



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

September 21, 2010

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Douglas McCormick
Allied Commercial Partners
Agent for Service of Process for
San Jacinto Fund, LLC
165 South Union Blvd,
Suite 510
Lakewood, CO, 80228

TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2010-0042

To the Agent for Service of Process:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2010-0042 (hereinafter "the Complaint"). The Complaint alleges that San Jacinto Fund, LLC violated California Water Code (CWC) Section 13268(a)(1) by failing to submit technical reports as required under Section 13267 of the CWC. Pursuant to CWC Section 13268(b)(1), the Regional Board may impose administrative civil liability for violations of Section 13268(a)(1). The Complaint proposes that administrative civil liability in the amount of twenty-one thousand dollars (\$21,000) be imposed as authorized under CWC Section 13268(b)(1). Also enclosed are a Waiver Form and a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet that describes the Complaint process and explains what San Jacinto Fund, LLC can expect and its obligations as the process proceeds is available at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

If preferred, a hard copy of the Fact Sheet may be obtained by contacting Stephen D. Mayville at (951) 782-4992.

Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.

Unless waived, a public hearing on this matter will be held during the Regional Board meeting on December 9, 2010. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, San Jacinto Fund, LLC may waive its right to a hearing. Should San Jacinto Fund, LLC waive its right to a hearing and pay the proposed

California Environmental Protection Agency

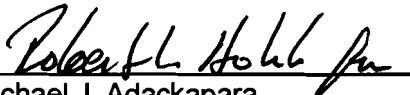


assessment, the Regional Board may not hold a public hearing on this matter. In addition, paragraph 31 of the Complaint proposes a reduction in the civil liability if certain conditions are met. If San Jacinto Fund, LLC chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form to this office by October 20, 2010. If San Jacinto Fund, LLC waives its right to a hearing and agrees to pay the assessed amount, a check for \$21,000 (\$11,000 if conditions specified under paragraph 31 are met) made payable to the State Water Resources Control Board-WDPF should be submitted by October 20, 2010. The Waiver Form and the check should be sent to the Regional Board office in the enclosed pre-printed envelope.

If San Jacinto Fund, LLC does not wish to waive its right to a hearing, requesting a pre-hearing meeting, as set forth in the Hearing Procedure is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request prior to October 20, 2010.

If you have any questions about the Complaint or the enclosed documents, please contact me at (951) 782-3238, or you may contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992 (smayville@waterboards.ca.gov). All legal questions should be directed to Ann Carroll at (916) 322-3227 (acarroll@waterboards.ca.gov), Staff Counsel, Office of Enforcement.

Sincerely,



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2010-0042 and its attachments, Waiver Form, Hearing Procedure and Preprinted Envelope

Cc with a copy of the complaint (by electronic mail only):

Board Members
Executive Officer (Regional Board Advisory Team)
State Water Resources Control Board, Office of Chief Counsel – David Rice (Regional Board Advisory Team Attorney)
State Water Resources Control Board, Division of Water Quality – Bruce Fujimoto
State Water Resources Control Board, Office of Enforcement – Ann Carroll
(Regional Board Prosecution Team Attorney)
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the Matter of:

**SAN JACINTO FUND, LLC
165 SOUTH UNION BLVD,
SUITE 510
LAKEWOOD, CO, 80228**

**Complaint No. R8-2010-0042
for
Administrative Civil Liability**

THE SAN JACINTO FUND IS HEREBY GIVEN NOTICE THAT:

