



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## California Regional Water Quality Control Board, San Diego Region

October 1, 2012

**Via Certified Mail Return Receipt & Fax**  
7011 0470 0002 8961 6442

In reply refer to:

**CAU: 9 000002314: FMelbourn**  
**CIWQS Place ID: 769449**

Mr. Gordon L. Gerson, Esq.  
Agent for Service of Process  
Ariel Suites, L.P.  
Gerson Law Firm APC  
9255 Towne Center Drive  
San Diego, CA 92121-3033  
Fax Number: (858) 452-5410

Mr. Gerson:

### **NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2012-0065 FOR ADMINISTRATIVE CIVIL LIABILITY WITH MANDATORY MINIMUM PENALTIES AGAINST ARIEL SUITES, L.P. FOR VIOLATION OF ORDER NO. R9-2007-0034, NPDES NO. CAG919001**

Enclosed find Complaint No. R9-2012-0065 (Complaint) for Administrative Civil Liability with Mandatory Minimum Penalties against Ariel Suites, L.P. for \$138,000 for alleged violations of Order No. R9-2007-0034, NPDES No. CAG919001, *General Waste Discharge Requirements for Discharges From Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay, Tributaries Thereto Under Tidal Influence, and Storm Drains or Other Conveyance Systems Tributary Thereto*. The alleged violations are described in the Complaint.

#### Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) will hold a hearing on the Complaint no later than ninety (90) days after it is issued. You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of \$138,000 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the following to the San Diego Water Board by 5 p.m., on **October 23, 2012**:

1. The enclosed waiver form signed by an authorized agent of Ariel Suites, L.P; and
2. A check for the full amount of civil liability of \$138,000 made out to the "State Water Resources Control Board."

Mr. Gordon L. Gerson, Esq.  
Gerson Law Firm APC  
Ariel Suites, L.P.

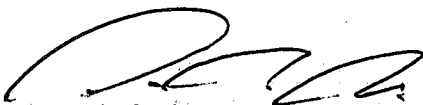
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Public Hearing

Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on **December 12, 2012**. The meeting is scheduled to convene at the San Diego Water Board, 9174 Sky Park Court, San Diego, California at 9 a.m. At that time, the San Diego Water Board will accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed Mandatory Minimum Penalties.

The heading portion of this letter includes a San Diego Water Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the San Diego Water Board pertaining to this matter. Please contact Mr. Frank Melbourn by email at [FMelbourn@waterboards.ca.gov](mailto:FMelbourn@waterboards.ca.gov) or by phone at (858) 467-2973 if you have any questions.

Respectfully,



JAMES G. SMITH  
Assistant Executive Officer

JGS:cmc:ftm

- Enclosures
1. Complaint No. R9-2012-0065
  2. Waiver of Public Hearing Form
  3. Proposed Hearing Procedures

**Mr. Gordon L. Gerson, Esq.**  
**Gerson Law Firm APC**  
**Ariel Suites, L.P.**

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**October 1, 2012**  
**ACL with MMPs**  
**R9-2012-0065**

Copy to:

1. Mr. Steve Donlon, Ariel Suites, L.P., 850 E. Desert Inn Road, Las Vegas, NV, 89109-9382, [steved@arielsuites.com](mailto:steved@arielsuites.com)
2. Mr. David W. Gibson, California Regional Water Quality Control Board, San Diego Region, [dgibson@waterboards.ca.gov](mailto:dgibson@waterboards.ca.gov)
3. Mr. Ken Greenberg, CWA, Compliance Office (WTR-7), USEPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3920, [greenberg.ken@epa.gov](mailto:greenberg.ken@epa.gov)
4. Catherine Hagan, Esq., California State Water Resources Control Board, Office of Chief Counsel, [chagan@waterboards.ca.gov](mailto:chagan@waterboards.ca.gov)
5. Leonard Hayden, P.E., Swinerton Builders, 16798 West Bernardo Drive, San Diego, CA 92127, [lhayden@swinerton.com](mailto:lhayden@swinerton.com)
6. Jessica Jahr, Esq., California State Water Resources Control Board, Office of Chief Counsel, [jjahr@waterboards.ca.gov](mailto:jjahr@waterboards.ca.gov)
7. Vanessa Young, Esq., California State Water Resources Control Board, Office of Enforcement, [vyoung@waterboards.ca.gov](mailto:vyoung@waterboards.ca.gov)

