

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR RE-HEARING OF ADMINISTRATIVE CIVIL LIABILITY ORDER
R5-2007-0054

ISSUED TO
TEHAMA MARKET ASSOCIATES, LLC
AND
ALBERT GARLAND
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY

SCHEDULED FOR 13/14 AUGUST 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

Pursuant to California Water Code (CWC) section 13323, the Central Valley Water Board issued an Administrative Civil Liability (ACL) Order R5-2007-0054 to Tehama Market Associates, LLC and Albert Garland for violations of the Federal Clean Water Act section 301 and CWC section 13376. These violations were caused by a failure to obtain coverage under, and implement the provisions of, Order 99-08-DWQ (NPDES General Permit No. CAS00002), the State Water Resources Control Board's Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activity.

In ACL Order R5-2007-0054, administrative civil liability in the amount of \$250,000 was imposed by the Central Valley Water Board for the aforementioned violations. However, the Superior Court of the State of California, County of Butte, remanded the Order for further administrative proceedings. An administrative hearing to address the issues remanded by the Superior Court is currently scheduled to be conducted before the Central Valley Water Board during its 13/14 August 2009 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding provisions of the previously-issued ACL Order which were remanded by the Superior Court of the State of California, County of Butte, relating to the use of the doctrine of laches as a defense to the imposition of administrative civil liability. At the hearing, the Central Valley Water Board will consider whether to re-issue a modified version of the administrative civil liability order that addresses the issues remanded by the Superior Court, to issue an administrative civil liability order for a higher or lower amount, or to reject the proposed liability. The public hearing on 13/14 August 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:

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.

Hearing Procedures

The hearing will be conducted in accordance with these Hearing Procedures. This proposed draft version of the Hearing Procedures has been prepared by the Prosecution Team, and is 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 Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THESE PROCEDURES HAVE BEEN APPROVED BY THE CENTRAL VALLEY WATER BOARD FOR USE IN THE ADJUDICATION OF ADMINISTRATIVE CIVIL LIABILITY ACTIONS. THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 7 JULY 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. Tehama Market Associates LLC, and Albert G. Garland

Primary Contacts**Advisory Team:**

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Rancho Cordova, CA 95670

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Emel Wadhvani, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
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Prosecution Team:

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Discharger:

Tehama Market Associates, LLC and Albert G. Garland
Represented by Kenneth Petruzzelli, Esq.
O'Laughlin and Paris, LLP
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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: Pamela Creedon, Executive Officer; Phillip Wyels, Assistant Chief Counsel; and Emel Wadhvani, Staff Counsel. Members of the Prosecution Team are: Jim Pedri, Assistant Executive Officer, George Day, Supervising Water Resources Control Engineer; Scott Zaitz, Environmental Scientist; 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 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 Order 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 40 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 no later than ten days after all of the evidence has been received. 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.

Submission of Evidence and Policy Statements

The following information must be submitted 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.
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 evidence upon which the Order is based has already been entered into the administrative file. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on 7 July 2009. The Board's Advisory Team, all Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on 7 July 2009.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on 17 Jul 2009. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on 29 July 2009, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

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.

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. 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 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, in Redding. 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/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Scott Zaitz at (530) 224-4784 or szaitz@waterboards.ca.gov.

Questions

Questions concerning this proceeding may be addressed to Emel Wadhvani at (916) 322-3622 or ewadhvani@waterboards.ca.gov.

IMPORTANT DEADLINES

- 26 June 2009 Prosecution Team sends proposed Hearing Procedure to Discharger and Advisory Team
- 7 July 2009 Objections due on proposed Hearing Procedure; Hearing Procedure becomes final if no Objections
- 7 July 2009 Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
- 17 Jul 2009 Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
- 29 July 2009 All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
- 13/14 August 2009 Hearing