

ACL Complaint No. R5-2012-0561:

Henry J. Tosta (DBA Henry Tosta Dairy),
Henry J. Tosta Jr. Family Limited Partnership,
and Henry J. Tosta Trust
San Joaquin County

ACL Complaint No. R5-2012-0564:

Henry J. Tosta (DBA Reeve Road Heifer
Ranch) and Escheverria Brothers Dairy
General Partnership
San Joaquin County

Discharger's Ability to Pay and Continue in Business

In determining the amount of civil liability to be imposed on a discharger, the Regional Water Board is required to consider several factors specified in California Water Code § 13327, including, "the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, **the ability to pay, the effect on ability to continue in business**, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

Due to the ongoing decline in the dairy industry, Mr. Tosta is claiming an economic hardship with regard to the civil penalties assessed in the above-referenced actions. As required, Mr. Tosta has attached his tax returns for the years 2009, 2010, and 2011. The following is a summary of Mr. Tosta's adjusted gross income for each of those years:

<u>Tax Year:</u>	<u>Tosta - Individual</u>	<u>Tosta Family - L.P.</u>
2009	\$ -4,880,146	\$ -1,014,951
2010	\$ -5,143,759	\$ -307,532
2011	\$ -5,270,672	\$ -331,837