

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0592

IN THE MATTER OF

HENRY J. TOSTA

SAN JOAQUIN COUNTY

NOTICE OF HEARING TO ASSESS ADMINISTRATIVE CIVIL LIABILITY:

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), hereby gives notice that:

1. This Complaint is issued to Henry J. Tosta, operator of the Reeve Road Heifer Ranch, hereafter referred to as “Discharger”, pursuant to California Water Code (Water Code) section 13323.
2. Unless waived, a hearing on this matter will be held before the Central Valley Water Board within 90 days following issuance of this Complaint. The Discharger, or its representative(s), will have an opportunity to be heard and to contest the allegations in this Complaint and the proposed imposition of administrative civil liability. Not less than 10 days before the hearing date, an agenda for the meeting of the Central Valley Water Board at which this matter will be heard will be available on the Board’s website: <http://www.waterboards.ca.gov/centralvalley/>
3. At the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability (including an increase in the amount of the liability up to the statutory maximum) or whether to refer the matter to the Attorney General for assessment of judicial civil liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

BACKGROUND INFORMATION

4. The Reeve Road Heifer Ranch (WDID 5B39NC00152) is located at 21070 Reeve Road, Tracy, San Joaquin County (hereafter “Reeve Road Heifer Ranch” or “Heifer Ranch”). The Heifer Ranch and associated cropland are located on APN 209-300-015 and APN 209-300-016 and are owned by the Echeverria Brothers Dairy General Partnership. The Reeve Road Heifer Ranch is located to the west of the city of Tracy within the legal boundaries of the Sacramento-San Joaquin Delta. The property is comprised of a total of 118 acres of cropland and 18 acres of production area and is surrounded by cropland associated by Henry Tosta Dairy on the north and east, by Reeve Road on the west, and by West Middle Road on the south. The facility is permitted to house up to 127 mature dairy cows, but currently houses 800 support stock. Solid manure generated by

cattle is stockpiled in an area south of the unused wastewater storage lagoon. The cropland is bisected by the Main Drain canal of the Naglee-Burk Irrigation District.

5. On 3 May 2007, the Central Valley Water Board adopted the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (hereinafter "Dairy General Order") and a Monitoring and Reporting Program (hereinafter "MRP") that accompanied the Dairy General Order. The Dairy General Order and the MRP contained reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007. The Dairy General Order was a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's August 8, 2008 request and (2) have not expanded operations since October 17, 2005.
6. On 26 September 2011, the Discharger received a NOV for its failure to submit annual reports for calendar years 2008 through 2010 and a waste management plan by the due dates required by the Dairy General Order. On 25 October 2011 the Discharger responded to the NOV by submitting a letter indicating its intent to close the facility from the Dairy General Order along with the required Closure Plan. In response, on 1 May 2012, Central Valley Water Board staff conducted an inspection. Staff noted that the old manure lagoon had not been cleaned out as required for closure. Staff toured the rest of the facility and found evidence of the disposal of dead animals in the production area, including several dead calves and a decomposing cow skull, as well as numerous cow bones. North of the production area, in Heifer Ranch cropland, staff observed a large area of disturbed soil and two mature dairy cows buried in a shallow pit grave in land immediately adjacent to the Main Drain canal of the Naglee-Burke Irrigation District. Land adjacent to the burial area was dry, but the burial pit itself was full of water that appeared to be groundwater. During the inspection, Mr. Tosta told staff that the cows in the pit died on or around 25 April 2012 on the Henry Tosta Dairy and that 4-6 cows were buried in this manner at this location each month for 5-6 years. Given the shallow groundwater levels in this area, it is likely that the cows buried on the Reeve Road Heifer Ranch were buried directly in groundwater. Additional shallow depressions indicative of burial sites were seen throughout this area.
7. On 11 June 2012 the Executive Officer of the Central Valley Water Board issued Cleanup and Abatement Order (CAO) R5-2012-0709 to the Discharger. The CAO identified several violations, including the illegal burial of dead cows at a dairy facility, a failure to maintain domestic and agricultural wells, and a failure to manage waste in compliance with the waste management practices required by the Dairy General Order. The CAO required the Discharger to clean up and abate the effects of waste discharges to surface water and groundwater at the Reeve Road Heifer Ranch in accordance with a specified time schedule in the directives outlined below.
 - a. Directive 1 - Immediately stop the burial of dead animals and properly dispose of the dead animals as required by the Dairy General Order;
 - b. Directive 2