Order No. R9-2012-0065  
File: 14-2314.01 & 02  
NPDES No. CAG919001  
WDID No. 9 000002314  
Regulatory Measure: 380682 WDR  
Regulatory Measure: 387519 MMP  
Place ID: 769449  
Party ID: 528287

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**IN THE MATTER OF:**

Ariel Suites, L.P.  
Violation of Order No. R9-2007-0034,  
NPDES Permit No. CAG919001, *General  
Waste Discharge Requirements for Discharges  
From Temporary Groundwater Extraction and  
Similar Waste Discharges to San Diego Bay,  
Tributaries Thereto Under Tidal Influence, and  
Storm Drains or Other Conveyance Systems  
Tributary Thereto.*

Place ID: 769449

**COMPLAINT NO. R9-2012-0065  
FOR  
ADMINISTRATIVE CIVIL LIABILITY  
WITH  
MANDATORY MINIMUM PENALTIES**

**October 1, 2012**

**ARIEL SUITES, L.P. IS HEREBY GIVEN NOTICE THAT:**

1. Ariel Suites is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) must impose civil liability pursuant to section 13385 of the Water Code. The violations alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters for which the San Diego Water Board is required by statute to impose Mandatory Minimum Penalties (MMPs).
2. Extracted groundwater discharged to San Diego Bay is subject to San Diego Water Board Order No. R9-2007-0034, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG919001 (Order). The Order prescribes effluent limitations for the discharge of extracted groundwater directly into San Diego Bay or indirectly via a storm water conveyance system.
3. Water Code section 13385 requires that an MMP of \$3,000 be imposed for each "serious violation" of an effluent limitation. Water Code section 13385 (h)(2) defines a "serious violation" as "any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."
4. Water Code section 13385(i) requires that an MMP of \$3,000 be imposed for each non-serious violation of an effluent limitation contained in waste discharge requirements, not counting the first three violations, where there are four or more violations in any period of 180 days.

5. In addition to statutorily mandated MMPs, every violation of an NPDES permit is subject to discretionary liability under Water Code section 13385(a)(2), including violations not subject to MMPs under Water Code sections 13385 (h) or (i).
6. Pursuant to Appendix A to section 123.45 of the Code of Federal Regulations, Total Suspended Solids (TSS) is listed as a Group 1 Pollutants; and Copper, Nickel, and Tetrachloroethene (aka Tetrachloroethylene) are Group 2 Pollutants.
7. The San Diego Water Board hereby expressly reserves the right, at its sole discretion, to withdraw this Complaint for MMPs, and reissue a revised Complaint for discretionary administrative civil liabilities arising out of the allegations set forth herein.

**ALLEGATIONS**

8. Ariel Suites, L.P. reported effluent sampling results to the San Diego Water Board pursuant to Order No. R9-2007-0034's Monitoring and Reporting Program. Between February and July 2012, Ariel Suites, L.P. reported violations of effluent limitations for Copper, Nickel, Total Suspended Solids (TSS), and Tetrachloroethene (aka Tetrachloroethylene) as described in Table 1, Summary of Mandatory Minimum Penalty Violations.

**PROPOSED CIVIL LIABILITY**

9. Pursuant to Water Code sections 13385 (h) and (i), a mandatory minimum penalty of one hundred and thirty-eight thousand dollars (\$138,000) is recommended for the forty-seven (47) alleged violations of effluent limitations as identified in attached Table 1. Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Dated this first day of October 2012.



