

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0623

MANDATORY PENALTY
IN THE MATTER OF

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
MERCED RIVER FISH HATCHERY
MERCED COUNTY

This Complaint is issued to the State of California Department of Fish and Game (DFG) (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC 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 findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2004-0120 (NPDES No. CA0080055).

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

1. The Discharger operates the Merced River Fish Hatchery (hereafter Facility), a cold-water, flow-through hatchery located on land owned by the Merced Irrigation District in Merced County.
2. On 21 June 1996, the Central Valley Water Board issued WDRs Order 96-163 (NPDES No. CA0080055) to regulate the Facility's discharge of treated flow-through process wastewater to the Merced River, a water of the United States.
3. On 10 September 2004, the Central Valley Water Board issued Order R5-2004-0120 (NPDES No. CA0080055), which prescribed new requirements for the discharge and rescinded WDRs Order 96-163.
4. CWC sections 13385(h) requires the assessment of mandatory penalties and states, in part, the following:

CWC 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.

CWC 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.

5. CWC section 13323 states, in relevant 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.

6. WDRs Order R5-2004-0120 includes effluent limitations for total suspended solids (TSS). These effluent limitations are 5.0 mg/L net TSS as an average monthly limitation and 15 mg/L net TSS as a maximum daily limitation. The permit specifies that compliance with the effluent TSS limitations shall be determined by evaluating the net effluent TSS, where the net effluent TSS concentration is equal to the effluent TSS concentration minus the influent TSS concentration. Monitoring and Reporting Program R5-2004-0120 requires, in part, monitoring of influent and effluent TSS via grab samples at a minimum frequency of once per month.
7. The Discharger's January 2006 self-monitoring report (report) indicates that influent and effluent samples collected on 17 January 2006 yielded TSS results of 3.4 and 14.1 mg/L, respectively. These results yield a net effluent TSS result of 10.7 mg/L. Since influent and effluent were monitored only once for TSS in January 2006, the 10.7 mg/L net effluent TSS result obtained for the 17 January 2006 sampling event is used to evaluate compliance with both the daily maximum and monthly average effluent TSS limitations. Although the sample does not indicate a violation of the maximum daily limitation, the measured net effluent TSS result of 10.7 mg/L exceeds the monthly average effluent TSS limitation of 5 mg/L by greater than 40 percent.

The report states that the elevated TSS measurement is likely the result of high turbidity from the river flows and minimal hatchery flows to the settling ponds. However, the report does not provide sufficient justification to dismiss the net effluent TSS result obtained from influent and effluent TSS monitoring performed on 17 January 2006.

8. On 28 August 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying one (1) violation of WDR Order R5-2004-0120 subject to MMP pursuant to CWC section 13385(h). By letter dated 12 September 2008, the Discharger indicated that it did not dispute that the violation had occurred.
9. The total amount of the MMP assessed for the one cited serious effluent limitation violation cited in Finding 7 is **three thousand dollars (\$3,000)**.

10. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with Title 14, California Code of Regulations, section 15321(a)(2).

THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME 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 **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled in **5/6 February 2009**, unless the Discharger does either of the following by **30 December**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board.
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.

original signed by

LOREN J. HARLOW, Assistant Executive Officer

24 November 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent State of California Department of Fish and Game (hereafter referred to as "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0623 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2008-0623." made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)