

Lahontan Regional Water Quality Control Board

August 10, 2016

INTERESTED PERSONS

Notice of Proposed Settlement with California Department of Fish and Wildlife for an Effluent Limitation Violation at the Mojave River Fish Hatchery -Written Comments Due No Later Than 5:00 P.M., September 12, 2016

The California Regional Water Quality Control Board, Lahontan Region (Water Board) Executive Officer will consider approval of a proposed settlement with the California Department of Fish and Wildlife (CDFW). The proposed settlement, if approved, will resolve the effluent limitation violation alleged by Water Board staff in a Notice of Violation and Expedited Payment Settlement Offer (Settlement Offer) issued by the Water Board's Assistant Executive Officer on June 30, 2016. The alleged violation is subject to mandatory minimum penalties of \$3,000 per violation pursuant to Water Code section 13385, subdivision (h).

The Settlement Offer provides an opportunity for CDFW to waive its right to a hearing and agree to pay the mandatory minimum penalty of \$3,000 for the alleged violation. On August 3, 2016, CDFW took such action by submitting a signed copy of the Settlement Offer's Acceptance of Conditional Resolution and Waiver of Right to Hearing (enclosed). This action constitutes a proposed settlement that is subject to a 30-day public comment period pursuant Water Code section 13385 and the State Water Resources Control Board's Enforcement Policy.

The Settlement Offer, Notice of Violation, and signed Acceptance of Conditional Resolution and Waiver of Right to Hearing are available at the Water Board's website:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/mojave_river_fish_hatchery.shtml.

Persons may comment on the proposed settlement by submitting written comments so that they are received no later than 5:00 p.m. on September 12, 2016. Written comments should include "CDFW Mojave River Fish Hatchery, Proposed Settlement" in the subject line, and should be submitted by email to:

RB6enfproceed@waterboards.ca.gov

If the Executive Officer does not adopt the proposed settlement, the matter may be scheduled for Water Board consideration on whether to adopt or reject the settlement at the January 11-12, 2017 Board Meeting to be held in Victorville, California. Please check the Water Board's website for any updates on this matter.



Lauri Kemper, P.E.
Assistant Executive Officer

Enclosure: Acceptance of Conditional Resolution and Waiver of Right to Hearing

cc: Mojave River Hatchery Mailing List

CP/ma/T: Mojave River Fish Hatchery-Proposed Settlement
File Under: ECM / WDID 6B360812001

Lahontan Regional Water Quality Control Board

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

Gary Williams
California Department of Fish & Wildlife
Mojave River Fish Hatchery
12550 Jacaranda Ave.
Victorville, CA 92395

Settlement Offer No. R6V-2016-0041
NPDES Permit No. CA0102814

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, Lahontan Region (Water Board), the California Department of Fish and Wildlife (hereinafter "Permittee" or "DFW") hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Water Board to dispute the allegation of a violation described in the June 30, 2016 Notice of Violation (NOV), which is incorporated herein by reference.

DFW agrees that the NOV shall serve as a complaint pursuant to Division 7, Chapter 5, Article 2.5 of the California Water Code and that no separate complaint is required for the Water Board to assert jurisdiction over the alleged violation through its Chief Prosecutor. DFW agrees to pay the penalties required by California Water Code section 13385, in the sum of **\$3,000** (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violation described in the NOV. DFW understands that this Acceptance and Waiver waives DFW's right to contest the allegation in the NOV and the amount of civil liability for such violation.

DFW understands that this Acceptance and Waiver does not address or resolve liability for any violation, other than the one violation identified in the NOV.

Upon execution by DFW, the completed Acceptance and Waiver shall be returned to:

Lahontan@waterboards.ca.gov

Include "Mojave River Hatchery EPL Acceptance" and the WDID No. in the transmittal email's subject line.

DFW understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) and the State Water Resources Control Board's Enforcement Policy require the Water Board to publish notice of and provide at least 30 days for public

AMY L. HORNE, PH.D., CHAIR | PATTY Z. KOUYCHUMJIAN, EXECUTIVE OFFICER

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e-mail Lahontan@waterboards.ca.gov | website www.waterboards.ca.gov/lahontan

comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Water Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Water Board Executive Officer to question the Expedited Payment Amount, the Water Board Executive Officer will execute the Acceptance and Waiver.

DFW understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Water Board to resolve the violation set forth in the NOV may be withdrawn. In that circumstance, DFW will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Water Board. For such a liability hearing, DFW understands that this Acceptance and Waiver executed by DFW will be treated as a settlement communication and will not be used as evidence in that hearing.

DFW further understands that once the Acceptance and Waiver is executed by the Water Board Executive Officer, the full payment required by the deadline set forth below, is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1), funds collected for violations of effluent limitations pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the **\$3,000** liability shall be paid by a cashiers or certified check for **\$3,000** made out to the "State Water Pollution Cleanup and Abatement Account" referencing the number of this Settlement Offer. The payment must be submitted to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch, 1001 I Street, 18th Floor, Sacramento, California 95814, no later than thirty (30) days after the date the Acceptance and Waiver is executed by the Water Board Executive Officer.

I hereby affirm that I am duly authorized to act on behalf of and to bind DFW in the making and giving of this Acceptance and Waiver.

California Department of Fish and Wildlife

By: <u></u>	<u>8/3/16</u>
(Signed Name)	(Date)
<u>Ann Malcolm</u>	<u>Asst. Chief Counsel</u>
(Printed or typed name)	(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
 PATTY Z. KOUYOUMDJIAN
 EXECUTIVE OFFICER