**JAMES G. SMITH**  
Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.

Attachment: Table 1, Summary of Mandatory Minimum Penalty Violations

**CIWQS Entries**

Regulatory Measure ID	380682 WDRs	387519 ACL Complaint
Party ID:	528287	
Place ID:	769449	

**Table 1 - Summary of Mandatory Minimum Penalty Violations**

Violation No.	Violation Date	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious?	Mandatory Minimum Penalty
1	2/27/2012	Copper	MDEL	ug/L	5.80	36.20	Yes <sup>1</sup>	\$3,000
2	2/27/2012	Copper	MDEL	lb/day	0.0348	0.0535	Yes	\$3,000
3	2/29/2012	Nickel	AMEL	ug/L	6.80	7.07	No <sup>2</sup>	\$0
4	2/29/2012	Tetrachloroethene	AMEL	ug/L	2.00	35.20	Yes	\$3,000
5	2/29/2012	Tetrachloroethene	AMEL	lb/day	0.0120	0.0692	Yes	\$3,000
6	2/29/2012	Copper	AMEL	lb/day	0.0174	0.0712	Yes	\$3,000
7	2/29/2012	Copper	AMEL	ug/L	2.90	36.20	Yes	\$3,000
8	3/5/2012	Nickel	MDEL	ug/L	13.60	14.60	No	\$3,000
9	3/5/2012	Copper	MDEL	ug/L	5.80	12.80	Yes	\$3,000
10	3/5/2012	TSS	Instantaneous Max	mg/L	50.00	52.00	No	\$3,000
11	3/13/2012	Copper	MDEL	ug/L	5.80	29.90	Yes	\$3,000
12	3/31/2012	Copper	AMEL	lb/day	0.0174	0.0476	Yes	\$3,000
13	3/31/2012	Copper	AMEL	ug/L	2.90	16.05	Yes	\$3,000
14	3/31/2012	Tetrachloroethene	AMEL	lb/day	0.0120	0.0404	Yes	\$3,000
15	3/31/2012	Tetrachloroethene	AMEL	ug/L	2.00	12.98	Yes	\$3,000
16	3/31/2012	TSS	AMEL	mg/L	30.00	45.25	Yes	\$3,000
17	4/6/2012	Copper	MDEL	ug/L	5.80	11.10	Yes	\$3,000
18	4/6/2012	Copper	MDEL	lb/day	0.0348	0.0361	No	\$3,000
19	4/6/2012	TSS	Instantaneous Max	mg/L	50.00	66.00	No	\$3,000
20	4/12/2012	Nickel	MDEL	ug/L	13.60	24.30	Yes	\$3,000
21	4/12/2012	Copper	MDEL	ug/L	5.80	17.20	Yes	\$3,000
22	4/12/2012	Copper	MDEL	lb/day	0.0348	0.0466	Yes	\$3,000
23	4/20/2012	Nickel	MDEL	ug/L	13.60	25.80	Yes	\$3,000
24	4/20/2012	Copper	MDEL	ug/L	5.80	10.10	Yes	\$3,000
25	4/30/2012	Tetrachloroethene	AMEL	lb/day	0.0120	0.0197	Yes	\$3,000
26	4/30/2012	Tetrachloroethene	AMEL	ug/L	2.00	6.70	Yes	\$3,000
27	4/30/2012	Nickel	AMEL	lb/day	0.0408	0.0531	Yes	\$3,000
28	4/30/2012	Nickel	AMEL	ug/L	6.80	18.05	Yes	\$3,000
29	4/30/2012	Copper	AMEL	lb/day	0.0174	0.0323	Yes	\$3,000
30	4/30/2012	Copper	AMEL	ug/L	2.90	10.96	Yes	\$3,000
31	4/30/2012	TSS	AMEL	mg/L	30.00	38.75	No	\$3,000
32	5/4/2012	Nickel	MDEL	ug/L	13.60	15.70	No	\$3,000
33	5/4/2012	Copper	MDEL	ug/L	5.80	9.76	Yes	\$3,000
34	5/4/2012	TSS	Instantaneous Max	mg/L	50.00	59.00	No	\$3,000
35	5/11/2012	Copper	MDEL	ug/L	5.80	10.80	Yes	\$3,000
36	5/18/2012	Copper	MDEL	ug/L	5.80	6.11	No	\$3,000
37	5/25/2012	TSS	Instantaneous Max	mg/L	50.00	57.00	No	\$3,000
38	5/31/2012	Nickel	AMEL	ug/L	6.80	12.85	Yes	\$3,000
39	5/31/2012	Copper	AMEL	ug/L	2.90	7.12	Yes	\$3,000
40	5/31/2012	TSS	AMEL	mg/L	30.00	37.75	No	\$3,000
41	6/1/2012	Nickel	MDEL	ug/L	13.60	16.40	Yes	\$3,000
42	6/1/2012	Copper	MDEL	ug/L	5.80	12.90	Yes	\$3,000
43	6/1/2012	TSS	Instantaneous Max	mg/L	50.00	52.00	No	\$3,000
44	6/30/2012	Nickel	AMEL	ug/L	6.80	9.69	Yes	\$3,000
45	6/30/2012	Copper	AMEL	ug/L	2.90	5.03	Yes	\$3,000
46	6/30/2012	TSS	AMEL	mg/L	30.00	36.25	No	\$3,000
47	7/2/2012	Copper	MDEL	mg/L	5.80	8.83	Yes	\$3,000
<b>TOTAL MMP</b>								<b>\$138,000</b>