1. San Jacinto Fund, LLC (hereinafter the Discharger) is alleged to have failed to furnish technical or monitoring program reports as required by a Regional Water Board Order issued pursuant to CWC section 13267(b) for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Water Board) may impose administrative civil liability under California Water Code (hereinafter CWC) section 13268(b)(1).
2. CWC Section 13323 authorizes the Executive Officer of the Regional Water Board to issue the Administrative Civil Liability Complaint (Complaint), and CWC Section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.
3. The Discharger is an agricultural operator that engages in agricultural land uses in the San Jacinto Watershed located at 981 North Sanderson Avenue, San Jacinto (Assessor's Parcel Number 436030001) in Riverside County.
4. By letter dated December 19, 2009¹, the Regional Water Board's Executive Officer issued a CWC section 13267 Investigative Order (hereinafter the Order) for technical reports for the implementation of the TMDLs for nutrients in Lake Elsinore and Canyon Lake to multiple agricultural operators in the San Jacinto River Watershed.
5. By letter dated February 23, 2009, mailed certified mail return receipt requested, the Regional Water Board's Executive Officer rescinded the Order due to mailing irregularities and confusion regarding the process for an exemption from the Order. In that same letter, the Executive Officer issued a revised CWC section 13267 Investigative Order (hereinafter the Revised Order) to multiple agricultural operators in the San Jacinto Watershed.
6. The Revised Order required the Discharger to submit technical reports to the Regional Water Board in order to achieve compliance with the Lake Elsinore and Canyon Lake nutrient TMDLs by June 30, 2009. These technical reports included a proposed watershed-wide nutrient water-quality monitoring plan that included a monitoring schedule, specific monitoring locations, and sampling protocols; and an Agricultural Nutrient Management Plan to identify the studies and steps proposed to be taken to identify specific activities, operations, and processes from agricultural areas that contribute nutrients to Lake Elsinore

¹ The letter was incorrectly dated December 19, 2009, and should have been dated December 19, 2008.

and Canyon Lake, which must include a proposed schedule for completion of each of the steps identified.

7. The Revised Order set forth the need for the required technical reports, evidence supporting that need, and the Discharger's burden and cost of the technical reports.
8. The Discharger had the option to comply with the Revised Order by either becoming a member of Western Riverside County Agricultural Coalition (WRCAC) or submitting the required technical reports as an individual.

ALLEGATIONS:

9. The Discharger failed to submit technical reports concerning Lake Elsinore/Canyon Lake Nutrient TMDLs by June 30, 2009 as required by the Revised Order—a Regional Water Board Order issued pursuant to CWC section 13267(b).
10. Via electronic transmission dated August 4, 2009 to the Regional Water Board, WRCAC identified all agricultural owners/operators who have become WRCAC members, and are, therefore, in compliance with the Revised Order. WRCAC did not identify the Discharger as a member at that time, and thus the Discharger was individually responsible for compliance with the Revised Order.
11. By letter dated August 17, 2009, the Regional Water Board's Assistant Executive Officer sent the Discharger a "Notice of Violation of California Water Code Section 13267 Order to Submit Investigative Plans Concerning Lake Elsinore/Canyon Lake Nutrient Total Maximum Daily Loads (TMDLs)" (hereinafter NOV) via certified mail return receipt requested.
12. CWC section 13268(a)(1) provides that any person failing or refusing to furnish technical or monitoring program reports as required by CWC section 13267(b) may be civilly liable in accordance with CWC section 13268(b).
13. Pursuant to CWC section 13268(b)(1), the Regional Water Board may impose civil liability in an amount, which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

CIVIL LIABILITY CALCULATION:

14. CWC Section 13327 requires the Regional Water Board, in determining the amount of liability, to consider the nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts taken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
15. On November 17, 2009, the State Water Resources Control Board (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 May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13327. Attachment "A", incorporated herein and made a part of this ACL Complaint by this reference, presents the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy.

The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS

16. The per day factor is 0.55. This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements.
- a. The potential for harm is moderate because water quality standards (which include beneficial uses and water quality objectives) were not, and are not, being attained in Lake Elsinore and Canyon Lake due to excessive levels of nutrients (both nitrogen and phosphorus), and discharges from agricultural operations contain nutrients (nitrogen and phosphorous) that contribute to the impairment of water quality and beneficial uses of Lake Elsinore and Canyon Lake. Without technical reports, Regional Water Board staff are unable to determine the contribution of nutrients from agricultural operations, or the efforts (such as nutrient reduction strategies) necessary to correct the impairment of beneficial uses in Lake Elsinore and Canyon Lake.
 - b. The deviation from requirements is major because the Discharger's failure to comply with the Revised Order rendered the requirement to report ineffective.
 - c. The Discharger has been in violation of the Revised Order for a total of 447 days, from July 1, 2009 to September 21, 2010. The Enforcement Policy establishes an alternative approach to civil liability calculations for multiple day violations that do not cause daily detrimental impacts to the environment or regulatory program. The Discharger's failure to submit required technical reports has not caused a daily detrimental impact to the San Jacinto Watershed, but there is a cumulative impact from the continued discharges from the Discharger's agricultural operations. Therefore, using the alternative approach to the liability calculation for multiple day violations, the civil liability is assessed based on 20 days of violation (see page 18 of the Enforcement Policy for details). Applying the per day factor to the adjusted number of days of violation yields an initial liability of \$11,000 (\$1,000 [maximum statutory liability per day of violation] x 20 [number of days of violation] x 0.55 [per day factor]).

