

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER R5-2022-00XX

VACATING ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0022

IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT
WASTEWATER TREATMENT FACILITY
FRESNO COUNTY

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), finds the following:

1. On 27 January 2016, the Central Valley Water Board's Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint R5-2016-0512 to Malaga County Water District (Malaga), alleging violations of Malaga's Waste Discharge Requirements/NPDES Permit, Order No. R5-2008-0033, and Cease and Desist Order, Order No. R5-2008-0032. The ACL Complaint proposed the Board impose administrative civil liability for Malaga's failure to (a) implement a legally sufficient pretreatment program required under its permit and (b) submit a treatment and disposal capacity study and propose a workplan as required by the Cease and Desist Order.
2. On 21 April 2016, the Central Valley Water Board held a hearing on the ACL Complaint and issued ACL Order R5-2016-0022 for the violations alleged in the Complaint, imposing a \$1,036,728 administrative civil liability against Malaga.
3. Malaga petitioned to the State Water Resources Control Board and, on 16 September 2016, filed a Petition for Writ of Mandate against the Central Valley Water Board with the Fresno County Superior Court.
4. On 21 June 2018, the superior court granted Malaga's Petition for Writ of Mandate, finding the hearing procedure used for the ACL Complaint administrative hearing was an "underground regulation" in contravention of the Administrative Procedure Act's rulemaking provisions. (Fresno County Superior Court Case No. 16-CECG-03036.) The Central Valley Water Board appealed.
5. On 10 December 2020, the Fifth District Court of Appeal affirmed the superior court's ruling that at least portions of the hearing procedure constituted an underground regulation but remanded the matter to the superior court to first consider whether use of the hearing procedure was harmless. (*Malaga County Water District v. Central Valley Regional Water Quality Control Board* (2020) 58 Cal. App. 5th 418.)

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6. On remand, the superior court found the Board's error in using the invalid hearing procedure was not harmless and issued a Writ of Mandate directing the Board to set aside ACL Order R5-2016-0022 and file a return by February 28, 2022, stating what it has done to comply with the Writ of Mandate.

ACCORDINGLY, IT IS ORDERED:

1. As directed by the Fresno County Superior Court's 18 November 2021 Writ of Mandate, the Central Valley Water Board vacates ACL Order R5-2016-0022.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the [law and regulations applicable to filing petitions](#) may be found on the Internet at: (http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

I, PATRICK PULUPA, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on XX February 2022.

PATRICK PULUPA, Executive Officer