

Document prepared by the Prosecution Team

ITEM: 12

SUBJECT: Tsar Nicoulai Caviar, LLC, Tsar Nicoulai Sturgeon Farm, Sacramento County

BOARD ACTION: *Consideration of Administrative Civil Liability Order*

BACKGROUND: Tsar Nicoulai Caviar, LLC (Discharger) owned and operated a fish farm with a wastewater treatment system. The treatment system consists of filtration, an aquatic vegetation pond for nutrient uptake, and a biofiltration system for ammonia and dissolved organics removal. Wastewater was discharged to the Sacramento County storm drain system which flows to an unnamed tributary of the Cosumnes River, a water of the United States.

On 24 June 2005, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order R5-2005-0080 (NPDES No. CA0085120), which included effluent limitations.

California Water Code section 13385 was amended in 2000 to require that the Water Boards assess mandatory minimum penalties (MMPs) for serious and non-serious violations of NPDES permits. A mandatory minimum penalty of \$3,000 must be assessed for each serious violation, defined, in part, as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements by either 40% or 20%, depending on the constituent. A mandatory minimum penalty of \$3,000 must also be assessed for each non-serious or chronic violation whenever an effluent limitation is exceeded four or more times in any period of six consecutive months, not counting the first three violations.

The Discharger was issued Administrative Civil Liability Complaint (ACLC) R5-2010-0541 on 16 September 2010 for violations of the effluent limitations included in WDRs Order R5-2005-0080. The ACLC was in the amount of \$23,000, and rescinded a previous ACLC (R5-2010-0511), extended the period of violations from 1 January 2009 through 30 June 2010, and accounted for one \$4,000 payment made against the previous ACLC.

ACL Complaint R5-2010-0541 was originally issued on 16 September 2010 and was sent to Ms. Mahone, the general manager of Tsar Nicoulai, LLC. The Discharger chose to waive its right to hearing within 90 days and asked to enter into settlement negotiations. Shortly thereafter a different ownership group (TNC Holding Company, LLC) took over the sturgeon farm.

ISSUES: The Board is obligated by law to assess the mandatory minimum penalties described in California Water Code section 13385, and the outstanding ACL Complaint for \$23,000 remains to be addressed. Therefore, on 26 April 2013, the Central Valley Water Board Prosecution Team reinitiated the process to proceed to hearing and re-issued ACL

Complaint R5-2010-0541. Staff is pursuing this ACL Order against Tsar Nicoulai Caviar, LLC because it is the party responsible for payment of the penalties that occurred while it was the owner and operator of the sturgeon farm. Ms. Mahone's address continues to be listed as the entity address for Tsar Nicoulai Caviar, LLC in both California and Nevada.

The Discharger received the re-issued ACL Complaint, as evidenced by the documents submitted on 23 May 2013 by Ms. Mahone. The Discharger requested an additional 90-day continuance to take care of legal matters unrelated to the Central Valley Water Board. On 11 June 2013, the Chair of the Central Valley Water Board denied the continuance on the grounds that the Discharger has had sufficient time to prepare for the hearing, as the alleged violations were originally brought to the Discharger's attention in September 2010.

PROSECUTION TEAM
RECOMMENDATION:

Board staff has prepared this ACL Order pursuant to the requirements of Water Code section 13385. The mandatory minimum penalty for effluent violations of the WDRs under this section of the Water Code is \$23,000.

Mgmt. Review	<u>WSW</u>
Legal Review	<u>LD</u>

25/26 July 2013

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