

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2007-0509

MANDATORY PENALTY
IN THE MATTER OF

DONNER SUMMIT PUBLIC UTILITY DISTRICT WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This complaint is issued to Donner Summit Public Utility District (hereafter referred to as Discharger) based on a finding of violations of Waste Discharge Requirements (WDR) Order No.95-150 (NPDES No. CA0081621), and WDR Order No. R5-2002-0088 (NPDES No. CA0081621) 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.

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

1. The Discharger owns and operates the Donner Summit Public Utility District Wastewater Treatment Plant (WWTP), which provides sewerage service to Norden and Soda springs areas, the Sugar Bowl and Soda Springs Ski Resorts, the Serene Lakes Subdivision, and Sierra Lakes Community Water District in Nevada County. Treated domestic, commercial and industrial wastewater is discharged to the South Yuba River, a water of the United States.
2. On 23 June 1995, the Regional Water Board adopted Waste Discharge Requirements (WDR) Order No 95-150 (NPDES No. CA0081621). On 7 June 2002, the Regional Water Board adopted WDR Order No. R5-2002-0088 (NPDES No. CA0081621) to regulate discharges of waste from the WWTP. On 7 June 2002, the Regional Water Board also adopted Cease and Desist Order (CDO) No. R5-2002-0089. WDR Order No. R5-2002-0088, rescinded WDR Order No. 95-150.
3. CWC Section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1): 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): 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): 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.*

4. California Water Code Section 13385(k) states, in part, the following: *In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following: (1) The compliance project is designed to correct the violations within five years, (2) The compliance project is in accordance with the enforcement policy of the state board, (3) the POTW has demonstrated that it has sufficient funding to complete the compliance project.*
5. California Water Code Section 79084(b) states, in part, the following: *For the purposes of this article, "small community" means a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the board.*
6. The Water Quality Enforcement Policy, adopted by the State Water Resources Control Board on 19 February 2002 states, in part, the following: *It is the policy of the SWRCB that "financial hardship" means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that "median annual household income" means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB...The SWRCB will maintain a current list of designated small communities with a financial hardship.*
7. On 16 October 2006, the State Water Resources Control Board designated Donner Summit Public Utility District as a Small Community with a Financial Hardship.
8. 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.

9. WDR Order No. 95-150 Discharge Prohibitions No. A.3. states: *The arithmetic mean of 20°C BOD (5-day) and total suspended solids in effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal).*
10. WDR Order No. 95-150 Effluent Limitations No. B.2. includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
BOD	mg/L	10	15	30
	lbs/day	43	65	129
Total Suspended Solids	mg/L	10	15	30
	lbs/day	43	65	129
Total Coliform Organisms	MPN/100 mL	--	--	23

11. WDR Order No. 95-150 Effluent Limitations No. B.3. states: *The discharge shall not have a pH less than 6.5 nor greater than 8.5.*
12. WDR Order No. R5-2002-0088 Effluent Limitations No. B.1. includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
BOD	mg/L	10	15	30
	lbs/day	43	65	130
Total Suspended Solids	mg/L	10	15	30
	lbs/day	43	65	130
Total Coliform Organisms	MPN/100 mL	--	--	23

13. WDR Order No. R5-2002-0088 Effluent Limitations No. B.3 states: *The arithmetic mean of 20°C BOD (5-day) and the total suspended solids in effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal).*
14. WDR Order No. R5-2002-0088 Effluent Limitations No. B.4. states: *The discharge shall not have a pH less than 6.5 nor greater than 8.5.*
15. According to the Discharger’s self-monitoring reports, the Discharger committed thirty-six (36) serious violations of the effluent limitations contained in Order No. 95-150 and Order No. R5-2002-0088 during the period beginning 1 January 2000 and ending 31 December 2006. The mandatory minimum penalty for these serious violations is one **hundred eight thousand dollars (\$108,000).**

16. According to the Discharger's self-monitoring reports, the Discharger committed forty (40) non-serious violations of the effluent limitations contained In Order No. 95-150 and Order No. R5-2002-0088 during the period beginning 1 January 2000 and ending 31 December 2006. Thirty-two (32) of the non-serious violations are subject to mandatory penalties under CWC Section 13385 (i)(1). The mandatory minimum penalty for these non-serious violations is **ninety-six thousand dollars (\$96,000)**.
17. The total amount of the mandatory penalties assessed for the cited effluent violations is **two hundred four thousand dollars (\$204,000)**. A detailed list of all the effluent violations is included in Attachment A, a part of this Order.
18. 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, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

