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## Central Valley Regional Water Quality Control Board

**TO:** (via e-mail)  
Clay Rodgers, Assistant Executive Officer  
Alex Mayer, Attorney  
**Advisory Team**

**FROM:** Pamela Creedon, Executive Officer  
Wendy Wyels, Environmental Program Manager  
Laura Drabandt, Attorney  
**Prosecution Team**

**CC:** (via e-mail)  
Marion Mahone  
**Tsar Nicoulai Caviar, LLC**

**DATE:** 6 June 2013

**SUBJECT:** Administrative Civil Liability Complaint R5-2010-0541 – Prosecution Team  
Requests that the Advisory Team Deny Tsar Nicoulai Caviar, LLC a Continuance

The Prosecution Team has re-noticed ACL Complaint R5-2010-0541 and scheduled this matter to be heard at the 25/26 July 2013 Board meeting. The Complaint proposes to assess mandatory minimum penalties of \$23,000.

On 23 May 2013, Marion Mahone, a representative for Tsar Nicoulai Caviar, LLC, e-mailed a letter to Laura Drabandt asking for an additional 90 days before going to hearing. Ms. Mahone's letter requested the time to sort through several legal matters unrelated to the Central Valley Water Board, but involving the caviar business entity and real property principal in this case. (Please see her letter and its attached Tentative Decision after Trial in *Mats Engstrom and Dafne Engstrom, California Estate Oestra, Inc., v. TNC Holding; Kanbar Spirits, Inc.; and Ramiilaj* (CGC-11-517017) for further information.)

Though the Prosecution Team is certainly understanding of the difficult situation Ms. Mahone finds herself in, we contend that it is in the best interest of the Central Valley Board to hear this matter as early as possible, which is the July Board meeting. The Prosecution respectfully requests that the Advisory Team deny the request for a continuance and hear the matter in July for the following reasons.

### **Foreclosure and Potential Bankruptcy**

The Tentative Decision after Trial that Ms. Mahone provided is essentially a breakdown of monies available after foreclosure. The court determined that there is a surplus value of \$178,290.81 that is available from the defendants to compensate the plaintiffs or any other general creditors of equal or superior priority.

If the Board adopts an order imposing a penalty amount on Tsar Nicoulai Caviar, LLC, it is possible that the order may be reduced to a judgment and receive higher priority as a creditor, should the LLC file for bankruptcy. By getting an order in place before the LLC files bankruptcy, the Central Valley Board would have more options in trying to collect the penalty by seeking to become a high priority and/or secured creditor. (11 U.S.C. § 362(a)(1) does not stay actions by a governmental unit to enforce its police or regulatory power, but enforcement of a money judgment is stayed; *also see* 11 U.S.C. §363(b)(4) and (5).)

### **Timeliness**

Tsar Nicoulai Caviar, LLC (the Discharger) has already received a continuous benefit of delaying this hearing by being nonresponsive. As stated in the Complaint, the Executive Officer first issued ACL Complaint R5-2010-0511 for MMPs accrued in 2009 for \$12,000, but Tsar Nicoulai Caviar, LLC only submitted a partial payment of \$4,000. The present pending Complaint, R5-2010-0541, covers the time period from 1 January 2009 through 30 June 2010, and was originally issued 16 September 2010. A waiver for a hearing within 90 days was submitted on 10 October 2010. Settlement negotiations were never completed and the Prosecution Team therefore requested this matter be heard at the July 2013 hearing.

The Discharger has benefitted by these delays by saving the time value of the \$8,000 not initially paid by 16 September 2010, and by saving the time value of the total \$23,000 since the Complaint was issued. An additional 90 day continuance would again benefit the Discharger.

The inverse is true for the Prosecution Team. The Prosecution Team is prejudiced by these continued delays because it continues to spend the time and resources on this case instead of other enforcement matters. Should the Discharger file bankruptcy before this matter is heard, the Central Valley Board may experience actual prejudice if it loses any priority and/or secured status as a creditor in the bankruptcy case.

Similarly, the Tentative Decision after Trial states that the foreclosure on the LLC became effective in January 2011, a full year after the violation period, and about three months after the Discharger submitted its 90 day waiver. There is a pattern that the more delays in this process, the worse off financially the Discharger becomes. Another 90 day delay is unjustified.

### **Conclusion**

Based upon the benefit of seeking an order as early as possible and the burden in continuing the matter once again, the Prosecution Team respectfully requests that the Advisory Team decline the Discharger's request and hear the matter in July.