

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0501

MANDATORY PENALTY
IN THE MATTER OF

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
PELICAN CROSSOVER PROJECT
STANISLAUS COUNTY

This Complaint is issued to the San Francisco Public Utilities Commission (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0081 (NPDES No. CAG995001).

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

1. Between 23 December 2010 and 24 August 2012, the Discharger owned and operated a groundwater extraction system. This system was used to dewater a construction site during the installation of new valves on the Discharger's San Joaquin Pipeline. The dewatering system discharged extracted groundwater to agricultural ditches which are tributary to the San Joaquin River, a water of the United States.
2. The discharge was regulated under WDRs Order R5-2008-0081, *Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) as Enrollee Number R5-2008-0081-089 from 23 December 2010 through termination upon completion of the project on 24 August 2012.
3. This Complaint addresses administrative civil liability for reporting and effluent violations that occurred during the period from 1 January 2011 through 24 August 2012. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties (MMPs). Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
4. On 26 July 2012, Central Valley Water Board staff issued the Discharger a Notice of Violation (NOV) for missing self-monitoring reports. As of the date of the NOV, the Discharger had not submitted any of the required quarterly monitoring reports from the First Quarter 2011 monitoring period through the Second Quarter 2012 monitoring period. The Discharger responded to the NOV on 24 August 2012 and submitted the six missing reports as well as the Third Quarter 2012 monitoring report. In addition, the Discharger confirmed that there were discharges to surface waters from 27 January 2011 through 21 October 2011.

5. On 9 October 2012, after reviewing the seven monitoring reports, Central Valley Water Board staff issued the Discharger a revised NOV for the period 1 January 2011 through 24 August 2012. The Discharger responded on 7 November 2012 and acknowledged the reporting violations, but questioned the validity of the total residual chlorine results. The Discharger's response included laboratory analytical reports identifying the chlorine violation but the Discharger did not provide information to demonstrate that the laboratory results were erroneous. On 7 December 2012, Board staff requested clarification regarding the statement that the chlorine violations were in error. The Discharger responded on 14 December 2012 with additional information describing the water sources on site. The response stated that the sample result was believed to be erroneous since the sample was taken from raw groundwater with no sources of chlorine or chlorinated potable water at the site. Although the Discharger provided a new justification for why it believed the sample was erroneous, this new argument does not negate the validity of the chlorine residual laboratory results which indicate that effluent limit exceedances occurred. Board staff considered all the responses provided by the Discharger and continue to allege the chlorine violations in Attachment A to the Complaint.
6. Water Code sections 13385(h) and (i) require assessment of mandatory penalties and states, in part, the following:

Water Code section 13385(h)(1) states:

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 serious violation.

Water Code section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

7. Water Code section 13385.1 provides the definition of a serious violation for the failure to submit a monitoring report and states, in part, the following:

Water Code section 13385.1(a)(1) states:

For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations...

Water Code section 13385.1(a)(2)(A) states:

Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the

date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

- (i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.
- (ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

Water Code section 13385.1(b)(1) states:

Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

- A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.
- B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.

Water Code section 13385.1(b)(2) states

Paragraph (1) shall only apply to a discharger who does both of the following:

- A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.
- B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.

9. Water Code section 13383 states, in part:

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.

10. WDRs Order R5-2008-0081 Effluent Limitations V.A.1.b., include, in part, the following effluent limitations:

- b. **Total Residual Chlorine.** Effluent total residual chlorine shall not exceed:
 - i. 0.011 mg/L, as a 4-day average; and
 - ii. 0.019 mg/L, as a 1-hour average.

- 11. Section X.B.3 of the Monitoring and Reporting Program (MRP) of WDRs Order R5-2008-0081 includes the due dates for monitoring reports, as shown below:

Table E-6. Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period	SMR Due Date
Continuous	All	1 May 1 August 1 November 1 February

- 12. The Discharger was required to submit quarterly self-monitoring reports during the time it was enrolled under WDR Order R5-2008-0081. Seven quarterly self-monitoring reports were required (First Quarter 2011 through Third Quarter 2012). The Discharger did not submit any reports until the Central Valley Water Board staff sent a NOV dated 26 July 2012 indicating that the Discharger was in violation of the WDRs and the corresponding Monitoring and Reporting Program. In response to the NOV, the Discharger submitted the missing self-monitoring reports within 30 days after receiving the 26 July 2012 NOV.
 - a. The First Quarter 2011 report was not submitted by the required date of 1 May 2011, but was submitted within 30 days after the Discharger received written notice of the need to file a report. The report states that there was a discharge, but no effluent violations. Therefore, pursuant to Water Code section 13385.1(b)(1) and (2), this late report is subject to one \$3,000 MMP.
 - b. The Second Quarter 2011 report was not submitted by the required date of 1 August 2011, but was submitted within 30 days after the Discharger received written notice of the need to file a report. The report states that there was a discharge, and the laboratory reports shows that there were two chlorine effluent violations. Therefore, neither of the exemptions found in Water Code sections 13385.1(a)(2)(A) or 13385.1(b) apply. Pursuant to Water Code section 13385.1(a)(1), the Board must assess one serious violation for each 30-day period in which the report was overdue. The report was due on 1 August 2011 and was submitted on 24 August 2012, for a total of 12 serious violations. The mandatory minimum penalty for these serious reporting violations is thirty-six thousand dollars (\$36,000).
 - c. The Third Quarter 2011 report was not submitted by the required date of 1 November 2011, but was submitted within 30 days after the Discharger received written notice of the need to file a report. The report states that there was a discharge, but no effluent violations. Therefore, pursuant to Water Code section 13385.1(b)(1) and (2), this late

report is subject to one \$3,000 MMP.