ADJUSTMENTS TO DETERMINATION OF INITIAL LIABILITY

17. The Discharger's culpability factor is 1.0. This value is based on the fact that the discharger is an agricultural operator engaged in agricultural land uses in the San Jacinto River Watershed, in areas tributary to Lake Elsinore and Canyon Lake. The TMDLs adopted for

Lake Elsinore and Canyon Lake identify agricultural operators as dischargers required to comply with the TMDLs.

18. The Discharger's cleanup and cooperation factor is 1.5. This value is based on the fact that the Discharger has not voluntarily cooperated in returning to compliance by either joining WRCAC or by submitting the required reports despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Revised Order.
19. The Discharger's history of violations factor is 1. This value is based on the fact that the Discharger has not been issued other Orders by the Regional Water Board for noncompliance with the Porter-Cologne Water Quality Control Act or the Federal Water Pollution Control Act.
20. Based on these adjustments, the amount revised from the initial liability is \$16,500 (initial liability x culpability factor x cleanup and cooperation factor x history of violations factor) for this violation.

TOTAL BASE LIABILITY AMOUNT

21. The amount revised from the initial liability, \$16,500, represents the total base liability amount.

ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

22. The Discharger's ability to pay factor is 1. The Discharger will not have difficulty paying the total base liability amount based on the fact that the Discharger owns three parcels in Riverside County. The assessed value of these three parcels is \$40,272,843. Thus, the total base liability amount remains \$16,500.

OTHER FACTORS AS JUSTICE MAY REQUIRE

23. Costs of Investigation and Enforcement: As of the date of the issuance of this Complaint, Regional Water Board Enforcement staff has incurred costs of investigation and enforcement in the amount of \$4,500. This is based on staff time of 30 hours, at a rate of \$150 per hour. If this matter proceeds to hearing, the Regional Water Board Prosecution Team reserves the right to seek an increase in the proposed civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint.

ECONOMIC BENEFIT

24. The economic benefit estimated for the violation at issue is \$231. The economic benefit was determined as follows:

The Discharger realized an economic benefit by delaying becoming a member of WRCAC or submitting technical reports as an individual. Based on the United States Environmental Protection Agency BEN Model, the Discharger saved approximately \$231 in deferred costs (assuming the Discharger would have become a member of WRCAC).

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than the economic benefit amount, or \$254.10.

MAXIMUM AND MINIMUM LIABILITY AMOUNTS

25. The maximum liability provided for by statute is \$406,000 and the minimum liability amount required by the Enforcement Policy is \$254.10 (Economic Benefit +10%).
26. The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. Because the proposed liability is \$21,000, the liability does not need to be adjusted to fall within the maximum and minimum liability amounts.

FINAL LIABILITY AMOUNT

27. Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$21,000 (\$16,500 [total base liability amount] + \$4,500 [staff costs]).

PROPOSED CIVIL LIABILITY ASSESSMENT:

28. The Division Chief proposes that the Discharger be assessed administrative civil liability in the amount of \$21,000, which consists of \$16,500 in discretionary penalties for failing to submit technical reports as required by the Revised Order and staff costs of \$4,500 (30 hours x \$150 per hour).
29. The Division Chief further proposes that the amount of the imposed administrative liability be reduced to \$11,000 if the Discharger complies with the requirements of the Revised Order by October 20, 2010.
30. Continued failure to comply with the Revised Order may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including referral to the Attorney General.
31. CWC Section 13323(b) provides that the Regional Water Board will hold a public hearing within 90 days after service of this Complaint, unless the Discharger chooses either of the following options:
 - a. Before October 20, 2010: Waive the right to a hearing before the Regional Water Board and pay the proposed civil liability of \$11,000 in full; or
 - b. After October 20, 2010: Waive the right to a hearing before the Regional Water Board and pay the proposed civil liability of \$21,000 in full; or
 - c. Waive the right to a hearing before the Regional Water Board within 90 days after service of this Complaint to engage the Regional Water Board Prosecution Team in settlement discussions.

