

For Deposit only to
STATE OF CALIFORNIA
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Waterboards 420
Deposited by: null

ENDORSE ABOVE THIS LINE

Seq: 16
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Back

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FRONT

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - VIEW AT AN ANGLE.

STATE OF CALIFORNIA WARRANT NUMBER **04-856807**

FUND NAME: **FISH & GAME PRESERVATION**

FUND NO: **0200**

NO. DAY, YR: **05, 06, 2014**

AMOUNT: **5600**

04856807

DOLLARS: **6000.00**

CENTS: **00**

TO: **SANTA ANA REGIONAL WATER**

01817156

121134231: 048580721*

Item Number: 0000016

JOHN CHONG
CALIFORNIA STATE CONTROLLER

Front

Confidential

01317156



EDWARD C. GARDNER JR.
GOVERNOR

MATTHEW HODGINS
SECRETARY FOR
ENVIRONMENTAL REVISIONS

Santa Ana Regional Water Quality Control Board

April 18, 2014

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7012-0470-0002-5054-2583**

State of California
Department of Fish and Wildlife
1416 9th Street, Room 1206 22
Sacramento, CA 95814

ATTN: Wendy Bogdan

**SETTLEMENT OFFER NO. R8-2014-0029: OFFER TO PARTICIPATE IN EXPEDITED
PAYMENT PROGRAM RELATING TO VIOLATIONS OF LAKE ELSINORE/CANYON
LAKE NUTRIENTS TMDL WATER CODE 13267 INVESTIGATIVE ORDER**

Dear Ms. Bogdan:

This letter is to notify the California Department of Fish and Wildlife (hereinafter "Department" or "you") of alleged violations of the California Water Code and to allow the Department to expedite settlement of the violations of Water Code 13267.

NOTICE OF VIOLATION:

The California Department of Fish and Wildlife (hereinafter the Department) is alleged to have violated California Water Code (hereinafter CWC) section 13267(b) by failing to furnish technical or monitoring program reports as required by a Regional Water Board Order issued pursuant to CWC section 13267(b) as identified in the Notice of Violation (NOV) attached as Exhibit "1". The Department will have the opportunity to address the alleged violations as discussed below.

On March 28, 2014, Water Board staff received notification that the Department complied with the 13267 Order negating the need for the Regional Board to pursue further formal enforcement action. This settlement agreement addresses Water Board staff costs associated with the Department's violation of the 13267 Investigative Order.

STATUTORY LIABILITY:

California Water Code section 13268 requires the assessment of an administrative civil liability penalty for failure to submit requested submittals pursuant to CWC section 13267. The Department is subject to discretionary administrative civil liabilities of up to

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one thousand dollars (\$1,000) for each day in which the violation occurs, and to reimburse the Regional Board's staff costs. This discretionary administrative civil liability may be assessed by the Regional Board beginning with the date that the violations first occurred. The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Department can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV. Since the Department eventually complied with the 13267 Order, the settlement would cover Water Board staff costs associated with addressing the Department's non-compliance. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of the violation of the 13267 Investigative Order, the Regional Board makes this Conditional Offer. The Department may accept this offer, waive the Department's right to a hearing, and pay Water Board staff costs of \$6,000 that are a result of Water Board staff time spent contacting Department staff and other agencies' staff throughout 2012-2014 to determine compliance with the 13267 Order, drafting the NOV and preparing a draft Administrative Civil Liability Complaint and this settlement agreement. The specific actions conducted by Water Board staff and the associated time is presented in Exhibit "2". If the Department elects to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the NOV regardless of the date that the violation occurred.

THE DEPARTMENT'S OPTIONS FOR RESPONSE TO OFFER:

The Department has the following options in response to the offer for participating in the Expedited Payment program:

- A. If the Department accepts this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order" (Acceptance and Waiver) on or before May 19, 2014.

- B. If the Department chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date specified above.**

Responses contesting any of the violations alleged in the NOV shall be submitted as a pdf via email or CD to Hope Smythe, Hope.Smythe@waterboards.ca.gov, and submitted by you under penalty of perjury.

