 11/15/13
Maximum Days Fined (Steps 2 & 3) = 228	Maximum Days Fined (Steps 2 & 3) = 504
Minimum Days Fined (Steps 2 & 3) = 13	Minimum Days Fined (Steps 2 & 3) = 22

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.

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2013-0592

HENRY J. TOSTA
SAN JOAQUIN COUNTY

SCHEDULED FOR 6/7 February 2014

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.

Overview

Pursuant to Water Code section 13323, the Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to Henry J. Tosta, alleging violations of Water Code section(s) 13267 and 13350 for discharging waste into waters of the state and failing to comply with Cleanup and Abatement Order R5-2012-0709 and Water code section 13267 for failing to furnish technical or monitoring reports. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$310,775. A hearing is currently scheduled to be conducted before the Board during its 6/7 February 2014 meeting.

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. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's 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 Board's web page at:

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

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

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

Separation of Prosecutorial and Advisory 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 Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Kenneth Landau, Assistant Executive Officer, and Alex Mayer, Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer, Andrew Altevogt, Assistant Executive Officer, Robert Busby, Supervising Engineering Geologist, Charlene Herbst, Senior Engineering Geologist, Sean Walsh, Environmental Scientist, Gilberto Corral, Water Resources Control Engineer, Vanessa Young, Staff Counsel and David Boyers, Assistant Chief Counsel.

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. 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.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties 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). At the hearing, 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 Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Henry J. Tosta

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670

Phone: (916) 464-4726

ken.landau@waterboards.ca.gov

Alex Mayer, 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) 341-5051;
alex.mayer@waterboards.ca.gov

Prosecution Team:

Andrew Altevoigt, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4656;
andrew.altevoigt@waterboards.ca.gov

David Boyers, Assistant Chief Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: 916-341-5276;
david.boyers@waterboards.ca.gov

Discharger

Henry J. Tosta
20662 San Jose Road
Tracy, CA 95304

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

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), to cross-examine witnesses (if warranted), and to provide a closing statement. 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 no later than the deadline listed under "Important Deadlines" below. 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. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

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

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information 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 not generally receive copies of materials incorporated by reference unless copies are provided, 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.
4. The qualifications of each expert witness, if any.

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

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly 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.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: 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 the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

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 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.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other 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 shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL 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, Rancho Cordova, CA 95670. 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 Andrew Altevogt (contact information above) for assistance obtaining copies.

Questions

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

IMPORTANT DEADLINES

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

21 November 2013	<ul style="list-style-type: none"> ▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
2 December 2013	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request “Designated Party” status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
9 December 2013	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
13 December 2013	<ul style="list-style-type: none"> ▪ Discharger’s deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
16 December 2013	<ul style="list-style-type: none"> ▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
17 December 2013	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence and Policy Statements,” above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
6 January 2014	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence and Policy Statements” above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons’ comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
14 January 2014	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
16 January 2014	<ul style="list-style-type: none"> ▪ Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
6/7 Feb 2014	<ul style="list-style-type: none"> ▪ Hearing

** Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “*” will be revised if a settlement cannot be reached.*

† This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.