DONNER SUMMIT PUBLIC UTILITY DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **two hundred four thousand dollars (\$204,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **21/22 June 2007**, unless the Discharger agrees to:
 - a) Waive the hearing and pay the proposed civil liability of **two hundred four thousand dollars (\$204,000)** in full; or
 - b) Waive the right to a hearing in 90 days, and submit a settlement proposal **within 30 days** of the date of this complaint that includes an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal; or
 - c) Waive the right to a hearing in 90 days, and submit a settlement proposal **within 30 days** of the date of this complaint that includes an agreement to expend at least two hundred four thousand dollars towards a compliance project to achieve full compliance with WDR Order No. R5-2002-0088 and Cease and Desist Order No. R5-2002-0089. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
3. If a hearing on this matter is held, the Regional 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.

PAMELA C. CREEDON, Executive Officer

2 April 2007

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Donner Summit Public Utility District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0509 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will either:
 - a. remit payment for the civil liability imposed in the amount of **two hundred four thousand dollars (\$204,000)** by check, which contains a reference to "ACL Complaint No. R5-2007-0509" and is made payable to the "*State Water Pollution Cleanup and Abatement Account*"; or
 - b. submit a settlement proposal **within 30 days** of the date of this complaint that includes an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal; or
 - c. submit a settlement proposal **within 30 days** of the date of this complaint that includes an agreement to expend at least **two hundred four thousand dollars (\$204,000)** towards a compliance project to achieve full compliance with WDR order No. R5-2002-0088 and Cease and Desist Order No. R5-2002-0089. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

Donner Summit Public Utility District Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2006) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 95-150 and R5-2002-0098))

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	1/1/2000	Total Suspended Solids	mg/L	15	19	Weekly	3
2	1/11/2000	Total Coliform Organisms	MPN/100 mL	23	110	Daily	3
3	4/1/2000	BOD	lbs/day	65	192	Weekly	1
4	5/3/2000	pH	pH units	6.5	6.4	Daily	4
5	7/1/2000	Total Suspended Solids	mg/L	10	12	Monthly	4
6	7/8/2000	Total Suspended Solids	mg/L	15	20	Weekly	4
7	1/1/2001	Total Suspended Solids	mg/L	10	11	Monthly	3
8	1/3/2001	Total Suspended Solids	mg/L	30	31	Daily	4
9	1/6/2001	Total Suspended Solids	mg/L	15	21	Weekly	4
10	1/9/2001	Total Coliform Organisms	MPN/100 mL	23	27	Daily	4
11	5/10/2001	Total Coliform Organisms	MPN/100 mL	23	1600	Daily	4
12	6/12/2001	Total Coliform Organisms	MPN/100 mL	23	130	Daily	4
13	12/29/2001	BOD	mg/L	15	26	Weekly	1
14	12/31/2001	BOD	lbs/day	130	186	Daily	1
15	12/31/2001	BOD	mg/L	30	51	Daily	1
16	12/31/2001	BOD	mg/L	10	16	Monthly	1
17	12/31/2001	BOD	% removal	85	71	Monthly	4
18	1/1/2002	Total Suspended Solids	mg/L	10	13	Monthly	4
19	1/2/2002	Total Suspended Solids	lbs/day	129	133	Daily	4
20	1/2/2002	Total Suspended Solids	mg/L	30	47	Daily	1
21	1/3/2002	BOD	lbs/day	130	140	Daily	4
22	1/3/2002	BOD	mg/L	30	60	Daily	1
23	1/5/2002	BOD	lbs/day	65	163	Weekly	1
24	1/5/2002	BOD	mg/L	15	56	Weekly	1
25	1/5/2002	Total Suspended Solids	lbs/day	65	133	Weekly	1
26	1/5/2002	Total Suspended Solids	mg/L	15	47	Weekly	1
27	1/8/2002	BOD	mg/L	30	36	Daily	4
28	1/12/2002	BOD	mg/L	15	23	Weekly	1
29	1/22/2002	BOD	mg/L	30	43	Daily	1
30	1/26/2002	BOD	lbs/day	65	66	Weekly	4
31	1/26/2002	BOD	mg/L	15	31	Weekly	1
32	1/29/2002	BOD	mg/L	30	34	Daily	4
33	1/31/2002	BOD	lbs/day	43	60	Monthly	4
34	1/31/2002	BOD	mg/L	10	27	Monthly	1
35	1/31/2002	BOD	% removal	85	73	Monthly	4
36	2/1/2002	Total Suspended Solids	mg/L	10	12	Monthly	4
37	2/2/2002	BOD	mg/L	15	27	Weekly	1
38	2/9/2002	BOD	mg/L	15	26	Weekly	1

