



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 8, 2011

Attn: Eric G. Lardiere
Whittaker Corporation
1955 Surveyor Avenue
Simi Valley, California 93063

Certified Mail No.
7004 1160 0002 0465 8574

Dear Mr. Lardiere:

SECOND AMENDED COMPLAINT NO. OE-2011-0039 FOR MANDATORY MINIMUM PENALTY AGAINST WHITTAKER CORPORATION, FORMER WHITTAKER-BERMITE FACILITY 2216 SOLEDAD CANYON ROAD, SANTA CLARITA, CA, 91305. (ORDER NO. R4-2003-0111, NPDES PERMIT NO. CAG994004, CI NO. 8727)

Enclosed is Second Amended Complaint No. OE-2011-0039 for Mandatory Minimum Penalty in the amount of \$54,000.00 against Whittaker Corporation (hereinafter Permittee) for violating waste discharge requirements contained in Regional Water Board Order No. R4-2003-0111. This Second Amended Complaint amends First Amended Complaint No. OE-2011-0039 issued to the Permittee on September 12, 2011. The Second Amended Complaint reflects that violations numbers 903362, 659646, and 769096 have been dismissed for the reasons discussed below:

Violation No. 903362: Based on the Permittee's second quarter 2006 self-monitoring report, it is evident that this violation is the result of laboratory error and is not an exceedance of the effluent limit for selenium that is subject to a mandatory minimum penalty. Therefore, this violation is dismissed because it is not subject to a mandatory minimum penalty.

Violation No. 659646: Based on the monitoring sample taken by the Permittee on October 17, 2006 and the resulting laboratory analysis for selenium, the monthly average value for selenium should have been reported as non-detectable. The monthly average value for selenium should not have been based on the October 13, 2006 sample and laboratory results for selenium. Therefore, this violation is dismissed because it is not subject to a mandatory minimum penalty.

Violation No. 769096: This laboratory result is a clear outlier. Boron was detected at 0.47 mg/L in the influent sample, and the treatment plant was not designed to remove Boron, and did not add Boron as part of the treatment process. Further, samples taken in the preceding year and in subsequent years have never exceeded the limit of 1 mg/L. Therefore, this violation is dismissed because it is not subject to a mandatory minimum penalty.

A detailed response to the Permittee's September 28, 2011 Submission of Legal/Technical Arguments will be provided in a separate communication shortly.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1901 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Also, enclosed is a copy of the State Water Resources Control Board (State Water Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before a Hearing Officer of the State Water Board will be held on this Complaint pursuant to California Water Code Sections 13323(c) and 183. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Second Amended Complaint No. OE-2011-0039 and return it to the Office of Enforcement by 5:00 p.m. on December 7, 2011. If we do not receive the waiver and full payment of the mandatory minimum penalty by December 7, 2011, this matter will be heard by a State Water Board Hearing Officer. An agenda containing the date, time, and location of the hearing will be mailed to you at least ten days prior to the hearing date.

If you have any questions regarding this matter, please contact Ms. Erin Mustain, case manager, at (916) 445-9379 or emustain@waterboards.ca.gov or Ms. Ann Carroll, staff counsel, at (916) 322-3227 or acarroll@waterboards.ca.gov.

Sincerely,

David Boyer

David M. Boyers
Acting Director, Office of Enforcement
State Water Resources Control Board

cc: [via email only]

Mr. Tim Regan, Office of Chief Counsel, State Water Resources Control Board
Ms. Ann Carroll, Office of Enforcement, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Ms. Erin Mustain, Office of Information Management and Analysis,
State Water Resources Control Board
Mr. Jose Diaz, Project Manager, California Department of Toxic Substances Control,
jdiaz@dtsc.ca.gov
Mr. Ravi Subramanian, CDM, SubramanianR@cdm.com
Mr. Richard Montevideo, Rutan & Tucker, rmontevideo@rutan.com

1 DAVID M. BOYERS, Acting Director (SBN 199934)
2 ANN K. B. CARROLL, Staff Counsel (SBN 240452)
3 MAYUMI OKAMOTO, Staff Counsel (SBN 253243)
4 Office of Enforcement
5 State Water Resources Control Board
6 1001 I Street, 16th Floor
7 Sacramento, California 95814
8 Telephone: 916-322-3227
9 Fax: 916-341-5896
10 E-mail: acarroll@waterboards.ca.gov

