

EXHIBIT 12

WWG

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December 30, 2011

Via U.S. Mail & Email: jwalsh@waterboards.ca.gov
Warren W. Gross
Senior Engineering Geologist
California Regional Water
Quality Control Board, Central Valley Region
1685 E. Street
Fresno, CA 93706

RECEIVED

JAN - 3 2012
RWQCB-CVR
FRESNO, CALIF.

**Re: Notice of Violation and Record of Violations for Assessment of
Mandatory Minimum Penalties, Malaga County Water District
Wastewater Treatment Facility (NPDES CA0084239, RM 382358),
Fresno County**

Dear Mr. Gross:

Since on or about July 8, 2010, the California Regional Water Quality Control Board, Central Valley Region, through a variety of staff members has sent letters that are virtually identical to the one you sent on December 9, 2011, attaching a purported "Record of Violations" dating back to March 31, 2008 purporting to list "violations of water discharge requirements, specifically under Order R5-2008-0033, and stating that your agency has identified the violations listed in the attached exhibit and claiming that these are subject to mandatory minimum penalties. Invariably, these notices and the attachments lists the very same violations claimed to exist dating back to March 31, 2008, and demand "comments or corrections" by a specified date. The District has repeatedly responded to and commented on this very same "Attachment A" at least four times now. The District has further notified you, on each and every occasion on which it has received this same purported list of violations, that your agency's determination of the purported violations, coupled with its repeated threats to issue a administrative sole liability complaint are completely baseless, false and inaccurate. You have ignored every correspondence you have received from the District, and it is clear that you will ignore this correspondence as well. The only difference between these previous notifications sent to the District and the one inappropriately issued on December 9, 2011, demanding a response by today, is the addition of purported violations occurring in 2010 and 2011. Your description of the purported violation is so nebulous as to defy comprehension. We are not going to further respond to these baseless purported notices of violation.

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You know, because we have told you repeatedly, these notices, including the one you issued on December 9 do not conform to your own regulations and policies or with the underlying statutory authority for the imposition of "mandatory minimum penalties (MMP) as defined by the Water Code. The interpretation of Section 11385(i)(2) which persistently appears as fn 2 of each and every notice of violation we have received represents a seriously and obviously incorrect interpretation of that section which serves as the basis for your improper characterization of any purported violation as either chronic or serious. Suffice to say, as we have notified you repeatedly previously, that the purported violations you list on this new "Attachment A" to your December 9, 2011, letter are not appropriately categorized or simply did not occur.

Your agency has demonstrated, over and over again, that these repeated threats to issue a complaint or impose penalties are completely baseless and are in direct contravention of the applicable law which regulate your agency's ability to administratively assess penalties and fines for violations. Before filing a Petition for Writ of Mandate to require you to conform to applicable law, we will provide you with this last opportunity to withdraw your December 9, 2011, claim that there is any violation and the accompanying threat to issue an administrative civil liability complaint for those non-existent violations. If we are not informed that you have done so by January 15, 2012, we will file a Petition for Writ of Mandate which will result in an order of the court requiring you to cease and desist from making these baseless "determinations" and threats. You are not immune from liability for taking these types of actions which violate the provisions of statute. You have continually targeted the Malaga County Water District without basis or reason, and the purpose for your persistent, baseless threats of administrative action is to force Malaga to discontinue its operation of its wastewater treatment facilities in favor of the 'consolidation' which you have expressly supported of those treatment facilities with the City of Fresno. Your agency is acting in complete disregard of the statutory mandates that are applicable to it and in excess of its jurisdiction.

We would urge you to have a competent lawyer review what you have been doing for the last several years with respect to Malaga County Water District so that your agency can be appropriately informed of just how blatantly illegal your actions are. If we do not receive notification that you have withdrawn these threats and purported notices of violation by the date that is stated, your agency will be sued and Malaga will be recover damages and attorneys fees. It is apparent that the "staff" that you refer to in your letter of December 9, 2011, has absolutely no understanding whatsoever of how to even make a determination of a violation in accordance with the applicable statutory mandates. Your "staff" should not profess to know what the requirements of the law are, and certainly you have access to attorneys, including the Attorney General's Office, to properly advise you on how to appropriately perform the limited functions that you are entitled to perform under law.

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Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/js
C/C Russ Holcomb