

**Regional Water Quality Control Board, Central Valley Region  
Board Meeting – 17/18 February 2022**

RESPONSE TO COMMENTS ON PROPOSED ORDER VACATING  
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0022 IN THE MATTER OF  
MALAGA COUNTY WATER DISTRICT, WASTEWATER TREATMENT FACILITY,  
FRESNO COUNTY

At a public meeting scheduled for 17 and 18 February 2022, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider adoption of the proposed Order Vacating Administrative Civil Liability Order R5-2016-0022.

The Central Valley Water Board provided the parties to Administrative Civil Liability (ACL) Order R5-2016-0022 the opportunity to submit written comments on the proposed Order by 24 January 2022. Written comments were received by Malaga County Water District on 14 January 2022. Some changes were made to the proposed Order based on comments received. This document contains staff responses to written comments submitted during the comment period.

**Comment No. 1:** The adoption of the proposed Order will result in a motion to rescind the order or have the regional board held in contempt because it includes inaccurate factual recitations.

**RESPONSE:** The proposed Order contains background information for the Writ of Mandate to help provide context and justification for the Board's action to vacate ACL Order R5-2016-0022. Malaga does not identify any specific inaccuracies in these findings or propose specific revisions other than to delete all six paragraphs. The proposed Order has not been revised in response to this comment.

**Comment No. 2:** The proposed Order illegally directs the Assistant Executive Officer because it merges the adjudicative functions with the prosecutorial function and suggests a procedure not allowed under Water Code section 13323.

**RESPONSE:** As initially circulated to the parties, the proposed Order expressly acknowledged that it is within the discretion of the Assistant Executive Order to determine how to proceed on ACL Complaint R5-2016-0512 and encouraged prompt resolution of this matter. The Fresno County Superior Court's Minute Order of 21 September 2021 remanded the matter back to the Board for further proceedings in accordance with the APA and its regulations, and the Writ of Mandate directing the Board to vacate ACL Order R5-2016-0022 noted that nothing therein shall limit or control the discretion legally vested in the Central Valley Water Board. Following an adoption of an order vacating the enforcement order, the Assistant Executive Officer would retain the discretion to rescind ACL Complaint R5-2016-0512 or schedule it for rehearing consistent with the Fresno County Superior Court's Minute Order. Malaga does not identify what other

procedure would be appropriate following an order vacating ACL Order R5-2016-0022.

Nonetheless, the proposed Order has been revised to delete provisions concerning actions following adoption of an order vacating ACL Order R5-2016-0022 as unnecessary. The Assistant Executive Officer retains discretion on how to proceed on ACL Complaint R5-2016-0512. Board staff continue to encourage prompt resolution of this matter, consistent with Water Code section 13323.

**Comment No. 3:** The entire Board is disqualified from hearing the ACL Complaint due to an unacceptable probability of an actual bias.

**RESPONSE:** This comment is beyond the scope of the proposed Order vacating ACL Order R5-2016-0022. If the Assistant Executive Officer, within his discretion, schedules ACL Complaint R5-2016-0512 for rehearing, Malaga will have an opportunity to move to disqualify members of the Board and the Advisory Team. The proposed Order has not been revised in response to this comment.