

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0585-A1  
For

MANDATORY PENALTY  
IN THE MATTER OF

UNION PACIFIC RAILROAD COMPANY  
DUNSMUIR RAILYARD  
WDID NO. 5A471001002

SISKIYOU COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Union Pacific Railroad Company, Dunsmuir Railyard (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0082-0017 (NPDES No. CA0083178). This complaint supersedes ACLC R5-2011-0585.

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

1. Discharger operates a groundwater extraction and treatment system for the removal of petroleum contamination. Treated groundwater is discharged through a subsurface infiltration gallery, Discharge D-001, constructed in river gravels and fill immediately adjacent to the Sacramento River, a water of the United States.
2. On 13 July 2010, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2008-0082-0017 (NPDES No. CA0083178), to regulate discharges of process water and storm water runoff generated from groundwater extraction and treatment operations at the facility.
3. On 18 May 2011, Central Valley Water Board staff issued the Discharger a Notice of Violation for effluent violations subject to mandatory minimum penalties. An administrative civil liability complaint assessing these violations was issued on July 14, 2011. In response to the July Complaint, the discharger elected to waive their right to a hearing within 90 days to enter in to settlement negotiations with the Regional Board. During the settlement process, Regional Board staff re-reviewed the Discharger's self-monitoring reports (SMRs) and identified additional violations that are subject to mandatory minimum penalties (Attachment A). This amended complaint provides notice of these additional violations and covers all violations subject to mandatory minimum penalties during the time period 1 July 2010 and 31 July 2011.

4. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a 'serious violation' means 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.

CWC section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants

5. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

6. WDRs Order No. R5-2008-0082-0017 Final Effluent Limitations IV.A.1.a. states, in part:
- a. The Discharger shall maintain compliance with the following effluent limitations specified in Table 4 below at Discharge Point D-001, with compliance measured at Monitoring Location EFF-002 as described in the attached MRP (Attachment E):

**Table 4. Effluent Limitations – Hardness-Dependent Metals**

Parameter	Units	Hardness in mg/L (H)							
		H<50		50≤ H <100		100≤ H <200		H ≥200	
		Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
Lead, total recoverable	ug/L	0.4	0.9	1.8	3.6	4.4	8.8	6.3	12.6
Zinc, total recoverable	ug/L	18.5	37.0	46.8	93.9	84.2	168.9	107.5	215.6

**ALLEGED EFFLUENT LIMITATIONS VIOLATIONS**

7. On 21 July 2010, the total recoverable lead concentration at EFF-001 was reported as 52 ug/L or 1,344 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 3.6 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
8. On 21 July 2010, the total recoverable lead concentration at EFF-001 was calculated as 52 ug/L or 2,788 percent greater than the allowed total recoverable lead average monthly effluent limitation of 1.8 ug/L for July 2011. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
9. On 9 August 2010, the total recoverable monthly lead concentration at EFF-001 was reported as 0.71 ug/L or 77.5 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
10. On 17 January 2011, the total recoverable monthly lead concentration at EFF-001 was reported as 1.4 ug/L or 250 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious violation because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

11. On 17 January 2011, the total recoverable lead concentration at EFF-001 was reported as 1.4 ug/L or 55.6 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 0.9 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
12. On 17 January 2011 the total recoverable zinc concentration at EFF-001 was reported as 30 ug/L or 62.2 percent greater than the allowed total recoverable zinc average monthly effluent limitation of 18.5 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
13. On 2 February 2011, the total recoverable lead concentration at EFF-001 was reported as 4.3 ug/L or 377 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 1.8 ug/L. The receiving water hardness at the time was 49.8 mg/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
14. On 2 February 2011, the total recoverable lead concentration at EFF-001 was calculated as 4.3 ug/L or 975 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L for February 2011. The receiving water hardness at the time was 49.8 mg/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
15. On 28 March 2011, the total recoverable zinc concentration at EFF-001 was reported as 19 ug/L or 2.7 percent greater than the allowed total recoverable zinc average monthly effluent limitation of 18.5 ug/L. This non-serious violation is subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because this violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
16. On 25 July 2011, the total monthly average recoverable lead concentration at EFF-001 was calculated as 1.3 ug/L or 225 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

17. On 25 July 2011, the total recoverable lead concentration at EFF-001 was calculated as 1.3 ug/L or 44.4 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 0.9 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **thirty-three thousand dollars (\$33,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this complaint. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A.
19. Issuance of this Administrative Civil Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 subsection (a)(2).

