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## Santa Ana Regional Water Quality Control Board

June 26, 2023

Placentia Hospitality LLC  
640 West Lambert Road  
Brea, CA 92821  
(Via Certified Mail)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUIRED**

Jessica Marquez  
[jessica@finehospitality.com](mailto:jessica@finehospitality.com)  
(Via Email)

Ken Pansuria  
[kenp@finehospitality.com](mailto:kenp@finehospitality.com)  
(Via Email)

Kirit Pansuria  
Agent for Service of Process for Placentia Hospitality LLC  
640 West Lambert Road  
Brea, CA 92821  
(Via Certified Mail)

### **TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLIANT NO. R8-2023-0012, PLACENTIA HOSPITALITY LLC**

Dear Ms. Marquez:

Enclosed is Mandatory Minimum Penalty Compliant No. R8-2023-0012 (Compliant) issued to Placentia Hospitality LLC (hereafter referred to as SHS Placentia or Discharger). The Complaint alleges that SHS Placentia has violated California Water Code (Water Code) section 13399.31 by failing to submit the 2021-2022 Annual Report under the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ, NPDES No. CAS000002 (General Permit) for the SHS Placentia construction site located at 380 South Placentia Avenue, in the city of Placentia.

The Annual Report was due to the Santa Ana Water Board by September 1, 2022, as required by Section II.1.4.b. of the General Permit. Two Notices of Non-Compliance (NNCs) were issued on September 19, 2022 and October 18, 2022, requiring that the construction site's late Annual Report be submitted by November 17, 2022. After the Discharger failed to respond to the NNCs, Conditional Settlement Offer No. R8-2023-0012 was issued on February 2, 2023, which provided you the opportunity to waive a

**KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER**

Board hearing and pay a mandatory minimum penalty of \$1,413 if you had responded by the deadline date of March 3, 2023.

The 2021-2022 Annual Report has not been submitted by this date and the Discharger has not responded to the NNCs or the Conditional Settlement Offer. The Discharger will have the opportunity to address the alleged violations as discussed below.

This Complaint proposes that an administrative civil liability in the amount of four thousand one hundred sixty-five dollars (\$4,165) be imposed. The penalty amount is the mandatory minimum penalty including staff costs as authorized by Water Code section 13399.33, subsections (c) and (d).

A public hearing on this matter is scheduled for the Santa Ana Water Board meeting on September 22, 2023. Pursuant to Water Code section 13323, the Discharger has the option to waive its right to a hearing. Should SHS Placentia waive its right to a hearing, submit the Annual Report, and pay the recommended liability, the Santa Ana Water Board may not hold a public hearing on this matter.

If SHS Placentia chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form. Please make the check payable to the Waste Discharge Permit Fund for four thousand one hundred sixty-five dollars (\$4,165) and include the Compliant Number (No. R8-2023-0012) on the memo line. Please send the following information to the appropriate location:

Mail Waiver Form to:

RWQCB  
Attn: Steven Stephansen  
3737 Main Street, Suite 500  
Riverside, CA 92501

Mail Payment to:

SWRCB – Accounting Office  
Attn: Sarah Fong  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Discharger should submit the attached Waiver to the Advisory Team by contacting Katharine Bramble via phone at (916) 440-7769 or via e-mail at [Katharine.Bramble@waterboards.ca.gov](mailto:Katharine.Bramble@waterboards.ca.gov). The Prosecution Team reserves the right to object to the Discharger's request to pursue Options #2.

If SHS Placentia does not wish to waive its rights to a hearing, a pre-hearing meeting with the Prosecution Team is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Steven Stephansen via phone at (951) 320-2027 or via email to [Steven.Stephansen@waterboards.ca.gov](mailto:Steven.Stephansen@waterboards.ca.gov) prior to **July 25, 2023**.

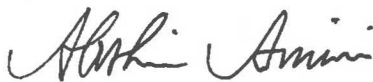
If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure which will provide deadlines and establish a process for submitting evidence and argument in this matter.

Additionally, a Fact Sheet describing the Complaint process is enclosed herein. The Fact Sheet also explains what SHS Placentia can expect and its obligations as the process proceeds.

As described in more detail in the attached Fact Sheet, as a part of this process, a separation of functions is in place between the Advisory Team and Prosecution Team within the Santa Ana Water Board. Procedural questions should be directed to the Advisory Team by contacting Katharine Bramble at the information listed above.

