

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0561

MANDATORY PENALTY
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF FISH AND GAME AND
EAST BAY MUNICIPAL UTILITY DISTRICT
MOKELUMNE RIVER FISH HATCHERY
SAN JOAQUIN COUNTY

This Complaint is issued to the California Department of Fish and Game and East Bay Municipal Utility District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC 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 97-116 and R5-2004-0122 (NPDES No. CA0004791).

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 the Mokelumne River Fish Hatchery. Fish hatchery waste is discharged into the Mokelumne River, a water of the United States.
2. On 20 June 1997, the Central Valley Water Board adopted WDRs Order 97-116 to regulate discharges of waste from the fish hatchery. The WDRs included effluent limitations and other requirements regarding the waste discharges. On 10 September 2004, the Board adopted WDRs Order R5-2004-0122, which contained new requirements and rescinded WDRs Order 97-116.
3. On 6 August 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger has not responded.
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. WDRs 97-116 Effluent Limitations (001 and 002) B.1. states in part: *“Effluent shall not exceed the following limits.”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
<u>Total Suspended Solids (TSS)</u>	mg/L (001, 002)	8	15 ¹

¹ To be ascertained by a 24-hour composite

7. WDRs Order R5-2004-0122, Effluent Limitations B.2, states, in part: *“Effluent...shall not have a pH less than 6.5 nor greater than 8.5. If the effluent pH is less than 6.5, it shall not be less than the concurrent influent pH. If the effluent pH is greater than 8.5, it shall not be greater than the concurrent influent pH.”*

8. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious violation of the above effluent limitations contained in Orders 97-116 and R5-2004-0122 during the period beginning 1 January 2000 and ending 30 June 2009. The mandatory minimum penalty for the **one (1)** serious violation is **three thousand dollars (\$3,000)**.

9. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Orders 97-116 and R5-2004-0122 during the period beginning 1 January 2000 and ending 30 June 2009. The non-serious violation is not subject to mandatory penalties under CWC section

MANDATORY PENALTY

CALIFORNIA DEPARTMENT OF FISH AND GAME AND EAST BAY MUNICIPAL UTILITY DISTRICT
MOKELUMNE RIVER FISH HATCHERY
SAN JOAQUIN COUNTY

13385(i)(1) because this violation was not preceded by three or more similar violations within a six-month period.

10. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
11. 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).

CALIFORNIA DEPARTMENT OF FISH AND GAME AND EAST BAY MUNICIPAL UTILITY DISTRICT ARE 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 conducted at the Central Valley Water Board meeting scheduled on **9/10 December 2009**, unless either of the following occurs by **26 October 2009**:
 - a) The Discharger 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 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 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.

Original signed by Joe Karkoski for

 PAMELA C. CREEDON, Executive Officer

25 September 2009

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent California Department of Fish and Game and the East Bay Municipal Utility District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0561 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2009-0561." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **26 October 2009**.
- 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 NO. R5-2009-0561**

**CA Department of Fish and Game and East Bay Municipal Utilities District
Mokelumne River Fish Hatchery**

RECORD OF VIOLATIONS (1 January 2000 – 30 June 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 97-116 and R5-2004-0122)

	<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>
1	12-Dec-01	TSS	mg/L	8	12.9	Monthly	1	218676
2	27-Mar-06	pH	pH Units	6.5	6.4	Instantaneous	3	368314

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 violation 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>6/30/2009</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 Violation) x \$3,000 = \$3,000