- i. Commence removal of dead animals buried adjacent to the Main Drain canal of the Naglee-Burke Irrigation District by 18 June 2012 and complete removal by 25 June 2012;
 - ii. Submit legal proof of disposal to the Central Valley Water Board by 2 July 2012;
 - c. Directive 3 - Collect groundwater samples in the vicinity of the dead cow burial area, the area adjacent to the Main Drain canal of the Naglee-Burke Irrigation District, by 23 July 2012;
 - d. Directive 4a
 - i. If the results of samples collected pursuant to Directive 3 indicate that waste disposal has caused pollution of groundwater, submit a groundwater remediation plan by 27 August 2012;
 - ii. Remove all wastewater and manure solids from the wastewater lagoon by 29 June 2012;
 - iii. Remove manure and bones in the area south of the wastewater lagoon by 29 June 2012;
 - iv. Complete any additional actions required to remove the Reeve Road Heifer Ranch from coverage under the Dairy General Order by 29 June 2012;
 - v. Provide documentation of proper disposal of the manure mixed with bones to the Central Valley Water Board;
 - e. Directive 5 - Repair the domestic and agricultural wells at the Reeve Road Heifer Ranch by 29 June 2012.
 8. In response to a request from the Discharger's consultant, David Avila of Western Dairy Design Associates, Inc. (Western Dairy Design), to extend the deadline for the completion of removing the dead animals buried adjacent to the Main Drain canal of the Naglee-Burke Irrigation District, a requirement of CAO Directive #2, the Executive Officer of the Central Valley Water Board issued a letter on 25 June 2012 granting an extension for completion until 29 June 2012. The Discharger remained subject to all other directives in the CAO.
 9. On 21 June 2012 the Central Valley Water Board received an email from Rebecca Hammond, who is married to the Discharger's stepson, in response to a newspaper article in the Stockton Record about the CAO. Ms. Hammond provided five historic photos of the Reeve Road Heifer Ranch showing numerous dead cows buried in cropland. Ms. Hammond noted that, "I feel it is important to note that when Mr. Tosta buries the cows over half of them are still alive...if you look in the correct places you will find 1000's of cow carcasses that have been buried over the years." Central Valley Water Board staff responded to her by email on 29 June 2012, and received a detailed response on 2 July 2012. Ms. Hammond stated that the photos were taken in 2003-

2004 by a former employee of the Henry Tosta Dairy. The email also claimed that “[sic] Henry never had a cow properly removed (Talo),” and “he has buried the cows on the properties since the dairy was first put in to business. I am not trying to make this out of something it is not, but I’m telling you...there has got to be 1000’s of buried cows out there. Mostly on the reeves road [Heifer Ranch].”

10. Staff used horizon features to identify the location where the photos submitted by Rebecca Hammond were taken. This area was identified as north of the wastewater lagoon and south of the burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District. On 3 July 2012 staff inspected the area and noted that the cropland in this vicinity was covered in weathered cow bones.
11. On 28 June 2012 Central Valley Water Board staff performed a quick inspection of the Reeve Road Heifer Ranch burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District and noted that the mounds of dirt and pits with dead cows inside them had been leveled.
12. On 3 July, 2012 staff conducted an inspection to verify compliance with the directives in the CAO. Western Dairy Design presented staff with an iPhone photograph of a receipt from Foothill Landfill, as well as a collection of rough notes. Staff reviewed these materials, but informed Western Dairy Design and Mr. Tosta that submission of an unverified receipt from a landfill was not sufficient to satisfy CAO Directive 2.
13. On 6 July 2012 Western Dairy Design submitted a status report, dated 21 June 2012, to the Central Valley Water Board. This report summarized the work that had been performed on the Reeve Road Heifer Ranch to date. The report described the excavation of the dead cows from the burial area adjacent to the Main Drain canal and collection of water quality samples, but did not contain information about the number of dead cows removed and disposed of at the Foothill Landfill. The 6 July 2012 report noted that “Mr. Tosta has verbally agreed to perform the cleanup [of the Reeve Road Heifer Ranch manure lagoon] as described [by the CAO]...I would estimate this work to be completed by the week of 23-27 July 2012.”
14. On 17 July 2012 staff performed a follow up inspection of the Reeve Road Heifer Ranch to assess compliance with the CAO. No progress had been observed regarding the removal of the manure containing animal remains from the area south of the wastewater lagoon as required by Directive 4 of the CAO. Staff reminded Mr. Tosta that the manure containing animal remains must be removed and properly disposed of at a landfill as required by the CAO. Mr. Tosta was also reminded of the continuing accrual of potential civil penalties stemming from a failure to meet the requirements of the CAO.
15. On 20 July 2012 the Central Valley Water Board received a report titled “Comprehensive Report - Dead Animal Removal – Reeve Road Heifer Ranch”, dated 18 July 2012, from Western Dairy Design. The report detailed the removal of decomposed cow carcasses from “an area 35 feet wide, 425 feet long, and 7 to 8 feet deep...along the south bank road of the Naglee-Burk Drain.” The report estimated that “8 to 12 animals were recovered from this excavation.” However, later in the report, a single receipt from Foothill Landfill is included in the report; the receipt has a

