

EXHIBIT 6



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board
Central Valley Region

Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

FILE

21 November 2008

Mr. Russ Holcomb
Malaga County Water District
3580 South Frank Street
Fresno, CA 93725

CERTIFIED MAIL
7007 3020 0000 1750 0378

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, MALAGA COUNTY WATER DISTRICT WWTF, FRESNO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) that have occurred at the Malaga County Water District (District) Wastewater Treatment Facility (WWTF) in Fresno County. The Complaint charges the District with civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of the mandatory minimum penalties for effluent limitation violations that occurred at the WWTF during the period of 1 February 2004 through 13 March 2008.

On 10 July 2008, staff issued the District a Notice of Violation and draft Record of Violations of Mandatory Minimum Penalties (MMPs) for the period of 1 February 2004 through 30 April 2008. By 18 September 2008 letter, the District acknowledged the identified violations. Staff has since changed the end of review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board adopted WDRs Order R5-2008-0033 and rescinded WDRs Order 99-100. This change reduced the civil liability from fifteen thousand dollars to nine thousand dollars.

On 5 August 2008, staff requested that State Water Board staff evaluate the District to determine the District's eligibility for designation as a small community with financial hardship. On 21 August 2008, staff received a memorandum from the Executive Director of the State Water Board confirming that the District's WWTF is a publicly owned treatment works serving a small community with financial hardship within the meaning of CWC section 13385(k)(2). Therefore, the Central Valley Water Board may entertain proposals from the Discharger to have all or a portion of the assessed penalty applied to the construction of a compliance project designed to rectify within five years the conditions that led to the violations.

Pursuant to CWC section 13323, the District may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **30 December 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board, which may include proposals for the penalty to be applied towards a compliance project

California Environmental Protection Agency

pursuant to CWC section 13385(k), and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it, along with a letter stating the issues to be discussed, to this office by **30 December 2008**; or

- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the District chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period of public notice, during which time interested parties may comment on this action by submitting information to this office, attention Jill Walsh. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver by **30 December 2008**, then a hearing will be scheduled for the **5/6 February 2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Jill Walsh, **no later than 5 p.m. on 30 December 2008**. This includes material submitted by the District to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 30 December 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Jill Walsh at (559) 445-5130 or Jo Anne Kipps at (559) 445-5035.


LONNIE M. WASS
Supervising Engineer

Enclosure: ACL Complaint R5-2008-0583

See next page for cc list



cc w/ encl: Ms. Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Fresno Environmental Health Department, Fresno

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583

MANDATORY PENALTY
IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT
WASTEWATER TREATMENT FACILITY
FRESNO COUNTY

This Complaint is issued to the Malaga County Water District (hereafter Malaga CWD or Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) at its Wastewater Treatment Facility (WWTF).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States.
2. The Central Canal is a distributary of the Kings River via the Fresno and Fancher Creek Canals and feeds into other canals and aqueducts to the south and to the west. The Central Canal is hydraulically connected to Fresno Slough that, during periods of heavy rain, drains to the San Joaquin River, both also waters of the United States.
3. On 28 July 1999, the Central Valley Water Board adopted WDRs Order 99-100 to regulate, in part, the discharge of up to 0.35 million gallons per day (mgd) of tertiary-treated wastewater from the WWTF to Central Canal.
4. On 14 March 2008, the Central Valley Water Board adopted WDRs Order R5-2008-0033, which prescribed new requirements for the discharge and rescinded WDRs Order 99-100.
5. CWC section 13385(i) requires assessment of mandatory penalties and states, in part, the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars

(\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part, the following:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

- 7. WDRs Order 99-100 General Discharge Specification B.2 states, "effluent shall have a pH between 6.0 and 9.0 pH units."
- 8. WDRs Order 99-100 General Discharge Specification B.3 states, "effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 μ mhos/cm, or 1000 μ mhos/cm, whichever is less."
- 9. WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, effluent "turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU."
- 10. On 10 July 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations identifying violations of WDRs Order 99-100 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations covers the period of 1 February 2004 through 30 April 2008. According to the Discharger's self-monitoring reports, the Discharger committed one (1) violation of the effluent turbidity limitation, two (2) violations of the effluent pH limitation, and five (5) violations of the effluent EC limitation during the period of 1 February 2004 through 30 April 2008. Attachment A, a part of this Complaint, identifies these eight effluent limitation violations, of which three are chronic violations subject to MMPs pursuant to CWC section 13385(i).
- 11. By 18 September 2008 letter, the Discharger acknowledged the violations identified in the draft Record of Violations identified in Finding 10 and Attachment A to this Complaint.

Following issuance of the Notice of Violation, staff changed the end of the review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board issued WDRs Order R5-2008-0033.

12. The total amount of the MMPs assessed for the three cited chronic violations is **nine thousand dollars (\$9,000)**.

13. CWC section 13385 (k)(1) states, in part:

In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

14. CWC section 13385 (k)(2) states, in part:

For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

15. On 5 August 2008, Central Valley Water Board staff requested State Water Resources Control Board (State Water Board) staff to evaluate the Discharger's eligibility for designation as a small community with a financial hardship.

16. On 21 August 2008, Central Valley Water Board staff received a memorandum from the Executive Director of the State Water Board confirming that the Discharger's WWTF is a publicly owned treatment works serving a small community with a financial hardship within the meaning of CWC section 13385(k)(2). This memorandum can be found as Attachment B, a part of this Complaint.