11 Attorneys for the Prosecution Team

12 **STATE OF CALIFORNIA**
13 **STATE WATER RESOURCES CONTROL BOARD**

14	In the matter of:)	Second Amended Complaint No. OE-2011-0039
15)	
16)	Mandatory Minimum Penalty
17)	for
18)	
19	Whittaker Corporation)	Violation of California Water Code § 13376
20)	
21)	and
22)	
23	2216 Soledad Canyon Road)	ORDER NO. R4-2003-0111
24	Santa Clarita, CA 91350)	(NPDES No. CAG994004)
25)	

26 This Second Amended Complaint to assess the mandatory minimum penalty pursuant to
27 California Water Code (CWC) Section 13385(h) and (i) is issued to the Whittaker Corporation
28 (hereinafter Permittee) based on a finding of violations of waste discharge requirements
29 prescribed in Order Nos. R4-2003-0111 (NPDES No. CAG994004, CI No. 8727). As issued,
30 First Amended Complaint No. OE-2011-0039 alleged twenty-one (21) effluent limit violations of
31 Order No. R4-2003-0111 . Further review of the Permittee's self-monitoring reports subsequent
32 to the issuance of the First Amended Complaint, resulted in the need to amend the effluent limit
violations alleged and the mandatory minimum penalty that the Water Boards must assess
pursuant to CWC Section 13385(h) and (i).

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1 **The Acting Director of the Office of Enforcement of the State Water Resources Control**
2 **Board (State Water Board) alleges the following:**

- 3
- 4 1. The Permittee operates the groundwater treatment system for the Former Whittaker-
5 Bermite facility (Facility) located at 2216 Soledad Canyon Road, Santa Clarita, CA
6 91350. The Facility, a 996-acre property, is a former manufacturing facility with multiple
7 historic owners and uses. Manufacturing included munitions, explosives, flares, and
8 components for the aerospace industry. To facilitate remediation and manage the
9 investigation and cleanup, the Facility was divided into soil Operable Units (OUs 1
10 through 6); groundwater and deep soils were designated as OU 7. The treatment plant
11 is in OU 5 of the Facility.
- 12
- 13 2. Groundwater beneath the Facility is impacted with volatile organic compounds (VOCs),
14 perchlorate, and heavy metals. The Permittee discharges treated groundwater from a
15 soil and groundwater remediation project to a storm water collection system near
16 Soledad Canyon Road and Commuter Way (Latitude 34° 25' 00" North, Longitude 118°
17 31' 15" West). The discharge from the storm water collection system flows into the
18 Santa Clara River (between the Lang Gauging Station and the Bouquet Canyon Road
19 Bridge), a navigable water of the United States. The discharged treated groundwater
20 may contain pollutants, which can degrade water quality and impact beneficial uses of
21 water, and which are defined as wastes under the Porter-Cologne Water Quality Control
22 Act (CWC §§ 13000 et seq.).
- 23
- 24 3. On May 4, 2004, the Regional Water Quality Control Board, Los Angeles Region
25 (Regional Board) determined that the waste discharges from the Permittee's Facility met
26 the conditions to be enrolled under Order No. R4-2003-0111, which was adopted by the
27 Regional Board on August 7, 2003. The Permittee was so enrolled on May 4, 2004.
28 Order No. R4-2003-0111 serves as General National Pollutant Discharge Elimination
29 System (NPDES) Permit No. CAG994004 and Waste Discharge Requirements for
30 Discharges of Groundwater from Construction and Project Dewatering to Surface
31 Waters in Coastal Watersheds of Los Angeles and Ventura Counties.

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1 4. On April 6, 2006, the Regional Board's Executive Officer revised the Permittee's Fact
2 Sheet and Monitoring and Reporting Program for Order No. R4-2003-0111 to eliminate
3 effluent limitations and monitoring requirements for total dissolve solids, sulfate, and
4 chloride.

