

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0566

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF TRACY  
WASTEWATER TREATMENT PLANT  
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Tracy (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2007-0036 and R5-2007-0036-01 (NPDES No. CA0079154).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the City of Tracy. Treated wastewater is discharged to Old River, a water of the United States and part of the Sacramento-San Joaquin Delta.
2. On 4 May 2007, the Central Valley Water Board adopted WDRs Order R5-2007-0036, which contained new requirements and rescinded WDRs Order 96-104. On 4 May 2007, the Board also adopted Time Schedule Order (TSO) R5-2007-0037, extending the compliance dates for the new dissolved oxygen and nitrate plus nitrite effluent limitation until 30 April 2012 and 31 July 2008, respectively. On 12 June 2008, the Board adopted Resolution R5-2008-0086, amending the WDRs to provide interim effluent limitations for chlorodibromomethane and dichlorobromomethane, with a 17 May 2010 full compliance date. On 3 February 2011, the Board issued amended WDRs Order R5-2007-0036-01 to address the remand items in Water Quality Order 2009-0003.
3. On 7 December 2012, effective 26 January 2013, the Board adopted WDRs Order R5-2012-0115, which contained new requirements and rescinded WDRs R5-2007-0036-01, except for enforcement purposes. This Complaint considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by TSO R5-2007-0037 and Resolution R5-2008-0086.
4. On 16 March 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0520 for mandatory minimum penalties for effluent violations from 1 February 2008 through 31 December 2008. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0520 to be resolved.

5. This Complaint addresses administrative civil liability for effluent violations that occurred between 1 January 2009 and 31 May 2013. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
6. On 3 July 2013, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations that occurred between 1 January 2009 and 31 March 2013. On 26 July 2013, the Discharger responded and agreed with the violations except for the 25 March 2013 total chlorine residual violation. The Discharger requested that this violation be dismissed because the total chlorine residual value was calculated inaccurately. Board staff reviewed the supplemental information and agrees that the discharge was in compliance with the effluent limitation contained in the WDRs. Therefore, the 25 March 2013 total chlorine residual violation has been removed.
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code 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.

8. Water Code section 13385.1 provides the definition of a serious violation for the failure to file a monitoring report and describes when mandatory minimum penalties will apply.

Water Code section 13385.1(a)(1) states, in part:

For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations...

9. Water Code 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.

10. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
- C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length .... The interim requirements shall include both of the following:
- i) Effluent limitations for the pollutant or pollutants of concern.
  - ii) Actions and milestones leading to compliance with the effluent limitation.

11. WDRs Order R5-2007-0036 Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 4:

**Table 4. Effluent Limitations**

| <b>Constituent</b> | <b>Units</b> | <b>Instantaneous Minimum</b> | <b>Instantaneous Maximum</b> |
|--------------------|--------------|------------------------------|------------------------------|
| pH                 | S.U.         | 6.5                          | 8.5                          |

12. WDRs Order R5-2007-0036 Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:
- g. **Total Coliform Organisms<sup>5</sup>**. Effluent total coliform organisms shall not exceed:
    - i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median;
    - ii. 23 MPN/100 mL, more than once in any 30-day period; and
    - iii. 240 MPN/100 mL, at any time

<sup>5</sup>This Order includes interim effluent limitations for total coliform organisms (Section IV.A.5.c.). Effective immediately, the interim effluent limitations shall apply in lieu of final effluent limitations for total coliform organisms. The final effluent limitations for total coliform organisms become effective when the Discharger complies with Special Provisions VI.C.4.b. or August 1, 2008, whichever is sooner.
13. WDRs Order R5-2007-0036-01 Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:
- g. **Total Coliform Organisms<sup>2</sup>**. Effluent total coliform organisms shall not exceed:
    - i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median;
    - ii. 23 MPN/100 mL, more than once in any 30-day period; and
    - iii. 240 MPN/100 mL, at any time

<sup>2</sup>This Order includes interim effluent limitations for total coliform organisms (Section IV.A.5.c.). Effective immediately, the interim effluent limitation for total coliform organisms become effective when the Discharger complies with Special Provisions VI.C.4.b. or August 1, 2008, whichever is sooner.
14. WDRs Order R5-2007-0036-01 Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:
- e. **Temperature**. The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F
15. WDRs Order R5-2007-0036-01, Monitoring Reporting Program (MRP), Attachment E, X.B.2., states, in part:
- 2. Monitoring results shall be submitted to the Regional Water Board by the first day of the second month following sample collection...
16. According to the Discharger's self-monitoring reports, the Discharger committed eleven (11) non-serious violations of the above effluent limitations contained in Order Nos. R5-2007-0036 and R5-2007-0036-01. One of these non-serious violations is subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because this violations was preceded by three or more similar violations within a 180-day period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
17. The Discharger was required to submit the October 2012 self-monitoring report by 1 December 2012. However, the Discharger did not submit the October 2012 monitoring report until 7 January 2013, 37 days after the deadline in the Monitoring and Reporting Program. The Discharger committed one (1) serious violation for failure to timely submit

the self-monitoring report required by WDRs Order R5-2007-0036-01. 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 alleged effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.
19. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the 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(a)(2).