handwritten note stating, "Henry Tosta CAO Reeve Road Heifer Ranch: Carcass bone and composted residue soil from 2 cows." The report also contained laboratory results from groundwater samples collected on 25 June 2012 (lab sheets state the collected and received dates were 24 June 2012, a Sunday).

- 16.** Groundwater underneath the Reeve Road Heifer Ranch has designated beneficial uses of municipal and domestic water supply (MUN), agricultural water supply (AGR), industrial service supply (IND), and industrial process supply (PRO). Two water quality samples taken at approximately 18 feet below soil surface in a burial pit after the cow carcasses were removed contained nitrate as nitrogen at 30mg/L and 21.9 mg/L, respectively. The maximum contaminant level (MCL) for nitrate as nitrogen in drinking water is 10mg/L. In addition, the samples contained total coliform greater than 2419.6 MPN/100mL. According to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, 4th Edition (Basin Plan), for drinking water the Most Probable Number (MPN) of coliform organisms over any seven-day period shall not exceed 2.2/100mL. The water samples also contained E.coli at 156.5 MPN/100mL; any positive result for E.coli is a cause for concern according to the US Environmental Protection Agency's Primary Drinking Water Regulations, because E.coli only comes from human and animal fecal waste. Ammonia was present in the samples at 5.2 mg/L. While ammonia is of greater concern in surface water because of effects on aquatic life, the concentration of ammonia in the samples is in excess of the taste and odor threshold of 1.5 mg/l. The results from these limited samples indicate nitrate in excess of the MCL, total coliform in excess of the Basin Plan standard, ammonia at levels that would affect the taste and odor of the water, and the presence of E.coli indicating impacts from human and/or animal fecal waste. These results indicate that the disposal of dead animals at this location has unreasonably affected groundwater quality, resulting in exceedances of water quality objectives and, therefore, causing degradation and pollution of groundwater in violation of Prohibition A.4. of the Dairy General Order. Because the water quality samples in this report confirmed pollution of groundwater from the Discharger's activities, the Discharger was required to submit a Groundwater Remediation Plan by 27 August 2012 in accordance with Directive 4 of the CAO.
- 17.** On 23 July 2012 the Central Valley Water Board received a request from Mr. Tosta for an extension of the deadlines under Directive 4 in the Cleanup and Abatement Order to 15 October 2012 for the completion of work required to remove the Reeve Road Heifer Ranch from the Dairy General Order. The request stated "the reason is that there are no farmers willing to accept manure until they are able to apply it, which will be after the corn is harvested." The Executive Officer did not grant this extension request because disposal of manure containing animal remains on farm fields, as proposed by Mr. Tosta, would not meet the requirements of Directive 4 of the CAO. On 15 August 2012 staff left a phone message with Western Dairy Design explaining that the 23 July 2012 request for extension of the CAO had not been granted.
- 18.** During the 26 July 2012 inspection, staff confirmed that the wastewater storage lagoon was cleaned down to native soil and that the manure scraped from the lagoon had been stacked on top of the existing manure piled south of the lagoon. On a subsequent inspection on 5 September 2012, staff walked along the top of the manure piles and observed that much of this material was comprised of dirt and manure, but numerous

cow bones were protruding out of the pile. Staff explained to Mr. Tosta and Mr. Avila in the field that manure containing animal remains must be disposed of at a landfill that accepts those materials and cannot be applied to land.