5
6 5. Effective April 6, 2006, Order No. R4-2003-0111 (Effluent Limitations E.1.b.i) contains
7 effluent limitations for boron, copper, chromium VI, dichlorobromomethane, nitrogen
8 (nitrite + nitrate, as N), perchlorate, selenium, tetrachloroethylene (PCE), and
9 trichloroethene:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Boron	µg/L	1.0	---
Copper	µg/L	20.8	10.4
Chromium VI	µg /L	16	8
Dichlorobromomethane	µg /L	1.1	0.56
Nitrogen ¹	mg/L	5	---
Perchlorate	µg/L	4	---
Selenium	µg/L	8	4
Tetrachloroethylene (PCE)	µg/L	0.34	0.17
Trichloroethene	µg/L	5.0	2.7

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23 6. On December 9, 2008, the Director of the State Water Board Office of Enforcement
24 (State Water Board) issued the Permittee the Offer to Participate in Expedited Payment
25 Program (EPP) No. SWB-2008-4-0099, which included a Notice of Violation notifying
26 the Permittee sixteen (16) effluent violation(s) subject to a mandatory minimum penalty.

27
28 7. Subsequent to the issuance of the December 9, 2008 NOV and the issuance of the
29 original Complaint, staff reviewed the self-monitoring reports submitted by the Permittee
30 and dismissed six (6) of the sixteen (16) effluent violations identified in the December 9,
31 2008 Notice of Violation as subject to mandatory minimum penalties and verified the
32 other ten (10) effluent violations as subject to mandatory minimum penalties. Further,

1 staff discovered eleven (11) additional effluent violations subject to and/or contributing to
2 mandatory minimum penalties.

3
4 8. Subsequent to the issuance of First Amended Complaint No. OE-2011-0039, staff again
5 reviewed the self-monitoring reports submitted by the Permittee and dismissed three (3)
6 of the twenty-one (21) effluent violations identified in Exhibit A to the First Amended
7 Complaint as subject to mandatory minimum penalties.

8
9 9. After multiple reviews of the self-monitoring reports submitted by the Permittee, staff
10 noted eighteen (18) effluent limit violations of Order No. R4-2003-0111 in the
11 Permittee's self-monitoring reports for the third, and fourth quarters of 2006; first,
12 second, third, and fourth quarters of 2007; and second quarter of 2008. The violations
13 are specifically identified in Exhibit "A" to this Complaint. Exhibit "A" is attached hereto
14 and incorporated herein by reference.

15
16 10. Any discharge containing pollutants violating the effluent limitations set in the waste
17 discharge requirements is prohibited by CWC Section 13376.

18
19 11. CWC section 13385(h)(1) requires the Water Boards to assess a mandatory minimum
20 penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC
21 section 13385(h)(2) "a serious violation is defined as any waste discharge that violates
22 the effluent limitations contained in the applicable waste discharge requirements for a
23 Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or
24 more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations
25 specifies the Group I and II pollutants."

26
27 12. CWC Section 13385(i) requires the Water Boards to assess a mandatory minimum
28 penalty of three thousand dollars (\$3,000) for each violation whenever the Permittee
29 violates a waste discharge requirement effluent limitation in any period of six
30 consecutive months, except that the requirement to assess the mandatory minimum
31 penalty shall not be applicable to the first three violations within that time period.

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¹ Nitrate-nitrogen plus nitrite nitrogen.

1 13. The exception provided under CWC Section 13385(j)(1)(D) does not apply to the
2 violations alleged herein. CWC Section 13385(j)(1)(D)(ii) defines a "wastewater
3 treatment unit" as a component of a *wastewater treatment plant* that performs a
4 designated treatment function.

5
6 14. The maximum amount of discretionary administrative civil liability assessable pursuant
7 to CWC Section 13385 for each day of violation is \$10,000 per day of violation plus \$10
8 times the number of gallons by which the volume discharged but not cleaned up
9 exceeds 1,000 gallons.

10
11 **YOU ARE HEREBY GIVEN NOTICE THAT:**

12
13 15. The Acting Director of the State Water Board Office of Enforcement proposes that the
14 Permittee be assessed a mandatory minimum penalty in the amount of \$54,000.00 for
15 the violations cited in Exhibit "A." Refer to Exhibit "A" for the calculation of the amount of
16 mandatory minimum penalty.