**THE CITY OF TRACY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 December 2013**, unless one of the following occurs by **8 October 2013**.
  - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **six thousand dollars (\$6,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, 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.

4. 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

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PAMELA C. CREEDON, Executive Officer

10 September 2013

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DATE

Attachment A: Record of Violations

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Tracy (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0566 (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 **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2013-0566" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **8 October 2013**.
- 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 engage in settlement discussions.)** 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, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water 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 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.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0566**

**City of Tracy  
Tracy Wastewater Treatment Plant**

**RECORD OF VIOLATIONS (1 January 2009 - 31 May 2013) MANDATORY PENALTIES**

(Data reported under Monitoring and Reporting Programs R5-2007-0036, R5-2007-0036-01, and R5-2012-0115)

|   | <u>Date</u>  | <u>Parameter</u>     | <u>Units</u>         | <u>Limit</u>                    | <u>Measured</u>     | <u>Period</u>             | <u>Remarks</u> | <u>CIWQS</u> |
|---|--------------|----------------------|----------------------|---------------------------------|---------------------|---------------------------|----------------|--------------|
| <i>Violations under NPDES Order R5-2007-0036</i>    |              |                      |                      |                                 |                     |                           |                |              |
| 1   | 8-May-09     | Total Coliform       | MPN/100 mL           | 240                             | 300                 | Instantaneous Maximum     | 3              | 822585       |
| 2   | 16-May-09    | pH                   | S.U.                 | 6.5                             | 6.4                 | Instantaneous Minimum     | 3              | 822588       |
| 3   | 28-Nov-09    | Total Coliform       | MPN/100 mL           | 23                              | 70                  | More than once in 30-days | 3              | 857658       |
| 4   | 11-Nov-10    | Total Coliform       | MPN/100 mL           | 240                             | 1600                | Instantaneous Maximum     | 3              | 886709       |
| 5   | 22-Nov-10    | Total Coliform       | MPN/100 mL           | 23                              | 50                  | More than once in 30-days | 3              | 886710       |
| <i>Violations under NPDES Order R5-2007-0036-01</i> |              |                      |                      |                                 |                     |                           |                |              |
| 6   | 16-Mar-11    | Total Coliform       | MPN/100 mL           | 2.2                             | 4.0                 | 7-day Median              | 3              | 897343       |
| 7   | 11-May-11    | Total Coliform       | MPN/100 mL           | 23                              | 30                  | More than once in 30-days | 3              | 908535       |
| 8   | 1-Sep-11     | Total Coliform       | MPN/100 mL           | 240                             | 1600                | Instantaneous Maximum     | 3              | 911852       |
| 9   | 30-Oct-11    | Total Coliform       | MPN/100 mL           | 240                             | 300                 | Instantaneous Maximum     | 3              | 913373       |
| 10  | 26-Dec-12    | Effluent Temperature | °F                   | 20°F                            | 22°F                | Instantaneous Maximum     | 3              | 942855       |
| 11  | 3-Jan-13     | Effluent Temperature | °F                   | 20°F                            | 22°F                | Instantaneous Maximum     | 3              | 944991       |
| 12  | 15-Jan-13    | Effluent Temperature | °F                   | 20°F                            | 22°F                | Instantaneous Maximum     | 4              | 944291       |
|   | <u>SMR</u>   | <u>Due Date</u>      | <u>Received Date</u> | <u># of 30-day Periods Late</u> | <u>MMPs Accrued</u> | <u>Remarks</u>            | <u>CIWQS</u>   |              |
| 13  | October 2012 | 12/01/2012           | 01/07/2013           | 1                               | \$3,000             | 5                         | 944992         |              |

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.
5. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report.

**ATTACHMENT A**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0566**

| <b><u>VIOLATIONS AS OF:</u></b>                 | <b><u>5/31/13</u></b> |
|---|-----------------------|
| Group I Serious Violations:                     | 0                     |
| Group II Serious Violations:                    | 0                     |
| Non-Serious Violations Not Subject to MMPs:     | 11                    |
| Non-serious Violations Subject to MMPs:         | 1                     |
| Serious Violations:                             | 1                     |
| <b><u>Total Violations Subject to MMPs:</u></b> | <b><u>2</u></b>       |

**Mandatory Minimum Penalty = (1 Late Reporting Violation + 1 Non-Serious Violations) x \$3,000 = \$6,000**

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2013-0566

ISSUED TO

CITY OF TRACY  
WASTEWATER TREATMENT PLANT  
SAN JOAQUIN COUNTY

SCHEDULED FOR 5/6 DECEMBER 2013

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.

