

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0510

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF PLACERVILLE  
POTABLE WATER SYSTEM MAINTENANCE PROJECT  
EL DORADO COUNTY

This Complaint is issued to the City of Placerville (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. The Discharger owns and operates a potable water distribution system, and discharges potable water as a result of operating the system. Discharges occur during well rehabilitation, tank/reservoir dewatering, pipeline/tank pressure testing, distribution system flushing, and fire hydrant flushing. Potable water is discharged to Hangtown Creek and Weber Creek, both tributaries of South Fork of American River, a water of United States.
2. On 2 December 2010, the Central Valley Water Board issued Notice of Applicability No. R5-2008-0081-042 for coverage under the *Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters, Order R5-2008-0081* (Low Threat General Order).
3. This Complaint addresses administrative civil liability for reporting violations that occurred during the period from 1 May 2011 through 31 May 2012. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. 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) along with a *Discharge Monitoring Report Reconciliation Form* for the period of 1 May 2011 through 31 May 2012. The NOV cited non-submittal of quarterly self-monitoring reports for the Second Quarter 2011, Third Quarter 2011, Fourth Quarter 2011, and First Quarter 2012.
5. On 14 August 2012, the Discharger submitted reconciliation forms for the Second and Third Quarters of 2011 and First Quarter 2012 stating that no discharges to surface water

occurred during these corresponding time period. Additionally, the Discharger submitted a reconciliation form and missing self-monitoring report for the Fourth Quarter 2011. According to the Fourth Quarter 2011 self-monitoring report, a discharge to surface waters occurred during this time period, however, no samples were collected during this discharge event.

6. Water Code section 13385(h)(1) 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 serious violation.

7. Water Code section 13385.1 provides the definition of a serious violation for the failure to file a monitoring report and describes when mandatory minimum penalties will apply.

Water Code section 13385.1(a)(1) states, in part:

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, in part:

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 or a regional board of the need to file a discharge monitoring report if the discharger submits a written statement to the state 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.

8. The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) section VII.D.1 states, in part:

For purposes of [Water Code] section 13385.1, in circumstances where a discharge to water of the United States did occur, but where the discharge failed to conduct any monitoring during the relevant monitoring period, a "discharge monitoring report" shall include a written statement to the Regional Water Board signed under penalty of perjury stating:

- a) That no monitoring was conducted during the relevant monitoring period;
- b) The reason(s) the requirement monitoring was not conducted; and
- c) If the written statement is submitted after the deadline for submitting the discharge monitoring report, the reason(s) the required discharge monitoring report was not submitted to the Regional Water Board by the requisite deadline.

The written statement shall be treated as a “discharge monitoring report” for the purposes of Water Code section 13385.1(a). Mandatory minimum penalties for late or missing discharge monitoring reports assessed for each 30 day period will cease accruing upon the date the written statement is received by the Regional Water Board.

9. Water Code section 13323 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, Self-Monitoring Reports (SMRs), Attachment X.B.3., states, in part:

3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

**Table E-6 Monitoring Periods and Reporting Schedule**

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

11. The Fourth Quarter 2011 self-monitoring report was required to be submitted by 1 February 2012, but the statement submitted pursuant to the Enforcement Policy, as described in Paragraph 8 above, was not submitted to the Central Valley Water Board until 14 August 2012, 195 days after the required deadline in the Monitoring and Reporting Program. According to the Discharger’s Fourth Quarter 2011 self-monitoring report, there was a discharge event to surface waters during this monitoring period. The Discharger failed to conduct any monitoring during the Fourth Quarter 2011. In accordance with the California Water Code section 13385.1(a), the Fourth Quarter 2011 quarterly self-monitoring report is subject to a mandatory minimum penalty. The Discharger committed six (6) serious violations for failure to timely submit the self-monitoring report required by WDRs Order R5-2008-0081. The mandatory minimum penalty for these serious violations is **eighteen thousand dollars (\$18,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **eighteen thousand dollars (\$18,000)**. As stated herein, a detailed list of the alleged effluent 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.
13. 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 CITY OF PLACERVILLE 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 **eighteen thousand dollars (\$18,000)**.
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 **eighteen thousand dollars (\$18,000)**; 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*

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PAMELA C. CREEDON, Executive Officer

11 January 2013

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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 City of Placerville (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0510 (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 **eighteen thousand dollars (\$18,000)** by check that references "ACL Complaint R5-2013-0510" 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.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0510**

**City of Placerville  
Potable Water System Maintenance Project  
RECORD OF VIOLATIONS (1 May 2011 - 31 May 2012) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2008-0081-042)**

	<u>Monitoring Period</u>	<u>Due Date</u>	<u>Received Date</u>	<u># 30-day periods subject to MMPs</u>	<u>Discharge</u>	<u>Required Monitoring Conducted</u>	<u>Remarks</u>	<u>CIWQS</u>
1	2Q2011	8/01/2011	8/15/2012	0	No	NR	2	936651
2	3Q2011	11/01/2011	8/15/2012	0	No	NR	2	936652
3-8	4Q2011	2/1/2012	8/15/2012	6*	Yes	No	3	**
9	1Q2012	5/1/2012	8/15/2012	0	No	NR	2	936654

Remarks:

1. Serious reporting violation subject to MMPs.
2. Non-serious reporting violation, not subject to MMPs.
3. No monitoring was conducted during the Fourth Quarter 2011

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>5/31/12</u></b>
Serious Violation:	6
Non-Serious Violations Not Subject to MMPs:	3
<b><u>Total Violations Subject to MMPs:</u></b>	<b><u>6</u></b>

**Mandatory Minimum Penalty = (6 Serious Violation) x \$3,000 = \$18,000**

NR – No Monitoring Required

\* Subject to one MMP per complete 30-day period that the report was late per the State Water Board's Enforcement Policy because there was a discharge but no monitoring was conducted.

\*\* CIWQS Violation IDs 936653, 941596, 941597, 941598, 941599, and 941600