17
18 16. The Permittee may waive the right to a hearing and pay the recommended
19 administrative civil liability. Should the Permittee choose to waive its right to a hearing,
20 an authorized agent must sign the waiver form attached to this Complaint and return it to
21 the State Water Board by 5:00 p.m. on December 7, 2011. If the hearing is waived, a
22 check in the amount of \$54,000.00 (payable to the State Water Pollution Cleanup and
23 Abatement Account) must be received by the State Water Board by 5:00 p.m. on
24 December 7, 2011.

25
26 17. If the State Water Board does not receive a waiver and full payment of the
27 recommended penalty by December 7, 2011, the Complaint will be heard before the
28 State Water Board Hearing Officer pursuant to California Water Code Sections 13323(c)
29 and 183. The Notice of Public Hearing contains that date, time, location, and specific
30 procedures of the scheduled hearing of this matter.

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1 18. If a hearing on this matter is held, the State Water Board will consider whether to affirm,
2 reject, or modify the proposed civil liability up to the maximum penalty provided for by
3 law, or whether to refer the matter to the Attorney General to have a Superior Court
4 consider Enforcement.

5
6 19. There are no statutes of limitation that apply to administrative proceedings. The statutes
7 of limitation that refer to "actions" and "special proceedings" and are contained in the
8 California Code of Civil Procedure apply to judicial proceedings, not administrative
9
10 proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95
11 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, Section 405(2), p.
12 510.)

13
14 20. Notwithstanding the issuance of this Complaint, the State Water Board and/or the
15 Regional Board shall retain the authority to assess additional penalties for violations of
16 the requirements of the Permittee's waste discharge requirements for which penalties
17 have not yet been assessed or for violations that may subsequently occur.

18
19 21. This enforcement action is exempt from the provisions of the California Environmental
20 Quality Act, California Public Resources Code Section 21000 et seq., in accordance with
21 California Code of Regulations, Title 14, Section 15321.

22
23 22. Regulations of the United States Environmental Protection Agency require public
24 notification of any proposed settlement of the civil liability occasioned by violation of the
25 Clean Water Act including NPDES permit violations. Accordingly, interested persons will
26 be given 30 days to comment on any proposed settlement of this Complaint.

27
28
29 David Boyers
30 David M. Boyers
31 Acting Director, Office of Enforcement
32 State Water Resources Control Board