- d. The Fourth Quarter 2011 report was not submitted by the required date of 1 February 2012, but was submitted within 30 days after the Discharger received written notice of the need to file a report. The report states that there was a discharge, but no effluent violations. Therefore, pursuant to Water Code section 13385.1(b)(1) and (2), this late report is subject to one \$3,000 MMP.
 - e. The First Quarter 2012 report was not submitted by the required date of 1 May 2012, but was submitted within 30 days after the Discharger received written notice of the need to file a report. The report states that there were no discharges to surface waters during the monitoring period. Therefore, pursuant to Water Code section 13385.1(a)(2)(A), mandatory minimum penalties do not apply to this violation.
13. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2008-0081, as listed in Table 1 of Attachment A. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0081 by 40 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
 14. Water Code section 13385.1 requires that the Board assess penalties for the failure to submit monitoring reports. The Discharger committed fifteen (15) serious violations for not submitting monitoring reports as required by WDRs Order R5-2008-0081 during the period beginning 1 January 2011 and ending 24 August 2012, which is the date that coverage under the WDRs Order was terminated. A detailed list of the monitoring violations is included in Table 2 of Attachment A and is described in Finding 12, above.
 15. The monitoring report violations meet the definition of serious, as found in Water Code section 13385.1(a)(1), because the reports were designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. The mandatory minimum penalty for these serious reporting violations is **forty-five thousand dollars (\$45,000)**.
 16. The total amount of the mandatory penalties assessed for the alleged effluent and reporting violations is **fifty-one thousand dollars (\$51,000)**. As stated herein, a detailed list of the alleged effluent and reporting violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
 17. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifty-one thousand dollars (\$51,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 April 2013**, unless the Discharger does one of the following by **11 February 2013**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifty-one thousand dollars (\$51,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by

PAMELA C. CREEDON, Executive Officer

11 January 2013

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the San Francisco Public Utilities Commission (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0501 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifty-one thousand dollars (\$51,000)** by check that references "ACL Complaint R5-2013-0501" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **11 February 2013**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0501
San Francisco Public Utilities Commission
Pelican Crossover Project

RECORD OF VIOLATIONS (1 January 2011 – 24 August 2012) MANDATORY PENALTIES
 Data reported under Monitoring and Reporting Program R5-2008-0081

Effluent Limitation Violations

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	28-Apr-11	Total Residual Chlorine	mg/L	0.019	0.13	1-Hour Ave	2	937201
2	28-Apr-11	Total Residual Chlorine	mg/L	0.011	0.13	4-Day Ave	2	937202

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is not subject to MMPs.
4. Non-serious violation subject to mandatory minimum penalties.

Mandatory Minimum Penalty for Effluent Violations = (2 Serious Violations) x \$3,000 = \$6,000

Late Reporting Violations

	<u>Monitoring Period</u>	<u>Due Date</u>	<u>Date Received</u>	<u># of 30-day periods subject to MMPs</u>	<u>Discharge?</u>	<u>Effluent Violations?</u>	<u>Remarks</u>	<u>CIWQS</u>
1	1Q2011	1-May-11	24-Aug-12	1	Yes	No	1	937208
2-13	2Q2011	1-Aug-11	24-Aug-12	12 ¹	Yes	Yes	1	**
14	3Q2011	1-Nov-11	24-Aug-12	1	Yes	No	1	937222
15	4Q2011	1-Feb-12	24-Aug-12	1	Yes	No	1	937223
*	1Q2012	1-May-12	24-Aug-12	0	No	No	2	937224

Remarks:

1. Serious Reporting Violation Subject to MMPs.
2. Violation not subject to MMPs.

<u>REPORTING VIOLATIONS AS OF:</u>	<u>24 August 2012</u>
Serious Violations Subject to MMPs:	15
Violations Not Subject to MMPs:	2
<u>Total Violations Subject to MMPs:</u>	<u>15</u>

Mandatory Minimum Penalty for Reporting Violations = (15 Serious Violations) x \$3,000 = \$45,000

* Not a violation subject to MMPs per Water Code section 13385.1(a)(2)(A) because there was no discharge during the monitoring period.

** CIWQS Violation IDs 937209–937213 and 937215-937221

¹ Subject to a mandatory minimum penalty for each complete 30-day period that the report was submitted past the report due date.

Total Mandatory Minimum Penalty = \$6,000 (effluent violations) + \$45,000 (reporting violations) = \$51,000