**UNION PACIFIC RAILROAD, DUNSMUIR RAILYARD IS HEREBY GIVEN NOTICE THAT:**

- 1) The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty-three thousand dollars (\$33,000)**.
- a) The discharger may accept the liability for mandatory penalties and submit payment for the proposed civil liability of **thirty-three thousand dollars (\$33,000) by 14 December 2011**;
- b) If the discharger elects to go to hearing on this matter, a hearing will be scheduled during the February 2012 Board Meeting. If a hearing is conducted, the Central Valley 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.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, **increasing the proposed amount to account for the costs of enforcement** (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

\_\_\_\_\_  
ROBERT A CRANDALL, Assistant Executive Officer

15 November 2011

\_\_\_\_\_  
(date)

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0585-A1**

This waiver supersedes the waiver associated with ACLC R5-2011-0585. By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Union Pacific Railroad (hereafter Discharger) in connection with Administrative Civil Liability Complaint **R5-2011-0585-A1** (hereafter 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. 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 in full.)**
  - a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
  - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **thirty-three thousand dollars (\$33,000)** by check that references "ACL Complaint **R5-2011-0585-A1**" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **14 December 2011**.
  - 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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.
  
- (OPTION 2: 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 Central Valley Water Board within 90 days after service of the complaint. 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.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**ATTACHMENT A - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2011-0585-A1**  
**Union Pacific Railroad Company,**  
**Dunsmuir Railyard**

Record of Violations (1 July 2010 – 31 July 2011)

Violation Date	Discharge Point	Pollutant/Parameter	Effluent Limit	Analytical Results	Percentage Over	Violation Type	180-day Violation Count	CIWQS Violation No.	MMP	Penalty Status
7/21/2010	D-001	Lead, total recoverable	3.6 ug/L MDEL	52 ug/L	1,344%	Serious Group II	1	879637	\$3,000	New Assessment
7/21/2010	D-001	Lead, total recoverable	1.8 ug/L AMEL	52 ug/L	2,788%	Serious Group II	2	898104	\$3,000	New Assessment
8/9/2010	D-001	Lead, total recoverable	0.4 ug/L AMEL	0.71 ug/L	77.5%	Serious Group II	3	908946	\$3,000	New Assessment
1/17/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	1.4 ug/L	250%	Serious Group II	4	908947	\$3,000	New Assessment
1/17/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	1.4 ug/L	55.6%	Serious Group II	5	908948	\$3,000	New Assessment
1/17/2011	D-001	Zinc, total recoverable	18.5 ug/L AMEL	30 ug/L	62.2%	Serious Group II	6	908949	\$3,000	New Assessment
2/2/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	4.3 ug/L	377%	Serious Group II	5	893652	\$3,000	New Assessment
2/2/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	4.3 ug/L	975%	Serious Group II	6	898106	\$3,000	New Assessment
3/28/2011	D-001	Zinc, total recoverable	18.5 ug/L AMEL	19 ug/L	2.7%	Non-Serious	6	898110	\$3,000	New Assessment
7/25/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	1.3 ug/L	225%	Serious Group II	4	906709	\$3,000	New Assessment
7/25/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	1.3 ug/L	44.4%	Serious Group II	5	906708	\$3,000	New Assessment
							<b>Total New Assessment:</b>		<b>\$33,000</b>	

Notes: Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.  
 Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.  
 Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:  
 (a) violates a WDR effluent limitation;  
 (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;  
 (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or  
 (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.  
 AMEL: Average Monthly Effluent Limitation  
 MDEL: Daily Maximum Effluent Limitation\  
 N/A: Not Applicable

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2011-0585-A1

UNION PACIFIC RAILROAD COMPANY  
DUNSMUIR RAILYARD  
SISKIYOU COUNTY

SCHEDULED FOR 2/3 FEBRUARY 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 Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) sections 13323 to Union Pacific Railroad Company, Dunsmuir Railyard (Discharger), alleging violations of CWC section 13385 for discharges from the Discharger's wastewater treatment plant that exceeded permitted effluent limitations.

The Complaint proposes that an administrative civil liability in the amount of \$33,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 2/3 February 2012 meeting.

**Purpose of Hearing**

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, or reject the proposed liability. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board 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 Central Valley Water Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

## **Hearing Procedure**

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. A copy of the general 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> or will be made available 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, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

**ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 28 NOVEMBER 2011 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.**

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

## **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 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 Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

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

1. Central Valley Water Board Prosecution Team
2. Union Pacific Railroad Company

## **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 no later than 5 p.m. on **5 December 2011**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to present evidence or cross-examine witnesses), 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 other parties by 5 p.m. on **14 December 2011**. The parties will be notified by 5 p.m. on **23 December 2011** whether the request has been granted or denied.