11/8/11
Date

Effluent Limitation Violations Requiring Mandatory Minimum Penalties																	
#	Violation Number	Violation Date ¹	Constituent	Pollutant Group	Limitation Period ²	Limitation Type	Limit	Result/Average	Units	% Over Limit	Date 180 Days Prior	Serious ² Violation?	No. of Violations w/in 180 days	Chronic?	Mandatory Fine?	Water Code	Penalty
1	905313	7/17/2006	Perchlorate	Group II	Daily Maximum	Concentration	4	14	ug/L	250%	1/18/2006	Y	N/A	N	Y	13385(n)	\$3,000
2	449788	8/18/2006	Perchlorate	Group II	Daily Maximum	Concentration	4	710	ug/L	17650%	2/19/2006	Y	N/A	N	Y	13385(n)	\$3,000
3	449787	8/18/2006	Nitrogen	Group I	Daily Maximum	Concentration	5	8	mg/L	60%	2/19/2006	Y	N/A	N	Y	13385(n)	\$3,000
4	449791	9/18/2006	Selenium	Group II	Daily Maximum	Concentration	8	26	ug/L	225%	3/22/2006	Y	N/A	N	Y	13385(n)	\$3,000
5	449789	9/18/2006	Nitrogen	Group I	Daily Maximum	Concentration	5	7	mg/L	40%	3/22/2006	N	5	Y	Y	13385(f)	\$3,000
6	903367	10/24/2006	Chromium VI	Group II	Daily Maximum	Concentration	16	50	ug/L	213%	4/27/2006	Y	N/A	N	Y	13385(n)	\$3,000
7	659650	11/16/2006	Selenium	Group II	Daily Maximum	Concentration	8	37	ug/L	363%	5/20/2006	Y	N/A	N	Y	13385(n)	\$3,000
8	903375	3/28/2007	Chromium VI	Group II	Daily Maximum	Concentration	16	56	ug/L	250%	9/29/2006	Y	N/A	N	Y	13385(n)	\$3,000
9	903376	3/31/2007	Chromium VI	Group II	Monthly Average	Concentration	8	56	ug/L	600%	10/2/2006	Y	N/A	N	Y	13385(n)	\$3,000
10	903378	6/30/2007	Tetrachloroethene (PCE)	Group II	Monthly Average	Concentration	0.8	1.4	ug/L	75%	1/1/2007	Y	N/A	N	Y	13385(n)	\$3,000
11	905320	7/31/2007	Trichloroethene (TCE)	Group II	Monthly Average	Concentration	2.7	4.3	ug/L	59%	2/1/2007	Y	N/A	N	Y	13385(n)	\$3,000
12	905318	7/31/2007	Tetrachloroethene (PCE)	Group II	Monthly Average	Concentration	0.8	0.97	ug/L	21%	2/1/2007	Y	N/A	N	Y	13385(n)	\$3,000
13	769111	8/29/2007	Dichlorobromomethane	Group II	Daily Maximum	Concentration	1.1	11	ug/L	900%	3/2/2007	Y	N/A	N	Y	13385(n)	\$3,000
14	903379	8/31/2007	Dichlorobromomethane	Group II	Monthly Average	Concentration	0.56	11	ug/L	1864%	3/4/2007	Y	N/A	N	Y	13385(n)	\$3,000
15	769106	9/6/2007	Dichlorobromomethane	Group II	Daily Maximum	Concentration	1.1	4.8	ug/L	336%	3/10/2007	Y	N/A	N	Y	13385(n)	\$3,000
16	769119	12/3/2007	Nitrogen	Group I	Daily Maximum	Concentration	5	7	mg/L	40%	6/6/2007	N	7	Y	Y	13385(f)	\$3,000
17	905321	12/31/2007	Copper	Group II	Monthly Average	Concentration	10.4	11	ug/L	6%	7/4/2007	N	7	Y	Y	13385(f)	\$3,000
18	905332	5/6/2008	Nitrogen	Group I	Daily Maximum	Concentration	5	9	mg/L	80%	1/18/2007	Y	N/A	N	Y	13385(n)	\$3,000
Total Penalty: \$54,000																	
1 - Violation occurs on sample date or last date of averaging period. 2 - For Group I pollutants, a violation is serious when the limit is exceeded by more than 40% - For Group II pollutants, a violation is serious when the limit is exceeded by more than 20% Violation period ending the last day of June 2011 Group I Violations Assessed MMP: 4 Group II Violations Assessed MMP: 14 Other Effluent Violations Assessed MMP: 0 Total Violations Assessed MMP: 18 Mandatory Minimum Penalty = (15 Serious ³ Violations + 3 Non-Serious Violations) x \$3,000 = \$54,000																	

WAIVER FORM

FOR SECOND AMENDED ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. OE-2011-0039

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

2 I am duly authorized to represent the Whittaker Corporation (hereinafter "Permittee") in
3 connection with Second Amended Administrative Civil Liability Complaint No. OE-2011-0039
4 (hereinafter the "Second Amended Complaint"). I am informed that California Water Code Section
5 13323, subdivision (c), states that, "any hearing shall be before the state board, or before a
6 member of the state board in accordance with Section 183, and shall be conducted not later than
90 days after the party has been served [with the complaint]."

7 ***(Check here if the Permittee waives the hearing requirement and will pay the***
8 ***recommended liability.)***

9 a. I hereby waive any right the Permittee may have to a hearing before the State Water
10 Resources Control Board Hearing Officer.

11 b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of
12 **\$54,000.00** by check that references "Second Amended ACL Complaint No. OE-2011-0039"
13 made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must
14 be received by the State Water Board by December 7, 2011 or this matter will be placed on
the State Water Board's agenda for a hearing as initially proposed in the Complaint.

15 c. I understand the payment of the above amount constitutes a proposed settlement of the
16 Complaint, and that any settlement will not become final until after the 30-day public notice
17 and comment period expires. Should the State Water Board receive significant new
18 information or comments from any source (excluding the Water Board's Prosecution Team)
19 during this comment period, the Director of the State Water Board Office of Enforcement
20 may withdraw the complaint, return payment, and issue a new complaint. I understand that
21 this proposed settlement is subject to approval by the State Water Board, and that the State
22 Water Board may consider this proposed settlement in a public meeting or hearing. I also
23 understand that approval of the settlement will result in the Permittee having waived the right
24 to contest the allegations in the Complaint and the imposition of civil liability.