**Overview**

Pursuant to Water Code section 13323, the Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to the City of Tracy, alleging violations of Water Code section 13385 for the discharge of wastewater from the Tracy Wastewater Treatment Plant that exceeded permitted effluent limitations and for the late submittal of one monitoring report. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of six thousand dollars (\$6,000). A hearing is currently scheduled to be conducted before the Board during its 5/6 December 2013 meeting.

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. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's 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 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, which has been approved by the Board Chair for the adjudication of such matters. The 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>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

### **Separation of Prosecutorial and Advisory 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 Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer and David Coupe, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Andrew Altevogt, Assistant Executive Officer, Wendy Wyels, Environmental Program Manager; Nichole Morgan, Senior Water Resources Control Engineer; Mohammad Farhad, Water Resources Control Engineer, and Andrew Tauriainen, Senior 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. 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. 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.

### **Hearing Participants**

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties 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). At the hearing, 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 Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. City of Tracy

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

**Primary Contacts****Advisory Team:**

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

David P. Coupe, Senior Staff Counsel  
c/o San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Phone (510)662-2306; fax: (510)622-2460  
[dcoupe@waterboards.ca.gov](mailto:dcoupe@waterboards.ca.gov)

**Prosecution Team:**

Wendy Wyels, Environmental Program Manager  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4835; fax: (916) 464-4645  
[wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov)

Andrew Tauriainen, Senior 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) 341-5445; fax: (916) 341-5896  
[Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov)

**Discharger**

Steve Bayley, Deputy Director Public Works  
City of Tracy  
3900 Holly Drive, Tracy, CA. 95304  
Phone: (209) 831-4434; fax: (209)831-4484  
[steveb@ci.tracy.ca.us](mailto:steveb@ci.tracy.ca.us)

**Ex Parte Communications**

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

**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 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. 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 the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

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**

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information 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 not generally receive copies of materials incorporated by reference unless copies are provided, 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.
4. The qualifications of each expert witness, if any.

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

**Designated Parties (including the Discharger):** All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

**Rebuttal:** Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

**Copies:** Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic

copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

**Other Matters:** The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

**Interested Persons:** 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 the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

**Prohibition on Surprise Evidence:** 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 Board Chair 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.

**Presentations:** Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

**Witnesses:** All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The ACL 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 Drive, Rancho Cordova, CA 95670. 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 Wendy Wyels (contact information above) for assistance obtaining copies.

### **Questions**

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

## **IMPORTANT DEADLINES**

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

|                                 |  |
|---------------------------------|--|
| 10 September 2013               | <ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.</li> </ul>   |
| 20 September 2013               | <ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedure.</li> <li>▪ Deadline to request “Designated Party” status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>  |
| 25 September 2013               | <ul style="list-style-type: none"> <li>▪ Deadline to submit opposition to requests for Designated Party status.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>  |
| 8 October 2013                  | <ul style="list-style-type: none"> <li>▪ Discharger’s deadline to submit <i>90-Day Hearing Waiver Form</i>.</li> </ul> <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>  |
| 10 October 2013*                | <ul style="list-style-type: none"> <li>▪ Advisory Team issues decision on requests for designated party status.</li> <li>▪ Advisory Team issues decision on Hearing Procedure objections.</li> </ul>   |
| 17 October 2013*                | <ul style="list-style-type: none"> <li>▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence and Policy Statements,” above.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>  |
| 5 November 2013*                | <ul style="list-style-type: none"> <li>▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence and Policy Statements” above. This includes all written comments regarding the ACL Complaint.</li> <li>▪ Interested Persons’ comments are due.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>   |
| 12 November 2013*               | <ul style="list-style-type: none"> <li>▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</li> <li>▪ Deadline to submit requests for additional time.</li> <li>▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p> |
| 14 November 2013*. <sup>†</sup> | <ul style="list-style-type: none"> <li>▪ Prosecution Team submits Summary Sheet and responses to comments.</li> </ul> <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>  |
| 5/6 December 2013*              | <ul style="list-style-type: none"> <li>▪ Hearing</li> </ul>  |

\* Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an “\*” will be revised if a settlement cannot be reached.

<sup>†</sup> This deadline is set based on the date that the Board compiles the Board Members’ agenda packages. Any material received after this deadline will not be included in the Board Members’ agenda packages.