### **Primary Contacts**

#### **Advisory Team:**

Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4726  
[klandau@waterboards.ca.gov](mailto:klandau@waterboards.ca.gov)

David Coupe, 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) 327-4439; fax: (916) 341-5199  
[dcoupe@waterboards.ca.gov](mailto:dcoupe@waterboards.ca.gov)

#### **Prosecution Team:**

Pamela Creedon, Executive Officer  
11020 Sun Center drive, Suite 200, Rancho Cordova, CA 95670  
Phone (916) 464-3291 fax: (916) 464-4645

Robert Crandall, Assistant Executive Officer  
Bryan Smith, P.E. Supervising Water Resources Control Engineer  
George Day, P.E. Senior Water Resources Control Engineer  
Dan Warner, Water Resources Control Engineer  
415 Knollcrest Drive Suite 100, Redding CA 96002  
Phone (530) 224-4845 fax (530) 224-4857  
[gday@waterboards.ca.gov](mailto:gday@waterboards.ca.gov)

Ellen Howard, Staff 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) 341-5677; fax: (916) 341-5896  
[ehoward@waterboards.ca.gov](mailto:ehoward@waterboards.ca.gov)

#### **Discharger:**

James Diel  
Union Pacific Railroad Company  
9451 Atkins Street  
Roseville, CA 95747

Robert C. Bylsma  
Union Pacific Corporation, Law Dept  
10031 Foothills Blvd #200  
Roseville, CA 95747-7101  
Phone: (916) 789-6229

### **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 Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Mr. David Coupe. Members of the Prosecution Team are: Ms. Pamela Creedon, Mr. Robert Crandall, Mr. Bryan Smith, Mr. George Day, Mr. Dan Warner, and Ms. Ellen Howard. 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. Ellen Howard is an attorney with the State Water Resources Control Board's Office of Enforcement and has not advised the Central Valley Water Board on any matter. Other 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.

### **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 Central Valley 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 person on the one hand, and a Central Valley Water 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 verbal). 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.

The following communications to the Advisory Board must be copied to all designated parties: Objections to this Hearing Procedure; requests for modifications to this Hearing Procedure; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

### **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 **25** minutes to present evidence (including evidence presented by witnesses called by the designated party), 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 by 5:00 p.m. on **12 January 2012**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

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**

**Case in Chief:** The Prosecution Team, the Discharger and each other designated party must submit the following information in writing 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 generally not receive copies of materials incorporated by reference, 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. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

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

The Prosecution Team shall submit one hard copy and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Kenneth Landau and David Coupe must receive all submissions no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

**Rebuttal:** Any designated party that would like to submit written evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies and one electronic copy of their rebuttal information to Kenneth Landau and one electronic copy of the information to David Coupe so that they

are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: By **18 January 2012**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

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 **30 January 2012**. Interested persons do not need to submit written comments in order to speak at the hearing.

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 Central Valley 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 Central Valley Water 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. Designated parties must provide the Advisory Team with a printed copy of such materials 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.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 415 Knollcrest Drive Suite 100, Redding CA 96002. 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](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 George Day (contact information above).

### **Questions**

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

**IMPORTANT DEADLINES**

(Note: The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

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

- |                    |   |
|--------------------|---|
| 14 November 2011   | Prosecution Team issues ACL Complaint to Discharger and Advisory Team and publishes Public Notice   |
| 28 November 2011   | Objections due on proposed Hearing Procedure  |
| 5 December 2011    | Deadline for submission of request for designated party status.   |
| 14 December 2011   | Deadline for opposition to request for designated party status.   |
| 14 December 2011   | Discharger's deadline for submitting signed form to waive right to hearing within 90 days.  |
| 23 December 2011   | Advisory Team issues decision on requests for designated party status, if any.  |
| 23 December 2011   | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.   |
| 12 January 2012    | Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.   |
| 12 January 2012    | Prosecution Team submits an electronic copy to Ken Landau and David Coupe of all documents cited in the complaint or Staff Report, unless previously submitted.   |
| 12 January 2012    | Requests for additional hearing time (see Hearing Time Limits, above).  |
| 13 January 2011    | All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals. |
| 18 January 2012    | Prosecution Team's deadline to submit Buff Sheet.   |
| 27 January 2012    | If <i>new</i> rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal.                                     |
| 30 January 2012    | Interested persons' comments are due.   |
| 2/3 February 2012: | Hearing   |