If you have any questions regarding the Complaint or the enclosed documents, please contact Steven Stephansen via phone at (951) 320-2027 or via email at [Steven.Stephansen@waterboards.ca.gov](mailto:Steven.Stephansen@waterboards.ca.gov). All legal questions should be directed Asa Standfeldt, attorney for the Prosecution Team, Office of Enforcement, via phone at (916) 322-5327 or via email at [Asa.Standfeldt@waterboards.ca.gov](mailto:Asa.Standfeldt@waterboards.ca.gov).

Sincerely,



A. Nick Amini, Ph.D., P.E.  
Branch Manager, Surface Water & Agriculture  
Santa Ana Water Board Prosecution Team

enclosures: MMP Complaint No. R8-2023-0012  
Waiver Form  
Fact Sheet

cc (w/encl): Santa Ana Water Board  
Jayne Joy, Santa Ana Water Board Advisory Team  
Katharine Bramble, Santa Ana Water Board Advisory Team Attorney  
Nick Amini, Santa Ana Water Board Prosecution Team  
Asa Standfeldt, Santa Ana Water Board Prosecution Team Attorney  
James Fortuna, Orange County Public Works  
Masoud Sepahi, City of Placentia NPDES Coordinator

**State of California  
California Regional Water Quality Control Board  
Santa Ana Region**

IN THE MATTER OF:

|                           |   |                            |
|---------------------------|---|----------------------------|
| Placentia Hospitality LLC | ) | Complaint No. R8-2023-0012 |
| 640 West Lambert Road     | ) | For                        |
| Brea, CA 92821            | ) | Mandatory Minimum Penalty  |

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This Complaint is issued to Placentia Hospitality LLC (hereafter referred to as SHS Placentia or Discharger) pursuant to California Water Code (Water Code) section 13399.33, which authorizes the imposition of civil liability administratively, and Water Code section 13323, which authorizes the issuance of this Complaint. This Complaint is based on allegations that the Discharger failed to submit the 2021-2022 Annual Report in accordance with Water Code section 13399.31, for which the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), must impose a penalty pursuant to Water Code section 13399.33.

The Surface Water and Agriculture Branch Manager of the Santa Ana Water Board alleges the following:

**BACKGROUND:**

1. Construction sites that discharge stormwater associated with construction activities are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ, NPDES No. CAS000002 (General Permit). General Permit coverage is required for construction sites that result in disturbance greater than one acre of total land area. Dischargers enrolled under the General Permit are required to comply with reporting requirements, including the requirement to submit an Annual Report by September 1 of each year.
2. On August 22, 2019, SHS Placentia obtained General Permit coverage under Waste Discharge Identification Number 8 30C387858, for SHS Placentia construction site located at 380 South Placentia Avenue, in the city of Placentia. General Permit coverage authorizes discharges of stormwater associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations, and prohibitions in the permit.

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3. On August 4, 2022, the State Water Resources Control Board (State Water Board) sent a courtesy email reminder to dischargers reiterating the September 1, 2022 Annual Report submittal deadline.
4. On August 24, 2022, the State Water Board sent a second courtesy email reminder to dischargers reiterating the September 1<sup>st</sup> deadline for the submittal of Annual Report.
5. On September 1, 2022, the Discharger's Annual Report for the 2021-2022 reporting year was due per General Permit Section II.I.4.b.
6. On September 19, 2022, the Santa Ana Water Board issued a Notice of Non-Compliance (NNC) to SHS Placentia for the failure to submit the 2021-2022 Annual Report. The NNC required the Discharger to submit the 2021-2022 Annual Report via the Stormwater Multiple Application and Report Tracking System (SMARTS) no later than October 18, 2022.
7. On September 23, 2022, Santa Ana Water Board staff received the United States Postal Service certified mail return receipt for the first NNC. However, the Discharger did not submit the late Annual Report in response to the initial notice.
8. On October 18, 2022, a second NNC was issued to SHS Placentia for the failure to submit the 2021-2022 Annual Report by the deadline specified in the first NNC. The second NNC required the Discharger to submit the 2021-2022 Annual Report via SMARTS by November 17, 2022.
9. On October 20, 2022, Santa Ana Water Board staff spoke to Ken Pansuria, President of Fine Hospitality Group, via phone and via email regarding the NNCs and the missing annual report. Mr. Pansuria stated the project is complete and had been since the 4<sup>th</sup> quarter of 2020. Santa Ana Water Board staff informed Mr. Pansuria that if the project was complete, that the 2021-2022 Annual Report must be submitted prior to submitting a Notice of Termination (NOT). Mr. Pansuria acknowledged the deadline and stated that he would hire a consultant to complete the documentation required. Santa Ana Water Board staff also provided SMARTS help guides via email to complete both the Annual Report and NOT.
10. On October 24, 2022, Santa Ana Water Board staff received the United States Postal Service certified mail receipt for the second NNC.
11. On November 14, 2022, Santa Ana Water Board staff left a voicemail for Mr. Pansuria regarding the Discharger's failure to submit the 2021-2022 Annual Report for the SHS Placentia construction site. Santa Ana Water Board staff requested a status update on the progress made by the Discharger in responding to the NNCs.
12. On November 16, 2022, Santa Ana Water Board staff spoke to SHS Placentia Receptionist Jen Gutierrez regarding the NNCs. Ms. Gutierrez stated that Jessica

