

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

R5-2008-0600

ISSUED TO

OAKWOOD LAKE WATER DISTRICT AND BECK PROPERTIES
OAKWOOD LAKE SUBDIVISION MINING RECLAMATION PROJECT
SAN JOAQUIN COUNTY

SCHEDULED FOR 23/24 April 2009

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 Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) issued Administrative Civil Liability (ACL) Complaint R5-2008-0600 pursuant to California Water Code (CWC) section 13323 against Oakwood Lake Water District and Beck Properties (hereafter Discharger), alleging that it violated CWC section 13385 by exceeding effluent limits contained in Waste Discharge Requirements (WDRs) Orders 98-123 and R5-2005-0153. The Complaint proposes that administrative civil liability in the amount of sixty-six thousand dollars (\$63,000) be imposed as mandated by CWC section 13385. As per the cover letter that accompanied the Complaint, all comments or evidence to be considered at a hearing, including material submitted by the Discharger, must have been received by 5 p.m. on 10 December 2008, and written materials received subsequently will not be incorporated into the administrative record if doing so would prejudice any party. A hearing is scheduled to be conducted before the Central Valley Water Board during its 23/24 April 2009 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 adopt an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 23/24 April 2009 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 the Central Valley Water Board's offices at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670-6114. 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/>

Hearing Procedures

The hearing will be conducted in accordance with these Hearing Procedures. These Hearing Procedures are subject to revision and approval by the Central Valley Water Board's Advisory Team. 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 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 Procedures is deemed waived. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with California Government Code § 11500) does not apply to this hearing.

THIS AND THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THESE HEARING PROCEDURES MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 13 MARCH 2009 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 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) Oakwood Lake Water District and Beck Properties, 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) no later than **5 p.m. on 18 March 2009** to Lori Okun, at lokun@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 Central Valley 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 23 March 2009**. All parties will be notified by 5 p.m. on 25 March 2009 in writing or by e-mail whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114
(916) 464-4726
fax (916) 464-4758
klandau@waterboards.ca.gov

Lori T. Okun, Senior Staff Counsel
State Water Resources Control Board Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
(916) 341-5165
fax (916) 341-5199
lokun@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Wendy Wyels, Environmental Program Manger I
Barry Hilton, WRCE
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State Water Resources Control Board Office of Chief Counsel
1001 I Street
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The primary contact for the Prosecution Team staff is Wendy Wyels
(916) 464-4835
wwyels@waterboards.ca.gov

Discharger:

Mr. Larry French, President
Oakwood Lake Water District
P.O. Box 690339
Stockton, CA 95269-0339

Mr. Byron Gee, Esq.
Nossaman, LLP
445 S Figueroa St # 31
Los Angeles, CA 90071
(213) 612-7800

Mr. Doug Coty, Esq.
Bold, Polisner, Maddow, Nelson & Judson
500 Ygnacio Valley Rd Ste 325
Walnut Creek, CA 94596
(925) 933-7777

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: Ken Landau, Assistant Executive Officer; and Lori T. Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Wendy Wyels, Environmental Program Manager; Barry Hilton, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. 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 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.

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, 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. 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.

Evidence, Exhibits and Policy Statements

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that a designated party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Water 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.
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.

The Prosecution Team has entered all material supporting the Complaint, including the type of information listed above, into the public file as of **10 December 2008**, in accordance with the submission deadline contained in the Cover Letter that accompanied the Complaint. This same deadline governed the submission of material by the Discharger, and all material submitted by the Discharger prior to this deadline has been added to the administrative record. 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 these Hearing Procedures or the Cover Letter that accompanied the Complaint. 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. 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.

Should the Advisory Team allow additional designated parties to present evidence before the Board, the Advisory Team will set a deadline for the additional designated parties to submit evidence into the administrative record. 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. Interested persons do not need to submit written comments in order to speak at the hearing.

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 11020 Sun Center Dr #200, in Rancho Cordova, CA 95670. Although an appointment is not necessary to view the public files, to facilitate review, please call Barry Hilton in advance at (916) 464-4762 to arrange a file review. This file shall be considered part of the official administrative record for this hearing. Other timely 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 Chair. Many of these documents are also posted on-line at: <http://www.waterboards.ca.gov/centralvalley/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels at the above number.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at lokun@waterboards.ca.gov.

IMPORTANT DEADLINES

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| 10 Nov 08 | Prosecution Team issues ACL Complaint w/ Cover Letter to Discharger |
| 05 Mar 09 | Prosecution Team sends proposed Hearing Procedures to Discharger and Advisory Team |
| 13 Mar 09 | Objections due on proposed Hearing Procedures |
| 18 Mar 09 | Deadline for submission of request for designated party status. |
| 23 Mar 09 | Deadline for opposition to request for designated party status. |
| 25 Mar 09 | Advisory Team notifies Designated Parties of determination on requests for designated party status, if any. |
| 13 April 09 | All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections. |
| 23/24 April 09 | Hearing |