<sup>1</sup> See paragraph 3 of Complaint.

<sup>2</sup> See paragraph 4 of Complaint. A "serious violation" may be counted as a violation to satisfy the first three violations; though such violation is not counted twice for the purpose of assessing the penalty amount.

AMEL: Average Monthly Effluent Limitation

MDEL: Maximum Daily Effluent Limitation

**WAIVER FORM**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2012-0065**

By signing this waiver, I affirm and acknowledge the following:  
I am duly authorized to represent Ariel Suites, L.P. in connection with Administrative Civil Liability Complaint No. R9-2012-0065 (hereinafter "Complaint"). I am informed that 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]. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if Ariel Suites, L.P. waives the hearing requirement and will pay the liability.)**

- a. *I hereby waive any right Ariel Suites, L.P. may have to a hearing before the San Diego Water Board.*
- b. *I certify that Ariel Suites, L.P. will remit payment for the civil liability imposed in the amount of one hundred and thirty-eight thousand dollars (\$138,000) by check that references "ACL Complaint No. R9-2012-0065" made payable to the "State Water Resources Control Board." Payment must be received by the San Diego Water Board by **October 23, 2012**, or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.*
- c. *I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the San Diego Water Board, and that the San Diego Water Board will consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Ariel Suites, L.P. having waived the right to contest the allegations in the Complaint and the imposition of civil liability.*

**(OPTION 2: Check here if Ariel Suites, L.P. waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right Ariel Suites, L.P. may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, Ariel Suites, L.P. requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that Ariel Suites, L.P. may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

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Print Name

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Title

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Signature

---

Date

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

PROPOSED HEARING PROCEDURES  
FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2012-0065  
ISSUED TO  
ARIEL SUITES, L.P.  
VIOLATION OF ORDER NO. R9-2007-0034

SCHEDULED FOR DECEMBER 12, 2012

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

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Administrative Civil Liability (ACL) Complaint No. R9-2012-0065 (Complaint) pursuant to Water Code section 13323 against Ariel Suites, L.P. (Discharger) alleging that it violated Order No. R9-2007-0034. The Complaint proposes that administrative civil liability in the amount of \$138,000 be imposed as authorized by Water Code section 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on December 12, 2012, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board at 9174 Sky Park Court, San Diego, California. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: <http://www.waterboards.ca.gov/sandiego/>.



**Proposed Hearing Procedures Page 2 of 7**  
**ACL Complaint No. R9-2012-0065**

Waiver of Hearing

Pursuant to Water Code section 13323, the San Diego Water Board will hold a hearing on the Complaint no later than ninety (90) days after it is issued. You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the following to the San Diego Water Board by 5 p.m., **October 23, 2012**:

1. The enclosed waiver form signed by an authorized agent of Ariel Suites, L.P; and
2. A check for the full amount of civil liability of \$138,000 made out to the "State Water Resources Control Board."