Marquez (the most recent Legally Responsible Person on file) no longer worked for the company and that Mr. Pansuria was unavailable to speak with Santa Ana Water Board staff. Ms. Gutierrez stated that she would pass along Board staff's contact information to Mr. Pansuria.

13. On November 17, 2022, Santa Ana Water Board staff again spoke with Ms. Gutierrez regarding the NNCs and reiterated the November 17, 2022 deadline to submit the 2021-2022 Annual Report. Santa Ana Water Board staff informed her that a mandatory minimum penalty (MMP) of \$1,000 plus staff costs would be imposed if the Annual Report was not received by the deadline. Ms. Gutierrez stated that Mr. Pansuria was out of the country and unavailable. Ms. Gutierrez also stated that she had spoken to Mr. Pansuria the previous day and stated he was planning to reach out to Santa Ana Water Board staff. Mr. Pansuria contacted Santa Ana Water Board staff later that day and requested an extension due to him being out of the country. Santa Ana Water Board staff informed Mr. Pansuria that there would be no extension, as two NNCs had already been issued, to which Mr. Pansuria responded that he would resolve the issue when he returned.
14. On February 2, 2023, the Santa Ana Water Board issued Conditional Settlement Offer (Settlement Offer) No. R8-2023-0012 to SHS Placentia inviting the Discharger to participate in an Expedited Payment Program relating to violations of the General Permit, which would have provided the opportunity for the Discharger to resolve the alleged violations by paying a MMP of \$1,413, including staff costs. In addition, staff advised the Discharger that they are still required to submit the 2021-2022 Annual Report via SMARTS. The Discharger was given a deadline of March 3, 2023 to respond to the Settlement Offer.
15. On March 6, 2023, Santa Ana Water Board staff verified that the Settlement Offer had been delivered according to the United States Postal Service's website.
16. On March 8, 2023, Santa Ana Water Board staff again spoke with Mr. Pansuria and informed him that the Santa Ana Water Board has not received any response regarding the Settlement Offer issued on February 2, 2023 and of SHS Placentia's continuing violation for the failure to submit the 2021-2022 Annual Report. Mr. Pansuria acknowledged receipt of the Settlement Offer and stated that the project had already been completed but the "owners were unable to close the project in SMARTS". Santa Ana Water Board staff informed Mr. Pansuria that all violations must be addressed prior to submitting a NOT and that several deadlines had already passed. Mr. Pansuria stated that the Settlement Offer response would be completed by March 10, 2023, and the associated violations would be addressed by the following week.
17. On May 17, 2023, Santa Ana Water Board staff conducted a compliance inspection of the SHS Placentia construction site. Construction at the site had been completed and the hotel was open for business. Santa Ana Water Board staff spoke with Mr. Robert Hussey, General Manager for the Springhill Suites location,

and explained that two NNCs were issued for the failure to submit the 2021-2022 Annual Report which was followed by a Settlement Offer for the failure to respond and adequately address the NNCs' requirements. Mr. Hussey was handed copies of both the NNCs and the Settlement Offer. He then signed the Document Receipt form and stated that he would follow up with the corporate office to complete all items outlined in the Settlement Offer, and then submit a NOT as all construction activities have been completed on site.

18. On May 30, 2023, Santa Ana Water Board staff again spoke to the receptionist regarding the Settlement Offer and the Discharger's failure to respond. She stated that Mr. Pansuria was unavailable but took Board staff's contact information to pass along to Mr. Pansuria. The receptionist was reminded that if the Santa Ana Water Board did not receive a response, there would be continued enforcement action.
19. To date, the Discharger has neither submitted the 2021-2022 Annual Report nor responded to the Settlement Offer and continues to ignore outreach efforts made by Santa Ana Water Board staff.