17. On 26 January 2006, the Central Valley Water Board adopted Administrative Civil Liability Order R5-2006-0003 based on findings of violations of WDRs Order 99-100. The MMPs totaled one million one hundred seven thousand dollars (\$1,107,000). Pursuant to CWC

section 13385(k), the Central Valley Water Board suspended payment of the MMPs as the Discharger proposed to spend an equivalent amount towards completion within five years of an approved compliance project designed to correct the violations. When the full amount of the \$1,107,000 is spent on the project, the penalties will be permanently suspended.

18. By 18 September 2008 letter, the Discharger indicated that, as of 1 June 2008, it had expended \$1,049,588 to complete components of the approved compliance project.
19. The Discharger has also indicated that it anticipates spending approximately \$400,000 more than the \$1,107,000 that it is required to spend on a compliance project pursuant to ACL Order R5-2006-0003. The Discharger may demonstrate that it is going to spend funds in excess of the amount required under ACL Order R5-2006-0003, and these funds may be applied in lieu of assessing the penalties against the Discharger should the Discharger's project meet both the requirements contained in CWC section 13385(k) and those in the State Board's *Water Quality Enforcement Policy*. The Discharger shall submit documentation of its projected expenditures beyond those required under Order R5-2006-0003 within the comment period so that the Board may consider applying these projected expenditures towards the penalties charged in this Complaint. In the event that the Board determines that approving a compliance project is an appropriate way to resolve the allegations contained herein, the Board will develop an ACL Order memorializing that settlement agreement.
20. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with Title 14 California Code of Regulations, section 15321(a)(2).

MALAGA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:
 - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or

- b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed. This includes documentation that may be submitted to the Board under Finding 19, above.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Loren J. Harlow

LOREN J. HARLOW, Assistant Executive Officer

11-21-2008

Attachment A: Record of Violations

Attachment B: State Board Memorandum dated 18 August 2008 from Dorothy Rice to Jack Del Conte

JKW: 11/18/08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Malaga County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0583 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **nine thousand dollars (\$9,000)** by check, which contains a reference to "ACL Complaint R5-2008-0583" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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 the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583**

**MALAGA COUNTY WATER DISTRICT WWTF
RECORD OF VIOLATIONS (1 February 2004 to 13 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program 99-100)**

Violation ID ¹	Violation Date	Parameter	Units	Period	Violation Type ²	Limit	Reported Value	MMP (Chronic)	MMP (Serious)
1	2/28/05	Turbidity	NTU	Monthly Average	CAT1	2.0	2.7	E ³	
2	9/6/05	EC ⁴	µmhos/cm	Daily Maximum	OEV	811 ⁵	840	E ³	
3	8/9/07	EC	µmhos/cm	Daily Maximum	OEV	1,000	1,033	E ³	
4	8/10/07	pH	pH units	Daily Maximum	OEV	9.0	9.2	E ³	
5	11/25/07	pH	pH units	Daily Maximum	OEV	9.0	9.2	E ³	
6	12/3/07	EC	µmhos/cm	Daily Maximum	OEV	782 ⁶	820	\$3,000	
7	12/10/07	EC	µmhos/cm	Daily Maximum	OEV	1,000	1,700 ⁷	\$3,000	
8	2/15/08	EC	µmhos/cm	Daily Maximum	OEV	816 ⁸	1,100	\$3,000	

¹ Violation ID in CIWQS

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation exempt from MMP amount pursuant to CWC Section 13385(f)(1).

⁴ Effluent EC violations considered potentially subject to MMP are those that occurred when daily effluent EC: (a) was greater than 1,000 µmhos/cm or (b) was less than 1,000 µmhos/cm but greater than source water EC plus 500 µmhos/cm on days when source water EC was monitored. This approach was followed in evaluating compliance with the effluent EC limitation in ACL Order R5-2006-0003, which was issued for violations subject to MMPs for the period of 1 February 2000 through 30 June 2004.

⁵ Source water EC reported as 311 µmhos/cm on 9/6/05 yields a maximum effluent EC limit of 811 µmhos/cm on that date.

⁶ Source water EC reported as 282 µmhos/cm on 12/3/07 yields a maximum effluent EC limit of 782 µmhos/cm on that date.

⁷ The Discharger provided no information to indicate this value, reported by the lab, is suspect or otherwise inaccurate.

⁸ Source water EC reported as 316 µmhos/cm on 2/15/08 yields a maximum effluent EC limit of 816 µmhos/cm on that date.

Abbreviation Definition

CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy
EC	Electrical conductivity at 25°C
CIWQS	California Integrated Water Quality System database
MMP	Mandatory Minimum Penalty
OEV	Violation of other effluent limitation

ATTACHMENT A
 ACL COMPLAINT R5-2008-0583
 MALAGA CWD WWTF
 RECORD OF VIOLATIONS

VIOLATION SUMMARY						
Violation	Chronic Violations		Serious Violations		Net Number	Net Liability
	Number	Amount	Number	Amount		
pH	2	\$6,000			2	\$6,000
Turbidity	1	\$3,000			1	\$3,000
EC	5	\$15,000			5	\$15,000
Total Violations	8	\$24,000			8	\$24,000
Exempt (E) Violations	5	<\$15,000>			5	<\$15,000>
Net Violations & Penalty	3	\$9,000			5	\$9,000

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Russ Holcomb
 Malaga County Water Dist
 3580 South Frank Street
 Fresno, CA 93725

2. Article Number
(Transfer from service label)

7007 3020 0000 1750 0378

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Vanessa Calderon* Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

11-24-08

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE



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CALIFORNIA REGIONAL WATER
 QUALITY CONTROL BOARD
 Central Valley Region
 1685 E Street
 Fresno, CA 93706

JW

