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8 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
9 **CENTRAL VALLEY REGION**

10) Complaint No. R5-2013-0527
11)
12) In the Matter of the Administrative Civil)
Liability)
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**APPLICATION OR MOTION FOR
ORDERS ALLOWING SEPARATE
PRIOR TRIAL OF THE ISSUE OF
LATCHES, FOR AN ORDER
EXCLUDING ALL EVIDENCE ON THE
GROUND THAT IT IS LEGALLY
IRRELEVANT BECAUSE IT IS
BARRED BY LATCHES AND
DECLARING THE INVALIDITY OF THE
HEARING PROCEDURES
ESTABLISHED BY THE
PROSECUTION TEAM**

19 Malaga County Water District, the party against whom the Administrative Liability
20 Complaint (ACL) is directed, applies for an order of this Regional Board as follows:

- 21 1. For an order excluding any and all evidence offered in support of the ACL
- 22 on the ground that it is illegally irrelevant because the ACL is barred by latches; and
- 23 2. For an order allowing for the separate prior trial of the issue of latches;
- 24 and
- 25 3. For an order declaring the Hearing Procedures established by the
- 26 Prosecution Team are invalid and set no limitation on Malaga's presentation or rebuttal
- 27 of evidence

28 The motion to exclude evidence and to conduct the separate prior trial on the

1 issue of latches is made on the ground that according to law where, as here, an
2 administrative complaint shows on its face that it is barred by latches, evidence in
3 support of the complaint is legally irrelevant and considering evidence on the merits
4 prior to determination of the issue of latches would be premature and would result in an
5 unnecessary expenditure and waste of time, money and resources addressing a matter
6 that is likely moot. The order for a declaration that the Hearing Procedures established
7 by the Prosecution Team are invalid is based on the fact that the Hearing Procedures
8 established are not consistent with the Administrative Procedure Act, the Constitution of
9 the State and the federal governments, and have not been validly established by
10 regulation.

11 The motion or application is based on this motion, the Memorandum of Points
12 Authorities submitted herewith and the Declaration of Neal E. Costanzo also submitted
13 herewith. Malaga's list of additional items to be presented as evidence and of
14 witnesses is submitted subject to the foregoing objections and application and motion
15 and are attached as Exhibits A and B, respectively.

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COSTANZO & ASSOCIATES

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19 Dated: June 20, 2013

By: 

Neal E. Costanzo
Attorneys for Plaintiff

WITNESS LIST

1. Michael Taylor, licensed Civil Engineer and Engineer overseeing operations of Malaga's Wastewater Treatment Plan for the period between 2007 and 2011. Testimony regarding whether the self-monitoring reports show any violation of effluent discharge limitations, the Regional Board's agreement to and Malaga's completion of compliance projects in lieu of proposed penalties and testimony refuting testimony, if any, from any witness presented by the Prosecution Team. Because the nature of the Prosecution Team's testimony is not disclosed, it is not known what amount of time would be consumed by this testimony.
2. Russ Holcomb, Malaga County Water District General Manager during the time frame covered by Attachment A to the ACL. Testimony of communications with Regional Board Staff, Malaga's financial condition, progress toward and completion of compliance projects. No estimate of time is available because the evidence which Holcomb will address depends on the nature of the prosecution testimony which is not disclosed.
3. Neal E. Costanzo, Attorney at Law and Malaga County Water District Legal Counsel. Testimony reflected in the accompanying Declaration.
4. Lonnie Wass, Jill Walsh, Pamela Creendon, Joanne Kipps and Warren Gross, all of whom will be examined concerning their communications with or communications received from Malaga County Water District or the factual basis, if any, of conclusions reflected in communications issued by each of them and reflected in the ACL. Again, because the nature of the Prosecution Team's evidence has not been disclosed, it is not possible to determine the time required for this testimony.

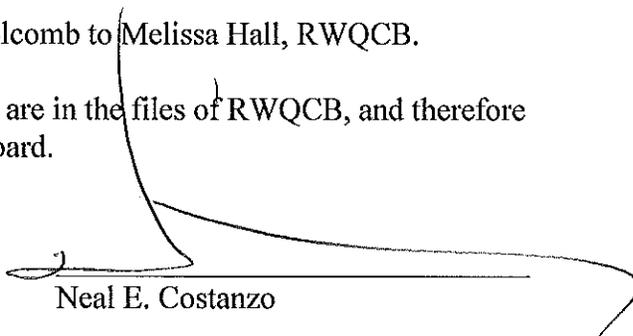
EXHIBIT LIST

Malaga objects to and moves to strike the documents identified as Exhibits 13, 14 and 18 by the Prosecution Team on the ground that the document is unauthenticated hearsay and irrelevant to any issue in this case. Subject to the objection in the accompanying Application/Motion Malaga designates the following documents, all of which are documents that were either issued to or received by the Regional Board Staff and are matters in their files which the Prosecution Team is already in possession of:

1. All documents referred to or mentioned in the ACL.
2. All documents attached to the Declaration of Neal E. Costanzo.
3. Order R5-2008-0032 and R5-2006-003.
4. May 30, 2007 fax from Michael Taylor (Taylor) to Dale Harvey (Harvey at RWQCB).
5. June 1, 2007, letter from Taylor to Harvey.
6. October 31, 2008, letter by Creendon to Russ Holcomb (Holcomb).
7. December 23, 2008 letter by Holcomb to Jill Walsh (Walsh) RWQCB.
8. January 20, 2009 letter by Holcomb to Harvey.
9. March 6, 2009, letter by Taylor to Harvey.
10. May 13, 2009 letter by Holcomb to Harvey.
11. December 9, 2009 letter by Holcomb to Harvey.
12. April 28, 2011 letter by Taylor to Warren Gross (Gross), RWQCB regarding Order R5-2008-033.
13. April 28, 2011 letter by Taylor to Gross regarding ACL R5-2006-0003.
14. September 20, 2012, letter by Holcomb to Melissa Hall, RWQCB.

Each and all of the foregoing documents are in the files of RWQCB, and therefore available to the Prosecution Team and to this Board.

Dated: June 24, 2013


Neal E. Costanzo