

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0561

MANDATORY PENALTY  
IN THE MATTER OF

DONNER SUMMIT PUBLIC UTILITY DISTRICT  
WASTEWATER TREATMENT PLANT  
NEVADA COUNTY

This Complaint is issued to the Donner Summit Public Utility District (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL) and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2015-0068 (NPDES CA0081621).

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

1. The Discharger owns and operates the Donner Summit Public Utility District Wastewater Treatment Plant (Facility), which is a wastewater collection, treatment, and disposal system that provides sewerage service to the Norden and Soda Springs areas, the Sugar Bowl and Soda Springs Ski Resorts, the Serene Lakes Subdivision, and the Sierra Lakes County Water District. During the months of October through July, treated wastewater can be discharged to the South Yuba River, a water of the United States. During summer months when treated wastewater is not discharged to the South Yuba River, it is used to spray irrigate approximately 53 acres of the Soda Springs Ski Area. In addition, treated wastewater is also used for snowmaking at the Soda Springs Ski Resorts during winter months.
2. In order to regulate discharges from the Facility, on 24 April 2009, the Central Valley Water Board issued WDRs Order R5-2009-0034 and Cease and Desist Order (CDO) R5-2009-0035, which became effective of 13 June 2009 and 24 April 2009, respectively.
3. On 28 March 2014, the Central Valley Water Board adopted CDO R5-2014-0044, which rescinded and replaced R5-2009-0034. CDO R5-2014-0044 updated interim effluent limitations, extended time schedules, and provided Mandatory Minimum Penalty (MMP) protection for aluminum, ammonia, copper, cyanide, dichlorobromomethane, manganese, nitrate, silver, and zinc. This Order considers the exemption from MMPs provided by CDO R5-2014-0044.
4. On 4 June 2015, the Central Valley Water Board renewed the WDRs and issued WDRs Order R5-2015-0068, which rescinded WDRs Order R5-2009-0034, except for enforcement purposes.
5. On 11 August 2015, the Central Valley Water Board issued a Minor Modification Letter to correct typographical errors related to the Report of Waste Discharge due date and the WDRs Order expiration date.
6. On 26 August 2015, the Assistant Executive Officer issued Administrative Civil Liability Order (ACLO) R5-2015-0538 for MMPs in the amount of \$3,000 for effluent limitation violations that

occurred between 1 July 2014 and 30 April 2015. The penalty was satisfied by the completion of a compliance project and the Board considers the effluent violation specifically listed in Attachment A to ACLO R5-2015-0538 to be resolved.

7. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 May 2015 through 30 June 2016. 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.
8. On 1 August 2016, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations from 1 May 2015 through 31 May 2016. On 11 August 2016, the Discharger responded and agreed with the violations and the proposed administrative civil liability. This Complaint extends the review period through 30 June 2016; no additional violations were found.
9. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, 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.

Water Code section 13385 subdivision (i)(1) states, in part:

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 violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

10. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
  - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length .... The interim requirements shall include both of the following:
    - i) Effluent limitations for the pollutant or pollutants of concern.
    - ii) Actions and milestones leading to compliance with the effluent limitation.

11. 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.

12. WDRs Order R5-2015-0068, Effluent Limitations and Discharge Specifications IV.A.1.a., includes, in part, the following final effluent limitation:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 4:

**Table 4. Effluent Limitations**

Parameter	Units	Effluent Limitations	
		Average Monthly	Average Weekly
Manganese, Total Recoverable	µg/L	120	350

13. CDO R5-2014-0044 interim effluent limitations include, in part, the following limitation:

Parameter	Units	Average Monthly	Maximum Daily
Manganese	µg/L	275	553

14. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group I violations of the above effluent limitations contained in Order R5-2015-0068 during the period beginning 1 May 2015 and ending 30 June 2016. These violations are defined as serious because the measured concentration of the Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.

15. The total amount of the mandatory penalties assessed for the alleged effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Order addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

16. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
17. Issuance of this Administrative Civil Liability Order 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).

**DONNER SUMMIT PUBLIC UTILITY DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled for **5/6 December 2016**, unless the Discharger does one of the following by **30 September 2016**:
  - 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. In addition, submits payment for the proposed civil liability of **six thousand dollars (\$6,000)** to the State Water Board, with a copy of the check to the Central Valley Water Board; or
  - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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 Assistant 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.

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ANDREW ALTEVOGT, Assistant Executive Officer

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7 September 2016

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 Donner Summit Public Utility District ((hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0561 (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 **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2016-0561" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **30 September 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **30 September 2016**.
- 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 Assistant 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 R5-2016-0561**

**Donner Summit PUD  
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 May 2015 – 30 June 2016) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Programs R5-2009-0034 and R5-2015-0068)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>WDRs</u> <u>Limit</u>	<u>CDO</u> <u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9-Jan-16	Manganese	µg/L	350	553*	587	Average Weekly	1	1003538
2	31-Jan-16	Manganese	µg/L	120	275	365	Average Monthly	1	1003539

\* The Discharger exceeded the maximum daily limitation listed in the CDO.

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 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 exempt.
4. Non-serious violation subject to mandatory penalties.

**VIOLATIONS through 6/30/2016**

Group I Serious Violations:	2
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
<u>Non-serious Violations Subject to MPs:</u>	<u>0</u>
<b>Total Violations Subject to MPs:</b>	<b>2</b>

**Mandatory Minimum Penalty = (2 Group I Serious Violations) x \$3,000 = \$6,000**