19. On 31 July 2012 staff received a phone call from David Avila of Western Dairy Design regarding the pile of manure containing animal remains on the Reeve Road Heifer Ranch. Mr. Avila explained that Mr. Tosta wanted to land apply the commingled manure rather than sending it to a landfill. Staff again explained to Mr. Avila that land application would not meet the requirements of the CAO or the Dairy General Order since manure containing animal remains must be properly disposed of at a landfill.
20. On 5 September 2012 staff performed a follow-up inspection of the Reeve Road Heifer Ranch to assess compliance with the CAO and did not observe any further progress regarding removal of the manure containing animal remains. Staff again explained that comingled manure that has been exposed to mammalian tissue must go to a landfill. Mr. Tosta indicated that he understood this restriction and would comply with this requirement.
21. On 14 September 2012 the Central Valley Water Board issued a letter titled "Status of Compliance with Cleanup and Abatement Order R5-2012-0709 Reeve Road Heifer Ranch" to the Discharger. The letter detailed the outstanding requirements and lack of compliance with the CAO, including: (1) the failure to timely submit a proof of legal disposal of animal carcasses; (2) failure to submit a Groundwater Remediation plan by 27 August 2012; and (3) failure to properly dispose of the pile of manure containing animal remains stacked south of the wastewater lagoon. The letter informed the discharger of the maximum potential penalty for violations to date, and requested immediate compliance with the CAO.
22. On 3 October 2012, Western Dairy Design submitted two emails on behalf of the Discharger. The first email requested replacement of certain pages of the 6 July 2012 Cleanup and Abatement Plan. The second email requested replacement of certain pages of the 18 July 2012 Comprehensive Dead Animal Removal Report. Staff reviewed these submissions in context of the original 6 July 2012 and 18 July 2012 reports but concluded that they did not change the Discharger's compliance status with the CAO.
23. Staff conducted inspections of the Reeve Road Heifer Ranch on 10 October 2012, 7 December 2012, 7 January 2013, 5 March 2013, 17 September 2013, 23 October 2013, and 15 November 2013. The pile of manure containing animal remains stacked next to the lagoon was not removed during this period.
24. Representatives of the Echevarria Dairy General Partnership submitted a cleanup plan for the pile of manure containing animal remains from the area south of the Reeve Road Heifer Ranch wastewater lagoon on 5 November 2013.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

25. Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
26. Pursuant to Water Code section 13350, subdivision (a), any person or entity who (1) violates a cleanup and abatement order hereafter issued by a Regional Water Board; or (2) in violation of a Waste Discharge Requirement issued by a Regional Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative civil liability pursuant to Water Code section 13350, subdivision (e), on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs.
27. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. Pursuant to Water Code section 13268 any person failing or refusing to furnish technical or monitoring program reports may be subject to an administrative penalty imposed by a regional board in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

THE ASSISTANT EXECUTIVE OFFICER OF THE CENTRAL VALLEY WATER BOARD ALLEGES:

SUMMARY OF ALLEGED VIOLATIONS

28. **Dead Cow Discharge to Ground Water:** The Discharger violated Water Code section 13350(a)(2) by burying dead cows in groundwater. The Discharger disposed of animal carcasses at the Reeve Road Heifer Ranch by placing the carcasses in groundwater, a water of the State, in violation of Dairy General Order Prohibition A.6. The Discharger disposed of animal carcasses in this manner from 1 May 2012, the date of the initial discovery inspection, until 25 June 2012, the date the carcasses were hauled to a landfill for disposal. By placing animal carcasses in groundwater in violation of the Dairy General Order, the Discharger caused waste to be deposited where it discharged to waters of the State. Liability may be assessed in accordance with Water Code section 13350(e)(1) from 1 May 2012, the date of the first inspection, until 25 June 2012, a total of **56 days**.
29. **Violation of CAO Directives:** The Discharger violated Water Code sections 13350(a)(1) and 13267 by failing to comply with the directives of CAO R5-2012-0709 including:
 - a. **Directive 2:** Failure to timely submit proof of legal disposal of animal carcasses.
 1. **Directive 2** required the Discharger to submit proof of legal disposal of animal carcasses from the area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District by 2 July 2012 as

required pursuant to Water Code section 13267.

