

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0570

MANDATORY PENALTY
IN THE MATTER OF

STATE OF CALIFORNIA - DEPARTMENT OF FISH AND GAME
NIMBUS SALMON AND STEELHEAD HATCHERY
AMERICAN RIVER TROUT HATCHERY
SACRAMENTO COUNTY

This Complaint is issued to the California Department of Fish and Game, Nimbus Salmon and Steelhead Hatchery, and American River Trout Hatchery (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 5-00-268 and R5-2005-0057 (NPDES No. CA0004774).

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

1. The Discharger owns and operates a fish hatchery. The hatchery discharges flow-through process wastewater to the American River, a water of the United States.
2. On 8 December 2000, the Central Valley Water Board adopted WDRs Order 5-00-268 to regulate discharges of waste from the hatchery. On 29 April 2005, the Central Valley Water Board adopted WDRs Order R5-2005-0057, which contained new requirements and rescinded WDRs Order 5-00-268.
3. On 29 July 2008, Central Valley Water Board staff sent the Discharger a draft Record of Violations. On 13 August 2008, the Discharger responded, agreeing with the number of violations. The Discharger also commented on two violations as discussed in Finding 11.
4. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, 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.”

CWC section 13385(i)(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 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.”*

5. CWC 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.”*

6. On 28 November 2000, the Executive Officer issued ACL Complaint R5-2000-0523 in the amount of \$15,000 for mandatory minimum penalties (MMPs) from 1 January 2000 through 30 June 2000. The Discharger completed a Supplemental Environmental Project and paid the remainder of the penalty. The Central Valley Water Board considers this prior matter resolved.

7. WDRs Order 5-00-268 Effluent Limitations No. B.1., include, in part, the following effluent limitations: *“The discharge of an effluent in excess of the following limits is prohibited:”*

<u>Constituents</u>	<u>Units</u>	<u>Daily Minimum</u>
Dissolved Oxygen	mg/L	7

8. WDRs Order R5-2005-0057 Effluent Limitations B.2. requires, in part: *“Effluent...shall not have a pH less than 6.5 nor greater than 8.5 standard units...”*

9. WDRs Order R5-2005-0057 Effluent Limitations B.3. requires, in part: *“Effluent...shall have a minimum daily dissolved oxygen concentration of 7.0 mg/L...”*

10. WDRs Order R5-2005-0057 Effluent Limitations B.4. requires, in part, *“Effluent discharges shall not exceed the following limitations...”*

<u>Constituent</u>	<u>Units</u>	Average	Maximum
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		<u>Monthly</u>	<u>Daily</u>
Total Suspended Solids (TSS) (net) ¹	mg/L	5.0	15
<u>Total Dissolved Solids (TDS)</u>	mg/L		125

¹ Effluent limitations for total suspended solids...are net values
(Net concentration = Effluent concentration – Influent concentration)

11. Central Valley Water Board staff has made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
 - Total Suspended Solids violations 5 and 6. The Discharger noted that the net TSS was 17.2 mg/L, not the total measured TSS of 22.3 mg/L. However, this did not affect the minimum penalty.
12. 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 5-00-268 and R5-2005-0057 during the period beginning 1 July 2000 and ending 30 April 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
13. According to the Discharger’s self-monitoring reports, the Discharger committed nine (9) non-serious violations of the above effluent limitations contained in Order 5-00-268 and R5-2005-0057 during the period beginning 1 July 2000 and ending 30 April 2008. One (1) of the non-serious violations is subject to mandatory penalties under CWC section 13385(i)(1) because this violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
14. The total amount of the mandatory penalties assessed for the cited effluent violations is **nine thousand dollars (\$9,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
15. 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CALIFORNIA DEPARTMENT OF FISH AND GAME, NIMBUS SALMON AND STEELHEAD HATCHERY, AND AMERICAN RIVER TROUT HATCHERY 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 **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 December 2008**, unless the Discharger does either of the following by **17 October 2008**:
 - 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 **nine thousand dollars (\$9,000)**; 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, 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.

Original signed by

JACK E. DEL CONTE, Assistant Executive Officer

17 September 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 the California Department of Fish and Game, Nimbus Salmon and Steelhead Hatchery, and American River Trout Hatchery (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0570 (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 Central Valley Regional Water Quality Control Board (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 proposed civil liability in the amount of **nine thousand dollars (\$9,000)** by check, which will contain a reference to "ACL Complaint R5 2008-0570" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **17 October 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **4/5 December 2008** Central Valley Water Board meeting.
 - 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)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0570

(Date

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0570**

**CA Department of Fish and Game
Nimbus Salmon and Steelhead Hatchery and American River Trout Hatchery
RECORD OF VIOLATIONS (1 July 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2000-268 and R5-2005-0057)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	31-Aug-02	DO	mg/L	7	5.9	Instantaneous	3
2	31-Aug-03	DO	mg/L	7	5.8	Instantaneous	3
3	30-Sep-03	DO	mg/L	7	6.2	Instantaneous	3
4	30-Nov-03	DO	mg/L	7	6.7	Instantaneous	3
5	9-Feb-06	TSS (net)	mg/L	15	17.2	Daily	3
6	28-Feb-06	TSS (net)	mg/L	5	17.2	Monthly	1
7	30-Apr-06	pH	pH units	8.5	8.9	Instantaneous	3
8	30-Jun-06	pH	pH units	8.5	8.7	Instantaneous	4
9	30-Jun-06	TDS	mg/L	125	363	Daily	1
10	31-Oct-06	pH	pH units	6.5	6.3	Instantaneous	3
11	14-Feb-07	DO	mg/L	5.8	4.5	Instantaneous	3
12	5-Apr-07	pH	pH units	6.5	6.3	Instantaneous	3

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 violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>4/30/2008</u>
Group I Serious Violations:	2
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	9
Non-serious Violations Subject to MPs:	1
Mass Limit Violations Not Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>3</u>

Mandatory Minimum Penalty = (2 Serious Violation + 1 Non-Serious Violation) x \$3,000 = \$9,000