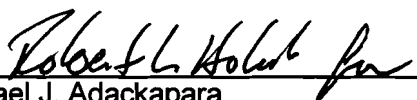
- d. Waive the right to a hearing before the Regional water Board within 90 days after service of this Complaint in order to extend the hearing date and/or hearing deadlines.

32. If the Discharger chooses Option (a) or (b) set forth in paragraph 31 above, an authorized representative must sign the enclosed waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of public notice of this Complaint to all the public and other interested persons to comment on this action. The waiver and payment must be mailed to:

California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

33. If the Discharger chooses Option (c) set forth in paragraph 31 above, an authorized representative must sign the enclosed waiver and submit it within thirty (30) days of the date of this Complaint. The Discharger must also submit a settlement proposal to the Regional Water Board within sixty (60) days of this Complaint. The waiver and settlement proposal must be mailed to the address listed above.
34. If the Discharger chooses Option (d) set forth in paragraph 31 above, an authorized representative must sign the enclosed waiver and submit it within thirty (30) days of the date of this Complaint. The Discharger must also submit a written explanation as to why an extension is warranted. The waiver and settlement proposal must be mailed to the address listed above.
35. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
36. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.
37. Issuance of this Administrative Civil Liability Complaint to enforce California Water Code Division 7, Chapter 4 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

September 21, 2010



Michael J. Adackapara
Division Chief
Regional Water Board Prosecution Team

Discharger Name/ID:

Attachment 'A' - ACLC R8-2010-0042

			Violation 1	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)		
	Step 2	Per Gallon Factor (Generated from Button)		
		Gallons		
		Statutory / Adjusted Max per Gallon (\$)		
		Total		\$ -
	Step 3	Per Day Factor (Generated from Button)		
Days				
Statutory Max per Day				
Total			\$ -	
Non-Discharge Violations	Step 3	Per Day Factor	0.55	
		Days	20	
		Statutory Max per Day	\$ 1,000	
	Total		\$ 11,000.00	
Initial Amount of the ACL				\$ 11,000.00
Add'l Factors	Step 4	Culpability	1	\$ 11,000.00
		Cleanup and Cooperation	1.5	\$ 16,500.00
		History of Violations	1	\$ 16,500.00
Step 5 Total Base Liability Amount				\$ 16,500.00
Step 6	Ability to Pay & to Continue in Business	1	\$ 16,500.00	
Step 7	Other Factors as Justice May Require	1	\$ 16,500.00	
	Staff Costs	\$ 4,500	\$ 21,000.00	
Step 8	Economic Benefit	\$ -	\$ 21,000.00	
Step 9	Minimum Liability Amount			
	Maximum Liability Amount	\$ 406,000		
Step 10 Final Liability Amount				\$ 21,000.00

Penalty Day Range Generator

Start Date of Violation= 7/1/09
 End Date of Violation= 9/21/10

Maximum Days Fined (Steps 2 & 3) = 448 Days
 Minimum Days Fined (Steps 2 & 3) = 20 Days



California Regional Water Quality Control Board

Santa Ana Region



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Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R8-2010-0042
ISSUED TO
SAN JACINTO FUND, LLC
981 NORTH SANDERSON AVENUE, SAN JACINTO, CA
IN RIVERSIDE COUNTY
SCHEDULED FOR DECEMBER 9, 2010

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

Background

The Division Chief has issued an Administrative Civil Liability (hereinafter "ACL") Complaint pursuant to California Water Code Section 13323 against San Jacinto Fund, LLC (hereinafter "Discharger") alleging that it has failed to submit technical reports in accordance with a Regional Board order issued under the authority of California Water Code (hereinafter "CWC") Section 13267. The ACL Complaint proposes that administrative civil liability in the amount of twenty-one thousand dollars (\$21,000) be imposed as authorized by CWC Section 13268(b)(1). A hearing is currently scheduled to be held before the Regional Board during its December 9, 2010 meeting.