#### **LEGAL AUTHORITY**

20. Section 13399.31 of the Water Code requires the regional boards to conduct a review of the annual reports in accordance with the requirements of the General Permit, and identify, on an annual basis, dischargers that have failed to submit that annual report.
21. Pursuant to Water Code section 13399.31 subdivision (b), the Santa Ana Water Board provides a NNC to any person that is identified to have failed to submit an annual report by the deadline specified in the General Permit. The first NNC directs the discharger within 30 days from the date on which the Santa Ana Water Board provided notice, to submit the annual report.
22. If a discharger does not come into compliance in response to the first NNC, Water Code section 13399.31 subdivision (c), directs the regional boards to send a second NNC to a discharger. Failure to submit the appropriate annual report within 60 days of the first NNC, after the second NNC is issued, subjects the discharger to mandatory minimum penalty (MMP).
23. Pursuant to Water Code section 13399.33, subdivisions (c) and (d), the Discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for its failure to submit the required Annual Report for the 2021-2022 Annual Report as required by the General Permit within 60 days from the date of issuance of the first NNC, when a second NNC was also issued.

## **PROPOSED MANDATORY MINIMUM PENALTIES AND ASSESSMENT OF COSTS**

24. Pursuant to Water Code section 13399.33 subdivision (c), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less than one thousand dollars (\$1,000) against a discharger who fails to submit the required annual report.
25. Water Code section 13399.33 subdivision (d) further requires the recovery of costs incurred by the Santa Ana Water Board for enforcement actions against dischargers who fail to submit the required annual report in accordance with Water Code section 13399.31. Staff spent twenty-five (25) hours for this enforcement action resulting in total staff costs of three thousand one hundred sixty-five dollars (\$3,165).
26. Therefore, the mandatory minimum liability for the violation alleged herein, including staff costs, is four thousand one hundred sixty-five dollars (\$4,165).

## **REGULATORY CONSIDERATIONS**

27. Notwithstanding issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for any violations that have not yet been assessed or for violations that may subsequently occur.
28. An 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.
29. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code section 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

## **PLACENTIA HOSPITALITY LLC IS HEREBY GIVEN NOTICE THAT:**

30. The Surface Water and Agriculture Branch Manager of the Santa Ana Water Board proposes an administrative civil liability in the amount of four thousand one hundred sixty-five dollars (\$4,165). The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33, subdivisions (c) and (d).
31. A hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on September 22, 2023, unless one of the following options occurs:



- a. The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein, and returning it to the Santa Ana Water Board, along with payment for the proposed liability of four thousand one hundred sixty-five dollars (\$4,165).
- b. The Discharger waives the 90-day hearing requirement in order to extend the hearing date (checking off the box next to Option 2) and returning it to the Santa Ana Water Board, along with rationale for the extension.



A. Nick Amini, Ph.D., P.E.  
Branch Manager, Surface Water & Agriculture  
Santa Ana Water Board Prosecution Team



## Santa Ana Regional Water Quality Control Board

### WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT NO. R8-2023-0012

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

I am duly authorized to represent Placentia Hospitality LLC in connection with Mandatory Minimum Penalty Complaint No. R8-2023-0012 (Complaint). 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. The person who has been issued a complaint may waive the right to a hearing.”*

**(OPTION 1: Check here if Placentia Hospitality LLC waives the hearing requirement and will pay the liability in full.)**

- a. I hereby waive any right Placentia Hospitality LLC may have to a hearing before the Santa Ana Water Board.
- b. I certify that Placentia Hospitality LLC will remit payment for the proposed penalty in the full amount of **four thousand one hundred sixty-five dollars (\$4,165)** by submitting a check made payable to the *“Waste Discharge Permit Fund,”* that references *“Complaint No. R8-2023-0012.”*
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Santa Ana Water Board receive significant new information or comments from any source (excluding the Santa Ana Water Board’s Prosecution Team) during this comment period the Santa Ana Water Board’s Surface Water and Agriculture Branch Manager may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Santa Ana Water Board (or the Santa Ana Water Board’s delegee), and that the Santa Ana Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Placentia Hospitality LLC having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject Placentia Hospitality LLC to further enforcement, including additional civil liability.

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

- (OPTION 2: Check here if Placentia Hospitality LLC waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)***

I hereby waive any right Placentia Hospitality LLC may have to a hearing before the Santa Ana Water Board within 90 days after service of the Complaint. By checking this box, Placentia Hospitality LLC requests that the Santa Ana Water Board delay the hearing and/or hearing deadlines so that Placentia Hospitality LLC may have additional time to prepare for the hearing. Please provide a written explanation of why additional time is needed. It remains within the discretion of the Santa Ana Water Board to approve the extension and the Prosecution Team reserves the right to object to this delay.