ATTACHMENT A

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
39	2/12/2002	BOD	mg/L	30	38	Daily	4
40	2/16/2002	BOD	mg/L	15	30	Weekly	1
41	2/19/2002	BOD	mg/L	30	53	Daily	1
42	2/21/2002	BOD	mg/L	30	41	Daily	4
43	2/23/2002	BOD	lbs/day	65	70	Weekly	4
44	2/23/2002	BOD	mg/L	15	47	Weekly	1
45	2/26/2002	BOD	mg/L	30	43	Daily	1
46	2/28/2002	BOD	lbs/day	43	55	Monthly	4
47	2/28/2002	BOD	mg/L	10	33	Monthly	1
48	2/28/2002	BOD	% removal	85	66	Monthly	4
49	3/2/2002	BOD	mg/L	15	30	Weekly	1
50	3/5/2002	BOD	mg/L	30	43	Daily	1
51	3/9/2002	BOD	mg/L	15	30	Weekly	1
52	3/12/2002	BOD	mg/L	30	38	Daily	4
53	3/16/2002	BOD	lbs/day	65	70	Weekly	4
54	3/16/2002	BOD	mg/L	15	29	Weekly	1
55	3/23/2002	BOD	mg/L	15	19	Weekly	4
56	3/26/2002	BOD	mg/L	30	31	Daily	4
57	3/30/2002	BOD	lbs/day	65	68	Weekly	4
58	3/30/2002	BOD	mg/L	15	26	Weekly	1
59	3/31/2002	BOD	lbs/day	43	50	Monthly	4
60	3/31/2002	BOD	mg/L	10	26	Monthly	1
61	3/31/2002	BOD	% removal	85	73	Monthly	4
62	1/4/2003	BOD	mg/L	15	21	Weekly	1
63	1/21/2003	BOD	mg/L	30	32	Daily	3
64	1/25/2003	BOD	mg/L	15	27	Weekly	1
65	1/31/2003	BOD	mg/L	10	12	Monthly	4
66	5/31/2003	BOD	% removal	85	79	Monthly	4
67	4/30/2004	Total Suspended Solids	% removal	85	84	Monthly	3
68	5/4/2004	Total Coliform Organisms	MPN/100 mL	23	30	Daily	3
69	1/8/2005	BOD	mg/L	15	23	Weekly	1
70	1/5/2006	Total Coliform Organisms	MPN/100 mL	23	900	Daily	3
71	3/2/2006	Total Coliform Organisms	MPN/100 mL	23	1600	Daily	3
72	6/14/2006	Total Suspended Solids	lbs/day	130	269	Daily	1
73	6/14/2006	Total Suspended Solids	mg/l	30	159	Daily	1
74	6/17/2006	Total Suspended Solids	lbs/day	65	139	Weekly	1
75	6/17/2006	Total Suspended Solids	mg/l	15	82	Weekly	1
76	6/30/2006	Total Suspended Solids	mg/l	10	22	Monthly	1

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 violations falls within the first three violations in a six-month period, thus is exempt.

ATTACHMENT A

4. Non-serious violation subject to mandatory penalties

<u>VIOLATIONS AS OF:</u>	<u>12/31/2006</u>
Group 1 Serious Violations:	36
Group 2 Serious Violations:	0
Non-Serious Exempt from MPs:	8
Non-serious Violations Subject to MPs:	32
<u>Total Violations Subject to MPs:</u>	<u>68</u>

Mandatory Minimum Penalty = (36 Serious Violations + 32 Non-Serious Violations) x \$3,000 = \$204,000