

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0531

MANDATORY PENALTY
IN THE MATTER OF

TNC HOLDING COMPANY LLC, AND RALPH F. NIX 1995 RECOVERABLE TRUST
TNC HOLDING COMPANY STURGEON FARM
SACRAMENTO COUNTY

This Complaint is issued to TNC Holding Company LLC, and Ralph F. Nix 1995 Recoverable Trust (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) Orders R5-2005-0080 and R5-2011-0084 (NPDES No. CA0085120).

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 fish farm with a wastewater treatment system. The treatment system consists of filtration, an aquatic vegetation pond for nutrient uptake, and a biofiltration system for ammonia and dissolved organics removal. Wastewater is discharged to the Sacramento County storm drain system which flows to an unnamed tributary of the Cosumnes River, then to the Cosumnes River, a water of the United States.
2. On 24 June 2005, the Central Valley Water Board issued WDRs Order R5-2005-0080 to regulate discharges of waste from the facility. On 1 December 2011, the Central Valley Water Board adopted WDRs Order R5-2011-0084 and Time Schedule Order (TSO) R5-2011-0085. The TSO provides protection from mandatory minimum penalties (MMPs) for violations of the iron effluent limitation through 1 December 2016.
3. On 16 March 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2009-0517 for \$3,000 in mandatory minimum penalties for effluent violations from 1 January 2008 through 31 December 2008. The previous ownership group (Tsar Nicoulai Cavair LLC) paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0517 to be resolved.
4. On 1 March 2010, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2010-0511 for \$12,000 in mandatory minimum penalties for effluent violations from 1 January 2009 through 31 December 2009. The previous ownership group (Tsar Nicoulai Cavair LLC) paid \$4,000 of the liability.
5. On 16 September 2010, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2010-0541 for \$23,000 in mandatory minimum

penalties to the previous ownership group (Tsar Nicoulai Cavair LLC). The Complaint rescinded ACLC R5-2010-0511, covered the violation period from 1 January 2009 through 30 June 2010, and accounted for the previous payment of \$4,000. This ACL Complaint is still outstanding and because ownership of the facility changed in 2011, Board staff is seeking resolution of the 2010 ACL Complaint separately from issuance of this 2013 ACL Complaint.

6. On 11 February 2013, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period of 1 July 2010 through 31 December 2012. The violations occurred after the new ownership group (TNC Holding Company LLC) assumed responsibility for the facility. The Discharger did not respond with any comments or corrections. Board staff subsequently reviewed the ROV and made minor corrections.
7. Water Code sections 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(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.

8. 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.

9. WDRs Order R5-2005-0080 Effluent Limitations No. A.1.a., include, in part, the following effluent limitations: “*The discharge of aquacultural wastewater shall maintain compliance with the following effluent limitations... : “*

Parameter	Units	Effluent Limitation
		Average Monthly
Total Iron	µg/L	300
Nitrate Nitrogen	mg/L	10

10. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Orders R5-2005-0080 and R5-2011-0084 during the period 1 July 2010 through 31 December 2012. This violation is defined as serious because the measured concentrations of a Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
11. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Order R5-2005-0080 and R5-2011-0084 during the period 1 July 2010 through 31 December 2012. This non-serious violation is not subject to mandatory penalties under Water Code section 13385(i)(1) because the violation was not preceded by three or more similar violations within a six-month period.
12. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Complaint.
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).

TNC HOLDING COMPANY LLC, AND RALPH F. NIX 1995 RECOVERABLE TRUST 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 **three thousand dollars (\$3,000)**.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **25/26 July 2013**, unless the Discharger does either of the following by **24 May 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 **three thousand dollars (\$3,000)**; 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.

PAMELA C. CREEDON, Executive Officer

26 April 2013

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent TNC Holding Company LLC, and Ralph F. Nix 1995 Recoverable Trust (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0531 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2013-0531" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **24 May 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 R5-2013-0531

TNC Holding Company LLC, and Ralph F. Nix 1995 Recoverable Trust
RECORD OF VIOLATIONS (1 July 2010 – 31 December 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2005-0080 and R5-2011-0084)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
Violations under R5-2005-0080								
1	8/25/2011	Total Iron	µg/L	300	690	Monthly Average	1	912160
2	11/29/2011	Nitrate	mg/L	10	11	Monthly Average	3	917081

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>12/31/2012</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>1</u>

Mandatory Minimum Penalty = (1 Serious Violation + 0 Non-Serious Violations) x \$3,000 = \$3,000