2. The Discharger submitted a report documenting the removal of animal carcasses, including a receipt from a landfill documenting disposal of waste, on 20 July 2012. Liability may be assessed in accordance with Water Code section 13268(b)(1) from 3 July 2012 to 20 July 2012, a total of **18 days**.

b. **Directive 4:** Failure to submit a Groundwater Remediation Plan.

1. **Directive 4** of the CAO required the discharger to submit a Groundwater Remediation Plan by 27 August 2012 if groundwater quality samples indicated that waste disposal has caused pollution of groundwater as required pursuant to Water Code section 13267.
2. As described above, groundwater samples indicate levels of pollution from waste disposal from the dead animal burial area adjacent to the Main Drain canal of the Naglee-Burk Irrigation District. Therefore, the Discharger was required to submit a Groundwater Remediation Plan to address high concentrations of nitrates and other constituents in groundwater at the Reeve Road Heifer Ranch. A Groundwater Remediation Plan was submitted by email to the Central Valley Water Board on 12 April 2013. The Discharger remained out of compliance with the CAO from 28 August 2012 to 12 April 2013, a total of **228 days**. Liability may be assessed in accordance with Water Code section 13268(b)(1).

c. **Directive 4:** Failure to remove and properly dispose of manure containing animal remains from the wastewater lagoon and from the area south of the wastewater lagoon.

1. **Directive 4** of the CAO required the discharger to remove all wastewater and manure from the manure lagoon and manure and bones in the area south of the wastewater lagoon and to provide documentation of proper disposal of manure containing animal remains by 29 June 2012.
2. The Discharger complied by removing the wastewater and manure from the manure lagoon. However the Discharger failed to export the manure containing animal remains from the Reeve Road Heifer Ranch to a landfill that is certified to accept this waste, therefore failing to properly dispose of this material. Central Valley Water Board staff reminded the Discharger and its agents of the requirement to dispose of manure containing animal remains at a landfill on at least six separate occasions and by letters dated 26 August 2013 and 29 October 2013. The Discharger has been out of compliance with this requirement of the CAO from 30 June 2012

through 15 November 2012, a total of **504 days**. Liability may be assessed in accordance with Water Code section 13350(e)(1).

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

- 30.** On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11709.pdf.

- 31. Maximum Civil Liability:** The maximum administrative civil liability for violations of Water Code section 13350(a)(1) and (a)(2) is \$5,000 per violation per day. The maximum penalty for violation of Water Code section 13268 is \$1,000 for each day in which the violation occurs. The maximum penalty for the violations described above is **\$3,047,000**.
- 32. Minimum Civil Liability:** The minimum administrative civil liability according to the Enforcement Policy is equal to the economic benefit plus 10%. Based upon evidence received, economic benefit plus 10% is substantially less than the \$310,775 proposed liability amount.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

Based on consideration of the above facts and after applying the penalty methodology, as detailed in Attachment A, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$310,775 for the violations cited above.

If the Central Valley Water Board holds a hearing, it may choose to impose the administrative civil liability in the amount proposed, in a higher or lower amount, or it may decline to seek civil liability, or it may recommend referral of the matter to the Attorney General for enforcement. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Discharger's waste discharge requirements and/or violations of requirements of the CAO for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.)

ACL Complaint R5-2013-0592
HENRY J. TOSTA
SAN JOAQUIN COUNTY

pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with CAO Order No. R5-2012-0709 or the Dairy General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with these orders, and/or future orders issued by the Central Valley Water Board.

21 November 2013

Date

Andrew Altevogt
Assistant Executive Officer
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Henry J. Tosta (Operator), hereinafter "Discharger", in connection with Administrative Civil Liability Complaint R5-2013-0592 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of three hundred ten thousand seven hundred seventy five dollars (\$310,775).** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **\$310,775 in full**.

The Discharger shall remit payment, by check, which will contain a reference to "ACL Complaint R5-2013-0592" and will be made payable to the "State Water Resources Control Board Waste Discharge Permit Fund". Payment must be received by **13 December 2013** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **6/7 February 2014** Central Valley Water Board meeting.

I understand that payment of the **\$310,775** in full 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.

-or-

4. **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** 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 reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. 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 Regional Water Board within 90 days after service of the complaint but reserve the ability to request a hearing in the future. 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.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

Penalty Methodology: Specific Factors Considered

ATTACHMENT B
Penalty Calculation for Civil Liability