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN NOVEMBER 9, 2012, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

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

**Proposed Hearing Procedures Page 3 of 7**  
**ACL Complaint No. R9-2012-0065**

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

1. San Diego Water Board Prosecution Staff; and
2. Ariel Suites, L.P.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a “designated party,” and not already listed above, shall request “designated party” status by submitting a request in writing (with copies to the existing “designated parties”) no later than 5 p.m. on **October 16, 2012**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a “designated party” (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of “designated parties” as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be submitted by 5 p.m. on **October 23, 2012**. The parties will be notified by 5 p.m. on **October 26, 2012**, as to whether the request has been granted or denied.

**Contacts**

Advisory Staff

Catherine Hagan, Esq., Senior Staff Counsel, [chagan@waterboards.ca.gov](mailto:chagan@waterboards.ca.gov)  
David W. Gibson, Executive Officer, [djgibson@waterboards.ca.gov](mailto:djgibson@waterboards.ca.gov)  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4353

Prosecution Staff

Chiara Clemente, Sr. Environmental Scientist, [cclemente@waterboards.ca.gov](mailto:cclemente@waterboards.ca.gov)  
Robert Morris, P.E., Sr. Water Resource Control Engineer,  
[rmorris@waterboards.ca.gov](mailto:rmorris@waterboards.ca.gov)  
Frank Melbourn, Water Resource Control Engineer, [fmelbourn@waterboards.ca.gov](mailto:fmelbourn@waterboards.ca.gov)  
James Smith, Assistant Executive Officer, [jsmith@waterboards.ca.gov](mailto:jsmith@waterboards.ca.gov)  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4353

Discharger

Gordon L. Gerson, Esq.  
Agent for Service of Process  
Ariel Suites, L.P.  
Gerson Law Firm APC  
9255 Towne Center Drive  
San Diego, CA 92121-3033

Steve Donlon, Ariel Suites, L.P., [steved@arielsuites.com](mailto:steved@arielsuites.com)  
Leonard Hayden, P.E., Swinerton Builders, [lhayden@swinerton.com](mailto:lhayden@swinerton.com)

### Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff).

### Ex Parte Communications

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

### 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 twenty (20) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (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 5 p.m. on **November 16, 2012**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### Submission of Evidence and Policy Statements

The following information must be submitted 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 San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, section 648.3.
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.
5. (*Discharger only*) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence.

The Designated Parties shall submit two (2) hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **November 9, 2012**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by 5 p.m. on **November 9, 2012**. Interested persons do not need to submit written comments in order to speak at the hearing.

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

#### Request for Pre-Hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **October 12, 2012**.

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**ACL Complaint No. R9-2012-0065**

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **November 16, 2012**, to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, California 92123. 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 San Diego Water Board Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/sandiego/> . Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

Catherine Hagan, Esq.  
Senior Staff Counsel  
California Regional Water Quality Control Board, San Diego Region  
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Facsimile: (858) 571-6972

**IMPORTANT DEADLINES**

October 1, 2012: Prosecution Team issues ACL Complaint to Discharger, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.

October 12, 2012: Discharger's deadline to submit request for pre-hearing conference.

October 16, 2012: Designated Parties' deadline to object on proposed Hearing Procedures. Deadline for submission of request for designated party status.

October 19, 2012: Advisory Team issues Hearing Procedure.<sup>1</sup>

October 23, 2012: Discharger's deadline for waiving right to hearing. Deadline for opposition to request for designated party status.

October 26, 2012: Advisory Team issues decision on requests for designated party status, if any.

November 9, 2012: Designated Parties' deadline to submit all information required under "Evidence and Policy Statements." Interested persons' deadline to submit written non-evidentiary policy statements.

November 16, 2012: Designated Parties' deadline to submit rebuttal evidence (if any) and evidentiary objections. Deadline to submit request for additional hearing time.

December 12, 2012: Hearing.

Proposed  
\_\_\_\_\_  
DAVID W. GIBSON  
Executive Officer

\_\_\_\_\_  
Date

<sup>1</sup> These proposed hearing procedures become final without issuance by the Advisory Team if no objection to the procedures is timely submitted and the Advisory Team does not issue revised hearing procedures on or before this date.