25 d. I understand that payment of the above amount is not a substitute for compliance with
26 applicable laws and that continuing violations of the type alleged in the Complaint may subject
27 the Permittee to further enforcement, including additional civil liability.

28 _____
(Print Name and Title)

29 _____
(Signature)

30 _____
(Date)

31

32

**HEARING OF THE
STATE WATER RESOURCES CONTROL BOARD**

1001 "T" Street
P.O. Box 100
Sacramento, California 95814
(916) 341-5272

Second Amended ACLC No. OE-2011-0039

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

<u>DISCHARGER</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATERS</u>
Whittaker Corporation	22116 SOLEDAD CANYON ROAD, SANTA CLARITA, CA 91350	Santa Clara River (between the Lang Gauging Station and the Bouquet Canyon Road Bridge)

Second Amended Administrative Civil Liability Complaint ("ACLC") No. OE-2011-0039 alleges that Whittaker Corporation (Permittee) violated waste discharge requirements contained in Regional Water Board Order No. R4-2003-0111 by failing to comply with effluent limits. As stated in the ACLC, State Water Board staff, represented by the State Water Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$54,000.00 be assessed against Whittaker Corporation for these violations.

Pursuant to Water Code section 13323(c) and section 183, a member of the State Water Board (hereinafter "Hearing Officer") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the State Water Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: January 18-19, 2012
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
* Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling Mr. Hugh Marley of the Los Angeles Regional Water Board at (213) 620-6375. Comments received, the Prosecution Team's proposed Hearing Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 p.m. on December 29, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the State Water Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Whittaker Corporation
2. State Water Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Officer identified in section VIII below so that it is received by **5:00 p.m. on December 7, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the State Water Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the State Water Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the State Water Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Jarrod Ramsey-Lewis, Water Resource Control Engineer from the State Water Board. Mayumi Okamoto will advise the Prosecution Team prior to and at the hearing. Neither Ms. Okamoto nor the members of the Prosecution Team will be advising the State Water Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the Hearing Officer (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Erin Mustain, PE
RCE No. 74621
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
(916) 445-9379
emustain@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **December 9, 2011**, the Prosecution Team will send the parties a preliminary Hearing binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Whittaker Corporation. is required to submit:

- 1) Any additional documents or evidence Whittaker Corporation wants the Hearing Officer to consider,
- 2) A summary of any testimony Whittaker Corporation intends to present, and
- 3) A statement regarding how much time Whittaker Corporation needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00pm on December 19, 2011**. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Officer and the parties a final Hearing binder no later than **January 9, 2012**. An agenda containing the date, time, and location of the hearing will be mailed to Whittaker Corporation at least ten days prior to the hearing date.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Officer to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by Prosecution Team, included in the final Hearing binder, and fully considered by the Hearing Officer in advance of the hearing, any such written materials must be received by **5:00 p.m. on December 19, 2011**. If possible, please submit written comments in Word format electronically to the Case Manager. Interested persons should be aware the State Water Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Officer will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Officer generally will be conducted in the following order:

- Opening statement by Hearing Officer
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Officer
- Deliberations (in open or closed session)
- Announcement of recommendation to the State Water Board

While this is a formal administrative proceeding, the Hearing Officer does not generally require the cross-examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Officer after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager **by 5:00 p.m. on December 19, 2011** to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the State Water Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Hearing Officer, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All evidence, including all written materials, must be received by the deadlines identified in Section IV,A, and IV.B., above, or it may be excluded from consideration by the Hearing Officer. The Hearing Officer will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING OFFICER

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, State Water Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the State Water Board, Hearing Officer, or Hearing Officer Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Officer Advisors.

The Hearing Officer will be advised before and during the hearing by a technical advisor, Tim Regan, Senior Staff Counsel, and/or Phil Wyels, Assistant Chief Counsel. None of these individuals has exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Officer as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Officer (identified below) by **5:00 p.m. on December 19, 2011**:

Tim Regan
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5172
TRegan@WaterBoards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Officer, as set forth in section C.2, by **5:00 p.m. on December 19, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS ABOUT NOTICE

Questions about notice may be directed to the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Officer as described above.

Date: November 8, 2011