

ITEM: 14

SUBJECT: Reconsideration of Administrative Civil Liability Order R5-2007-0054, Tehama Market Associates, LLC, and Albert Garland, Linkside Place Subdivision, Butte County

BOARD ACTION: The Board's Prosecution Team proposes that the Central Valley Water Board re-issue Administrative Civil Liability (ACL) Order R5-2007-0054, in order to include revisions made in accordance with an Order from the Superior Court of Butte County.

BACKGROUND: On 22 June 2007, the Central Valley Water Board issued ACL Order R5-2007-0054, which imposed \$250,000 in administrative civil liability on Tehama Market Associates, LLP and its principal, Albert Garland (Dischargers). The Dischargers subsequently filed a writ of mandate with the Superior Court challenging the ACL Order. The Court denied most of the Dischargers claims, but remanded the Order to the Central Valley Water Board for further administrative proceedings.

Tehama Market Associates, LLC was the owner and developer of an 18.6-acre residential development, known as the Linkside Place Subdivision, from December 2003 through October 2004. Stormwater runoff from the site discharged ephemeral drainages and wetlands that are tributary to Thermalito Afterbay and the Feather River. Board inspections on 18 February 2004 and 25 February 2004, revealed a lack of erosion and sediment controls, and the discharge of turbid water leaving the site. These violations resulted in the underlying administrative civil liability action.

The Central Valley Water Board issued the following series of ACL Complaints for the violations:

- 23 November 2004: the Executive Officer issued ACL Complaint R5-2004-0541 to Linkside Place, LLC
- 25 January 2006: the Acting Executive Officer rescinded ACL Complaint R5-2004-0541, and replaced it with ACL Complaint R5-2006-0501, which named Tehama Market Associates, LLC as the Discharger. This Complaint was rescinded on 10 April 2006 because the Board had been unable to hold a hearing within 90 days of the date the complaint was served
- 26 October 2006, the Assistant Executive Officer issued ACL Complaint R5-2006-0525, which named Tehama Market Associates, LLC and Albert Garland as Dischargers
- 20 April 2007: the Assistant Executive Officer replaced ACL Complaint R5-2006-0525 with ACL Complaint R5-2007-0500, also naming Tehama Market Associates, LLC and Albert Garland as Dischargers

At its defense at the Board hearing, the Discharger invoked a legal defense of laches. This defense protects parties from having to defend “stale” actions, and is similar to a defense invoking a statute of limitations. However, unlike a statute of limitations defense, the laches defense is grounded upon principles of fairness, not a statute. In general, a defendant asserting a laches defense must prove that the delay in bringing the action was inexcusable, and that the delay prejudiced the defense.

If an applicable statute of limitations does not exist, a defendant may borrow an analogous statute of limitations, and after that expires, any further delay is presumptively unreasonable. Borrowing a three-year statute of limitations that governs the commencement of civil actions from the Civil Code, the Discharger argued that the Board was prohibited from issuing an ACL Complaint 3 years and 61 days after the Board first discovered the violations.

The Board rejected the Discharger’s laches defense, and issued ACL Order R5-2007-0054, assessing \$250,000 in administrative civil liability to Tehama Market Associates, LLC and Albert Garland. The Board found that the laches defense was unavailable to the Dischargers because the Dischargers’ actions had contributed to the delay in bringing the action, stating, in findings, that the Dischargers had unclean hands and were estopped from asserting laches as a defense.

**ISSUE:**

The Superior Court found that the Central Valley Water Board could not dismiss the laches defense based on theories of unclean hands or estoppel, and ruled that the Dischargers had the legal right to use any legal means to delay the Board’s prosecution of Complaint R5-2006-0525. The Superior Court ordered the Board to vacate the Order imposing \$250,000 in administrative civil liability, and ordered the Board to conduct further administrative proceedings.

The Board must resolve the issue of whether laches is an applicable defense to the administrative action, and should consider whether the delay was reasonable or excusable, and whether the delay prejudiced the Dischargers.

**RECOMMENDATION:** The Prosecution Team proposes that the Board re-issue the ACL Order, including revised findings relating to laches, and reinstate the \$250,000 penalty imposed for the stormwater violations.

Mgmt. Review \_\_\_\_\_  
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