Opportunity for Settlement Without a Hearing

This matter may be settled without a hearing if no significant comments are received during the comment period and if the Discharger waives the right to a hearing and agrees to pay the proposed civil liability. The Division Chief will consider comments received to determine the need for any further changes to the ACL Complaint.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on December 9, 2010 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the City Council Chambers of Loma Linda located at 25541 Barton Road, City of Loma Linda, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml.

The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional 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 Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY SEPTEMBER 30, 2010 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

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

- (1) Regional Board Prosecution Team
- (2) FR of Cal Goetz Road, LLC, also referred to as the Discharger

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on October 4, 2010 by Advisory Team Attorney David Rice, Davidrice@waterboards.ca.gov. 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 Regional 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 received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on October 15, 2010. The parties will be notified by 5 p.m. on October 20, 2010 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team: **David Rice (email: Davidrice@waterboards.ca.gov)**
Phone: 916-341-5182
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Prosecution Team: **Ann Carroll (email: acarroll@waterboards.ca.gov)**
Phone: 916-322-3227
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Discharger: **San Jacinto Fund, LLC**
(email: currently not available)
Douglas McCormick, Alliance Commercial Partners
Agent for Service of Process
165 South Union Blvd.,
Suite 510
Lakewood, CO, 80228

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 Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, Office of Chief Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Ann Carroll, Staff Counsel, Office of Enforcement, State Water Resources Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board, and Hope Smythe, Basin Planning (Inland) Unit Chief, Santa Ana Regional Water Quality Control Board. 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. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral).

Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

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 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than 5 p.m. on November 19, 2010. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional 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 Regional Board to consider. Evidence and exhibits already in the public files of the Regional 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 Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on October 27, 2010.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on November 9, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on November 19, 2010. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received 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 the Advisory Team as early as possible, but no later than 5 p.m. on November 23, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional 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 Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by 5 p.m. on November 29, 2010 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, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on November 19, 2010. 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 Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: alucas@waterboards.ca.gov; phone: 951-782-7961). 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 Regional Board Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml!

Although the web page is updated regularly, to assure access to the latest information, you may contact Stephen D. Mayville (smayville@waterboards.ca.gov).

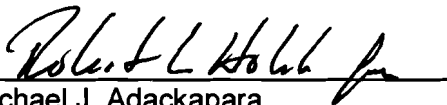
Questions

Questions concerning this proceeding may be addressed to the Advisory Team Attorney David Rice (Davidrice@waterboards.ca.gov).

IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

- September 21, 2010: Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
- September 30, 2010: Deadline for objections, if any, to proposed Hearing Procedure.
- October 4, 2010: Deadline for requests for designated party status.
- October 15, 2010: Deadline for oppositions to requests for designated party status.
- October 20, 2010: Discharger's deadline for waiving right to hearing.
- October 20, 2010: Advisory Team issues decision on requests for designated party status, if any.
- October 27, 2010: Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements."
- November 9, 2010: Remaining Designated Parties' deadline for all information required under "Submission of Evidence and Policy Statements."
- November 19, 2010: All Designated Parties' deadline for rebuttal information, and requests for additional time at the hearing, if any, and evidentiary objections.
- November 23, 2010: Interested Persons' deadline for written non-evidentiary policy statements.
- November 29, 2010: All presentation materials, such as PowerPoint.
- December 9, 2010: Public Hearing.



Michael J. Adackapara
Division Chief
Regional Board Prosecution Team

September 21, 2010



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0042

(If San Jacinto Fund, LLC wishes to choose any of the following waiver options, an authorized representative must sign this waiver with one of the options checked and submit it to the Regional Board office at the address provided in the header by 5 p.m. on October 20, 2010.)

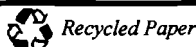
By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent San Jacinto Fund, LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0042 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(**OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$21,000** or the amount of **\$11,000** if the conditions specified in **paragraph 31 of the Complaint are satisfied** by check that references "ACL Complaint No. R8-2010-0042." made payable to the "State Water Resources Control Board-WDPF". Payment must be received by the Regional Board by **October 20, 2010** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- 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 Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

California Environmental Protection Agency



**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0042**

- 2 -

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

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

(Print Name and Title)

(Signature)

(Date)

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