

EXHIBIT 17

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May 23, 2013

RECEIVED

MAY 28 2013

RWQCB-CVR
FRESNO, CALIF.

Via US Mail & Email: lonnie.wass@waterboards.ca.gov

Lonnie Wass, Supervising Engineer &
Pamela Creedon, Executive Officer
Central Valley Regional
Water Quality Control Board
1685 E. Street
Fresno, CA 93706

Re: Administrative Civil Liability Complaint R5-2013-05274 Assessment of Mandatory Minimum Penalties (MMP), Malaga County Water District (Malaga), Waste Water Treatment Facility (WWTP); and NPDES 0084239, RM 390069, Fresno County

Dear Ms. Wass and Ms. Creedon:

The referenced "Administrative Civil Liability Complaint" (Complaint) together with your May 1, 2013, letter has been referred to me for a response.

As I have noted probably six times previously, each and all of the purported violations that are referred to in your complaint are alleged to have occurred, by the Attachment A to that complaint, primarily between August 9, 2007 and November 30, 2010. There are two purported violations that are alleged to have occurred in March of 2011. Any enforcement action relative to these alleged violations, and all of them, is barred by operation of law. Any evidence in support of the alleged violations would be legally irrelevant and inadmissible in any proceeding. It is clear the Complaint, which is in many respects absolutely non-sensical, was not drafted or even reviewed by an attorney, as it fails to conform to the most rudimentary requirements of a complaint.

What I find offensive is that the Executive Officer of your agency has falsely stated, presumably to avoid the legal bar referred to above, that the violations occurred "through 31 December 2012". The violations, however, are all allegedly set forth in your Attachment A and there is no allegation of any violation occurring anywhere near December 31, 2012. Of course, this is the same Attachment A that accompanied a series of notices of violation that are referred to in the complaint and which the District duly responded to, normally through me. Each and all of the 'violations' listed in the Attachment A, as you have been told previously, do not amount to violations of any requirement and provide no basis for the imposition of MMP's. The proposed Administrative Civil Liability is based upon a purported violation or violations that are not supported by the data or are not violations subject to

MMP's as defined by Water Code §13385, in particular, those violations classified as chronic. Malaga disagrees with the interpretation of §13385(i)(2) that is consistently set forth in fn 6 of Attachment A reproduced in this complaint and as it appeared in numerous notices of violation that we received, that there must be a six month period without any violation in order for a violation to be exempt under §13385(i)(2)(A). Furthermore, many of the alleged violations contained in Attachment A to the Complaint are the subject of a compliance project or projects and/or a pollution prevention plan that your agency expressly agreed could be performed in lieu of any MMP. The issuance of this complaint which now apparently attempts to sanction Malaga twice for violations as to which you agreed would be satisfied by the completion of certain compliance projects means that the vast majority of the purported violations listed in Exhibit A are barred for a different reason other than the passage of time alone.

Your May 1, 2013, letter in addition to the complaint itself purportedly gives the District three options as follows:

1. Waive the right to a hearing on the complaint and pay the proposed civil liability fine;
2. Enter into settlement discussions with the Board and request that any hearing on the complaint be delayed; or
3. Contest the complaint and/or enter into settlement negotiations with the Board.

Please be advised that Malaga will contest the complaint and will appear at the hearing to be conducted on July 25 and 26, 2013. Malaga has no desire to enter into settlement negotiations with any agency that has demonstrated, repeatedly, that it will not abide by a settlement agreement made previously. You should be aware that the filing of what is plainly a frivolous complaint which is so plainly barred by operation of law subjects your agency to an order awarding Malaga all costs and attorneys fees incurred as a result (Government Code §11455.30).

Your May 1, 2013, letter suggests that "any comments or evidence concerning the enclosed complaint must be supplied" to your agency by May 24, 2013 and that this includes "materials submitted by the District to be considered at a hearing. . .". You are sorely misinformed about the procedural requirements that apply to the administrative processing of your complaint. This is demonstrated further by the "Hearing Procedure for Administrative Civil Liability Complaint R5-2013-0527" which similarly purports to require the submission of all evidence, on an unspecified date in advance of the hearing. The hearing procedure document further states that "In accordance with §648(d) [of Title 23 of the California Code of Regulations] any procedure not provided by this hearing procedure is deemed waived". For your information, subdivision (d) of §648 states that the "presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses and the presentation of

argument, so long as those requirements are not mandated by state or federal statute or by state or federal constitutions". You are not the presiding officer. Moreover, what you are attempting to waive is Malaga's due process rights under the federal and state Constitutions and Malaga does not consent to your attempt to waive these procedures. You are not purporting to waive any "requirements" of the regulations, you are attempting to waive on behalf of Malaga the rights it has as a party accused of violating the Water Code. You, as a state agency are required to conform precisely to your own regulations and to the provisions of the statute which relate to this complaint. Malaga will insist on strict compliance. Lastly, your hearing procedure document discloses that you are contemplating conducting a hearing before a board that is not impartial in that they are being asked to decide the correctness of the decision of their own Executive Officer. Any hearing before the Board would be an unconstitutional proceeding in that the Board is not impartial. Malaga is not going to comply with your purported hearing procedures. Malaga is going to comply with the statute. The attempts to limit the time during which presentations of evidence may be made and the context in which that can be done is a clear violation of the Constitution. This hearing procedure document, is an absolute nullity. Any requirements relating to a hearing procedure must be prescribed by statute or regulation or by the presiding officer consistent with statute or regulation.

Lastly, you provided with your hearing procedure document which was issued by mail (purportedly) on May 3, 2013 but was not received in our office, interestingly, until May 16, 2013, a list of deadlines which had already passed by the date of our receipt of your falsely dated document.

Needless to say, it seems unlikely that your hearing is going to proceed as scheduled given your written threats to deprive Malaga County Water District of due process and the written representations we have received that you are not going to conform to those regulations and statutes that are applicable to the complaint you imprudently issued. Kindly advise me whether you are authorized to receive service of process on behalf of the Central Valley Regional Water Quality Control Board which is, apparently, the entity that is threatening to preside over this unlawful proceeding against Malaga. If we fail to hear from you, we will simply serve you in the manner which any state agency is allowed to be served which may or may not provide you with sufficient advance notification of a need to respond to our application for an injunction and writ of mandate.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/js