

Central Valley Regional Water Quality Control Board

23 January 2024

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EXTENSION OF COMPLETION DEADLINE FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT, E. & J. GALLO WINERY, LIVINGSTON WINERY, ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2022-0510, MERCED COUNTY

BACKGROUND

Waste Discharge Requirements Order 91-135 (WDRs) for the E. & J. Gallo Winery (Gallo) Livingston Winery (Winery) authorizes the discharge of winery process wastewater to land. The WDRs incorporate revised Monitoring and Reporting Program 91-135 and Standard Provisions and Reporting Requirements for Waste Discharge Requirements dated 1 March 1991.

The Gallo Winery is also regulated by Stipulated Administrative Civil Liability Order R5-2022-0510 (Stipulated ACLO). The Stipulated ACLO was ordered on behalf of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) by its Executive Officer on 2 February 2023 for violations incurred by Gallo due to an August 2021 unauthorized discharge of wastewater from the Winery to the Merced River, a water of the state and the United States.

STIPULATED ADMINISTRATIVE CIVIL LIABILITY ORDER

Paragraph 24 of the Stipulated ACLO states the following, in part:

24. ***Administrative Civil Liability:*** *The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **three hundred seventy-eight thousand six hundred sixty-eight dollars (\$378,668)** ... to resolve the violations alleged in this Stipulated Order as follows:*
- a. ***One hundred eighty-nine thousand three hundred and thirty-four dollars (\$189,334)*** shall be paid to the State Water Pollution Cleanup and Abatement Account.

- b. **One hundred eighty-nine thousand three hundred and thirty-four dollars (\$189,334)** (SEP Amount) shall be permanently suspended upon completion of the Supplemental Environmental Project (SEP) described in paragraph 26 and in Attachment C to this Order, herein incorporated by reference.

The Supplemental Environmental Project (SEP) is described in paragraph 26 of the Stipulated ACLO as follows:

26. **Supplemental Environmental Project:** *The Discharger will fund a portion of Merced County's Hagaman Park Restroom Septic Tank and Leach Field Relocation Project located at Hagaman Park, 19914 River Road, Livingston, CA. Merced County, which is overseeing the project, will relocate the existing restrooms septic tank and leachfield to a higher elevation above the flood zone along the Merced River. The SEP Amount will fund the installation of the new septic tank and the construction of the new leach field. The SEP does not include funding for the construction or installation of any buildings or fixtures (e.g., toilets, sinks, etc.). The SEP has a geographic nexus to the alleged violations.*

Paragraphs 27 and 28 of the Stipulated ACLO describe the SEP completion deadline and procedures for extension of the deadline as follows:

27. **SEP Completion Deadlines:** *The Discharger shall complete all the SEP requirements by 31 January 2024 or within one (1) year of the effective date of this Order, whichever is later (the "Completion Deadline"). Additionally, the Discharger shall submit a Final Report upon the completion of the SEP declaring such completion and detailing fund expenditures and goals achieved. The Final Report submission deadlines are outlined below.*
28. **Extension of the Implementation Schedule Deadlines:** *If the Discharger cannot meet any of the deadlines or the Completion Deadline contained in paragraph 27 due to circumstances beyond the Discharger's anticipation or control, the Discharger shall notify the Executive Officer in writing within thirty (30) days of the date the Discharger first knew of the event or circumstance that caused or could cause a violation of this Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Discharger to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Discharger shall adopt all reasonable measures to avoid and minimize such delays. The determination as to whether the circumstances were beyond the reasonable control of the Discharger and its agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the Discharger, due to*

circumstances beyond the control of the Discharger that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Discharger, a new compliance deadline may be established, and this Order revised accordingly. The Executive Officer will endeavor to grant a reasonable extension of time if warranted.

Paragraph 45 of the Stipulated ACLO states the following:

45. Modification: *This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.*

REQUEST FOR EXTENSION OF THE SEP COMPLETION DEADLINE

On 11 December 2023, Central Valley Water Board staff received a letter from Gallo staff dated 7 December 2023 requesting an extension of the SEP completion deadline to 31 January 2025. The letter indicated that Gallo staff discussed the SEP with Merced County staff (the project lead), and based on the schedule provided by Merced County, the SEP would not be completed by the deadline established in the Stipulated ACLO (2 February 2024, one year from its effective date).

Gallo provided justification for its request by indicating in the letter that floodwaters present in the Hagaman Park area throughout the first half of 2023 prohibited Merced County staff from performing a site evaluation to properly prepare a project scope. The letter also indicated that staff turnover at Merced County resulted in resource availability issues.

Based on the information provided by Gallo and considering that the Hagaman Park area was flooded for an extended period of time during 2023, Central Valley Water Board staff has determined that the delay in completing the SEP was due to circumstances beyond the control of Gallo. Therefore, Gallo's request to be granted a time extension for completion of the SEP is reasonable.

REVISED SEP COMPLETION DEADLINE

This letter serves as formal notice that the Completion Deadline for the SEP described in Stipulated ACLO R5-2022-0510 is hereby extended to **31 January 2025**. Gallo shall continue to submit quarterly progress reports documenting progress made on the SEP. The quarterly reports will be due on the last day of the month following the end of each quarter. The quarterly report due dates are listed below.

1st quarter 2024 – report is due on 30 April 2024.
2nd quarter 2024 – report is due on 31 July 2024.

3rd quarter 2024 – report is due on 31 October 2024.

4th quarter 2024 – report is due on 31 January 2025, if needed.

Following SEP completion, Gallo is required to submit a Certification of Completion as detailed in paragraph 29 of the Stipulated ACLO. All other aspects of the Stipulated ACLO remain in effect.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this letter, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. [Copies of the law and regulations applicable to filing petitions](#) may be found on the internet (http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

If you have any questions regarding this matter, please contact Omar Mostafa at 559-445-5197 or omar.mostafa@waterboards.ca.gov.

Patrick Pulupa
Executive Officer

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