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(Print Name and Title)

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(Signature)

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(Date)

# Administrative Civil Liability Complaint

## Fact Sheet

The California State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) are authorized to issue complaints for civil liabilities under California Water Code (Water Code) section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to respond, a default order may be issued against you.** The complaint is accompanied by a transmittal letter and a waiver options form. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

## Parties

The parties to a complaint proceeding are the Santa Ana Water Board Prosecution Team and the person(s) named in the complaint, referred to as the "Discharger(s)." The Prosecution Team is comprised of Santa Ana Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to a hearing, the hearing will be held before the Santa Ana Water Board (either the seven Governor-appointed board members or the Executive Officer). Those who hear the evidence and rule on the matter act as judges. The Santa Ana Water Board is assisted by an Advisory Team, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the Santa Ana Water Board, or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

## Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the Discharger provides information to the Prosecution Team that clearly and unmistakably demonstrates that a fundamental error exists in the

information set forth in the complaint.

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the Discharger(s) of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Water Board's Enforcement Policy, which is available at the State Water Board's enforcement website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/policy.shtml](http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml)

Hearing: If the matter proceeds to hearing, the Parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within ninety (90) days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. Executive Order N-63-20 has suspended section 11440.30 of the Government Code, which prohibits a presiding officer to conduct hearings by electronic means if a party objects, provided the following conditions are met:

1. Each participant in the hearing has an opportunity to participate and to hear the entire proceeding while it is taking place and to observe exhibits;
2. A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means;
3. The presiding officer satisfies all requirements of the American with Disabilities Act (ADA) and the Unruh Civil Rights Act.

The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each other's witnesses. Interested persons may provide comments but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Santa Ana Water Board will deliberate to decide the outcome. The Santa Ana Water Board may issue an order requiring payment of the full amount recommended in the complaint; it may issue an order requiring payment of a reduced amount; it may order the payment of a higher amount; decide not to impose an assessment; or it may refer the matter to the Attorney General's Office.

## **Factors That Must Be Considered By the Board**

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Santa Ana Water Board considers several factors specified in the Water Code and the State Water Board's Water Quality Enforcement Policy, including 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 violations, and other matters as justice may require (Water Code sections 13327, 13385(e), and 13399 (a)(2)). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint.

If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

### For an individual:

1. Last three (3) years of signed federal Internal Revenue Service (IRS) income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment, and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements; and
12. Other debt documentation.

### For a business:

1. Copies of last three (3) years of company IRS tax returns, signed and dated;
2. Copies of last three (3) years of company financial audits;
3. Copies of last three (3) years of IRS tax returns of business principals, signed and dated; and
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

### For larger firms:

1. Federal income tax returns for the last three (3) years, specifically:
  - a. IRS Form 1120-C for C Corporations;
  - b. IRS Form 1120-S for S Corporations; or
  - c. IRS Form 1065 for partnerships.

2. A completed and signed IRS Form 8821. This allows the IRS to provide the State Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
  - a. Audited Financial Statements for last three (3) years;
  - b. A list of major accounts receivable with names and amounts;
  - c. A list of major accounts payable with names and amounts;
  - d. A list of equipment acquisition cost and year purchased;
  - e. Ownership in other companies and percent of ownership for the last three (3) years; and
  - f. Income from other companies and amounts for the last three (3) years.

For a municipality, county, or district:

1. Type of entity:
  - a. City/Town/Village;
  - b. County;
  - c. Municipality with enterprise fund; or
  - d. Independent or publicly owned utility.
2. The following 1990 and 2000 United States Census data:
  - a. Population;
  - b. Number of persons age eighteen (18) years and above;
  - c. Number of persons age sixty-five (65) years and above;
  - d. Number of Individuals below one hundred and twenty-five percent (125%) of poverty level;
  - e. Median home value; and
  - f. Median household income.
3. Current or most recent estimates of:
  - a. Population;
  - b. Median home value;
  - c. Median household income;
  - d. Market value of taxable property; and
  - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level; and
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note

that all evidence regarding this case, including financial information, will be made public.

## **Petitions**

If the Santa Ana Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/wqpetition\\_instr.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml).

An order of the State Water Board, including its ruling on a petition from a Santa Ana Water Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Santa Ana Water Board or State Water Board may seek an order of the Superior Court under Water Code section 13328, if necessary, in order to collect payment of the penalty amount.



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KIRIT PANSURIA  
AGENT FOR SERVICE OF PROCESS FOR  
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640 WEST LAMBERT ROAD  
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