The Regional Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Board staff will determine that the violation is not supported, expunge the alleged violation, take no further action against the Department for the alleged violation, and notify the Department of that determination. The Department will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver for the remainder of the violations; or
 - 2) The Regional Board staff will determine that the alleged violation is meritorious, and will notify the Department of that determination. The Department will be given thirty (30) days from the date of receipt of the Regional Board staff determination to complete and return the Acceptance and Waiver.
- C. If the Department chooses not to make a payment in response to the Regional Board staff's determination, the Department should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.**

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

Per Water Board policy, the Regional Board will publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action and settlement. Upon receipt of the Department's Acceptance and Waiver, the Regional Board staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Regional Board, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to CWC section 13268(b)(1).

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Department's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Department will be free to make arguments as to any of the alleged violations, and the Department's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Department. The Department will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Regional Board Executive Officer, full payment of the assessed amount shall be due within thirty (30) calendar days after the Regional Board Executive Officer's execution. The \$6,000 liability shall be paid by cashiers or certified check for made out to the "State Water Pollution Cleanup and Abatement Account". Failure to pay the full penalty within the required time period may subject the Department to further liability.

Should you have any questions about this Conditional Offer or Notice of Violation, please contact Senior Staff Counsel, Ms. Julie Macedo at Julie.Macedo@waterboards.ca.gov or 916-323-6847. You may also contact me at Hope.Smythe@waterboards.ca.gov or 951-782-4493.

Sincerely,



Hope A. Smythe
Division Chief

Enclosures:

- Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order
- Exhibit "1" – February 15, 2013 Notice of Violation
- Exhibit "2" – Summary of Staff Costs

cc w/attachments

Julie Macedo, Office of Enforcement, SWRCB, Julie.Macedo@waterboards.ca.gov
Scott Sewell, San Jacinto Wildlife Area, ssewell@wildlife.ca.gov

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

California Department of Fish and Wildlife
Settlement Offer No. R8-2014-0029

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Regional Board), the California Department of Fish Wildlife (Department) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the February 16, 2013 Notice of Violation (NOV), which is attached hereto as Exhibit "1" and incorporated herein by reference. The NOV was issued as a result of the Department's failure to comply with a California Water Code section 13267 Investigative Order issued by the Regional Board on October, 12, 2012.

The Department 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 Regional Board to assert jurisdiction over the alleged violations through the Division Chief.

Subsequent to the issuance of the NOV, on March 28, 2014, the Regional Board received notification that the Department has complied with the 13267 Order; however, considerable time and effort was expended by Water Board staff to address the Department's non-compliance with the 13267 Order.

The Department agrees to pay for Water Board staff costs in the sum of \$6,000 in lieu of payment of the penalties that can be discretionarily imposed by California Water Code section 13268, (Expedited Payment Amount). The payment of \$6,000 which shall be deemed payment in full of any civil liability pursuant to Water Code section 13268 that otherwise might be assessed for the violations described in the NOV. The Department understands that this Acceptance and Waiver waives the Department's right to contest the allegations in the NOV and the amount of civil liability for such violations. The Department also recognizes that participation in the Expedited Payment Program may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

The Department understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

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

Hope Smythe
Division Chief
Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, California 92501
Hope.Smythe@waterboards.ca.gov

The Department understands that Water Board policy is that the Regional Board will publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

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

The Department understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Department 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 Regional Board. For such a liability hearing, the Department understands that this Acceptance and Waiver executed by the Department will be treated as a settlement communication and will not be used as evidence in that hearing.

The Department further understands that once the Acceptance and Waiver is executed by the Regional 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 13268 funds collected for violations of Water Section 13267 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$6,000 liability shall be paid by a cashier or certified check for \$6,000 made out to the "State Water Pollution Cleanup and Abatement Account". Please include the following reference on the payment: R8-2014-0029. 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 Regional Board Executive Officer. A copy of the check should be transmitted to Hope Smythe at the above address or transmitted electronically at Hope.Smythe@waterboards.ca.gov.

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

California Department of Fish and Wildlife

By:

Eddy Kanno
(Signed Name)

23 Apr 14
(Date)

Eddy Kanno
(Printed or typed name)

Sr. Environmental Scientist
(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13268

Date: _____

By: _____
Kurt V. Berchtold
Executive Officer