

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR CEASE AND DESIST ORDER
R5-2020-XXXX

PROPOSED TO BE ISSUED TO
GERMANO AND JACINTA SOARES
GERMANO SOARES DAIRY #1
STANISLAUS COUNTY

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY

The Central Valley Water Board has the authority to issue Cease and Desist Orders for persons who violate Waste Discharge Requirements. The Board's Prosecution Team has issued a tentative Cease and Desist Order (CDO) that describes violations of the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 by Germano and Jacinta Soares, together the owners and operators of the Germano Soares Dairy #1. The Board has scheduled a hearing to consider the matter on the following date:

15-16 October, 2020
Redding City Hall
777 Cypress Avenue
Redding CA, 96001

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may issue the CDO with or without modifications, decline to issue the CDO, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The Meeting Agenda will be posted at least ten days before the meeting on the [Board's website](#) at the following address:

(http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

To ensure a fair hearing, the Board staff and attorneys that have issued the CDO (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

This Hearing Procedure has been proposed by the Prosecution Team for the adjudication of CDO matters and is subject to further review by the Advisory Team. Objections to this Hearing Procedure must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Board's Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Board Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

I. Hearing Participants

Participants in the CDO hearing are considered either “Designated Parties” or “Interested Persons.”

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Germano and Jacinta Soares

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the “Important Deadlines” page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person’s interest. The Board’s Advisory Team will promptly respond to all timely requests for Designated Party status.

II. Hearing Time Limits

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **35 minutes**
2. Germano and Jacinta Soares: **30 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the “Important Deadlines” page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

III. Documents in Evidence and Availability of Board Files

The Board's Prosecution Team maintains a file containing the tentative CDO and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. The file is available to the public and may be inspected or copied. Due to COVID-19, the Central Valley Water Board is not open to the public during regular business hours. If you would like to review the file, please contact the Prosecution Team to schedule an appointment. [Documents will also be posted online](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

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Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the tentative CDO.

Designated Parties' (including the Discharger's) Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

Printing and Page Limitations: For each Designated Party, including the Board's Prosecution Team, the Board has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Board Members will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Board Members. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The tentative CDO, the proposed CDO (if different), this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

Parties without access to computer equipment are encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Board Members, which must be received by the Advisory Team at Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

V. Miscellaneous Matters

Summary Sheet and Proposed CDO: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed CDO for the Board's consideration. The proposed CDO shall be substantively based on the allegations made in the tentative CDO but may contain revisions reflecting the evidence submitted after the tentative CDO was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the CDO that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The [regulations governing adjudicatory hearings](#) before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: (<http://www.waterboards.ca.gov>). Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

VI. Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM	
Patrick Pulupa, Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4839 patrick.pulupa@waterboards.ca.gov	David Lancaster, Attorney I State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 341-5195 david.lancaster@waterboards.ca.gov
BOARD PROSECUTION TEAM*	
John Baum, Assistant Executive Officer 11020 Sun Center Dr. #200 Rancho Cordova, CA 95670-6114 Phone: (559) 445-5102 john.baum@waterboards.ca.gov (916) 464-4656	Catherine Hawe, Attorney I State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 322-3538 catherine.hawe@waterboards.ca.gov
DISCHARGER	
Germano and Jacinta Soares 9201 Hilmar Road Turlock, CA 95380 Phone: E-mail:	Fred Silva, Counsel Damrell Nelson Schrimp Pallios Pacher & Silva 1601 I Street Modesto, CA 95354 Phone: (209) 526-3500 fsilva@damrell.com

*The Board's Prosecution Team also includes: Clay Rodgers, Assistant Executive Officer, Central Valley Water Board; Robert Busby, Supervising Engineering Geologist, Central Valley Water Board; Sean Walsh, Environmental Scientist, Central Valley Water Board; Girma Getachew, Environmental Scientist, Central Valley Water Board; Vaneeta Chintamaneni, Attorney I, State Water Board, Office of Enforcement and Wendy Wyels, Environmental Program Manager, State Water Board, Office of Enforcement.

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the "Primary Contacts" table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

28 July 2020	<ul style="list-style-type: none"> ▪ Prosecution Team issues tentative CDO and Hearing Procedure.
7 August 2020	<ul style="list-style-type: none"> ▪ Objections due on Hearing Procedure. ▪ Deadline to request “Designated Party” status. <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
17 August 2020	<ul style="list-style-type: none"> ▪ Prosecution Team’s deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”
7 September 2020	<ul style="list-style-type: none"> ▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.” ▪ Interested Persons’ written statements are due. <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
14 September 2020	<ul style="list-style-type: none"> ▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. <p>Hard copies of rebuttal documents must be submitted to the Prosecution Team.</p> <ul style="list-style-type: none"> ▪ If a Designated Party’s submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Board Members by this date. ▪ Deadline to submit requests for additional time.
21 September 2020	<ul style="list-style-type: none"> ▪ All Designated Parties may submit responses to written statements submitted by Interested Persons. ▪ Prosecution Team submits Summary Sheet. ▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Board Members so that they are <u>received by</u> the Advisory Team by this date.
15-16 October 2020	Board Hearing