

Lahontan Regional Water Quality Control Board

April 5, 2016

INTERESTED PERSONS

Notice of Proposed Settlement with California Department of Fish and Wildlife for Effluent Limitation Violations at the Fish Springs Fish Hatchery -Written Comments Due No Later Than 5:00 P.M., May 5, 2016

The California Regional Water Quality Control Board, Lahontan Region (Water Board) Executive Officer will consider approval of a proposed settlement with California Department of Fish and Wildlife (CDFW). The proposed settlement, if approved, will resolve three effluent limitation violations 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 March 2, 2016. The three alleged violations are 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 \$9,000 for the three alleged violations. On March 25, 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/fish_springs_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 May 5, 2016.

Written comments should include "CDFW Fish Springs Fish Hatchery, Proposed Settlement" in the subject line, and should be submitted by email to:

RB6enfpceed@waterboards.ca.gov.

If the Executive Officer does not approve the proposed settlement, the matter may be scheduled for Water Board consideration on whether to adopt or reject the settlement at

the June 8-9, 2016, Board Meeting to be held in Bishop, 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 and Transmittal Email

cc (with enclosure): Fish Springs MMP Mailing List

CP/ma/T: fish_springs_settle_notice
File Under: CW-224545

Lahontan Regional Water Quality Control Board

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

Charlton H. Bonham, Director
California Department of Fish & Wildlife
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Director@wildlife.ca.gov

Settlement Offer No. R6V-2016-0007
NPDES Permit No. CA0102806

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 allegations of violations described in the Notice of Violation (NOV), which is attached hereto as Exhibit "1" and incorporated herein by reference.

DFW agrees that the NOV shall serve as a complaint pursuant to 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 violations through its Chief Prosecutor. DFW agrees to pay the penalties required by California Water Code section 13385, in the sum of \$9,000 (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 violations described in the NOV. DFW understands that this Acceptance and Waiver waives DFW's right to contest the allegations in the NOV and the amount of civil liability for such violations.

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

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

Lahontan@waterboards.ca.gov

Include "Fish Springs 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) require the Water Board to publish notice of and provide at least 30 days for public 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 violations 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 \$9,000 liability shall be paid by a cashiers or certified check for \$9,000, 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>Wendy Bogdan</u>	<u>March 12, 2016</u>
(Signed Name)	(Date)
<u>Wendy Bogdan</u>	<u>General Counsel</u>
(Printed or typed name)	(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Ferguson, Scott@Waterboards

From: Kindred, Bill@Wildlife
Sent: Friday, March 25, 2016 9:57 AM
To: Lahontan
Subject: Fish Springs EPL Acceptance WDID No. 6B140800002
Attachments: Settlement Offer No. R6V-2016-0007.pdf

Hello,

Please find attached Settlement Offer No. R6V-2016-0007.

Additional references:

Fish Springs Fish Hatchery, Big Pine, Inyo County
NPDES Permit No. CA0102806
Claim No. 7009 0820 0001 6638 8758

After signing, please send back to me at the e-mail address listed below. Thank you. Please e-mail or call me if you have any questions.

Bill Kindred
Fisheries Branch
830 S Street
Sacramento, CA 95811
CA Department of Fish and Wildlife
916-445-9935
Cell: 916-202-5695
Bill.Kindred@wildlife.ca.gov

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