

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0543

MANDATORY PENALTY
IN THE MATTER OF

KINDER MORGAN ENERGY PARTNERS, L.P.
THROUGH ITS OPERATING PARTNER SFPP, L.P.
FOX ROAD PETROLEUM RELEASE SITE
SOLANO COUNTY

This Complaint is issued to Kinder Morgan Energy Partners, L.P. through its operating partner SFPP, L.P. (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) Order R5-2008-0008 (NPDES No. CA0084760) and Time Schedule Order R5-2008-0009.

The 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 Groundwater Cleanup System (GWCS) at the location of a petroleum release on Fox Road near Elmira, Solano County. Treated groundwater is discharged to Gibson Canyon Creek, a water of the United States.
2. On 25 January 2008, the Central Valley Water Board issued WDRs Order R5-2008-0008 (NPDES No. CA0084760) and Time Schedule Order (TSO) R5-2008-0009, to regulate discharges of treated groundwater from the GWCS, and rescinded Order No. 5-01-078.
3. On 18 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0591 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
4. On 16 March 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations for the period from 1 January 2008 through 31 December 2008. On 25 March 2009, the Discharger sent a letter stating it had no comments.
5. 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 II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

6. 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.

7. TSO R5-2008-0009 Order 2 states, in part, the following:

The following interim effluent limitations shall be effective immediately. The interim effluent limitations for manganese...shall be effective until **31 December 2012**, or when the Discharger is able to come into compliance, whichever is sooner:

Parameter	Units	Maximum Daily Effluent Limitation
Manganese, Total Recoverable	µg/L	995

8. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitation contained in Order R5-2008-0009 during the period beginning 1 January 2008 and ending 31 December 2008. These 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 **nine thousand dollars (\$9,000)**.
9. 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.
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 California Code of Regulations, title 14, section 15321(a)(2).

KINDER MORGAN ENERGY PARTNERS, L.P. 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 **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the Discharger does either of the following **by 26 June 2009**:
 - 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

PAMELA C.CREEDON, Executive Officer

27 May 2009

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0543

ISSUED TO
KINDER MORGAN ENERGY PARTNERS, L.P.
FOX ROAD RELEASE SITE
SOLANO COUNTY

SCHEDULED FOR 13/14 August 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to Kinder Morgan Energy Partners, L.P., alleging violations of CWC section 13385 by violating provisions of WDRs Order R5-2008-0008 (NPDES No. CA0084760) and Time Schedule Order R5-2008-0009.

The Complaint proposes that an administrative civil liability in the amount of \$9,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 13/14 August 2009 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 13/14 August 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at
11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board's Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 3 JUNE 2009, OR THEY WILL BE WAIVED.** THESE DRAFT HEARING PROCEDURES WILL BECOME FINAL AT 5:00 P.M. ON 3 JUNE 2009 IF NO PARTY SUBMITS TIMELY OBJECTION(S), OR AS OTHERWISE DIRECTED BY THE ADVISORY TEAM. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Kinder Morgan Energy Partners, L.P.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on 5 June 2009 to Lori Okun (contact information listed below). The request shall include an explanation of the basis for status as a

designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on 10 June 2009. The parties will be notified by 5 p.m. on 15 June 2009 whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Lori Okun, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5165; fax: (916) 341-5199
LOkun@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Barry Hilton, Water Resources Control Engineer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4762; fax: n/a
bhilton@waterboards.ca.gov

Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5189; fax: (916) 341-5199
ppulupa@waterboards.ca.gov

Discharger Representative:

Steven J. Osborn
Manager—ENG Remediation
Kinder Morgan Energy Partners
P.O. Box 1318
Rocklin, CA 95677
Phone: (916) 786-0320

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Joe Karkoski, Acting Assistant Executive Officer, Wendy Wyels, Environmental Program Manager; Barry Hilton, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 25 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each

interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based will have been entered into the administrative file at the time the Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on 26 June 2009. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on 26 June 2009.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on 7 July 2009. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on 17 July 2009, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing,

each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, in Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralvalley/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Barry Hilton at (916) 464-4762.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

27 May 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
3 June 2009	Objections due on proposed Hearing Procedure; Hearing Procedure becomes final if no Objections
5 June 2009	Deadline for submission of request for designated party status.
10 June 2009	Deadline for opposition to request for designated party status.
15 June 2009	Advisory Team issues decision on requests for designated party status, if any.
26 June 2009	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
26 June 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
7 July 2009	Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
17 July 2009	All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
13/14 August 2009	Hearing

**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 Kinder Morgan Energy Partners L.P through its Operating Partner SFPP, L.P. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0543 (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 (Regional 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 **nine thousand dollars (\$9,000)** by check, which contains a reference to "ACL Complaint No. R5-2009-0543" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Regional Water Board **by 26 June 2009** or this matter will be placed on the Regional Water Board's agenda for adoption at the **13/14 August 2009** 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 Regional 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)

(Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0543**

**KMEP Fox Road Petroleum Release Site
Groundwater Remediation System**

RECORD OF VIOLATIONS (1 January 2008 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0008)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	7/28/08	Manganese	µg/l	995	1,800	daily	1
2	8/20/08	Manganese	µg/l	995	5,900	daily	1
3	9/3/08	Manganese	µg/l	995	2,600	daily	1

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>12/31/08</u>
Group I Serious Violations:	3
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>3</u>

Mandatory Minimum Penalty = (3 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$9,000



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, PE, Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

27 May 2009

APPROVED

Staff

Supervisor

Mr. Steven Osborn
Kinder Morgan Energy Partners
P.O. Box 1318
Rocklin, CA 95677

CERTIFIED MAIL
7006 2150 0000 7132 1999

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0543 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, KINDER MORGAN ENERGY PARTNERS, L.P. FOX ROAD RELEASE SITE, SOLANO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order R5-2008-0008 (NPDES No. CA0084760), and Time Schedule Order R5-2008-0009 at the Kinder Morgan Energy Partners, L.P. Fox Road Petroleum Release Site. The Complaint charges Kinder Morgan Energy Partners, L.P. (Discharger) with civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of accrued Mandatory Minimum Penalties (MMPs) for effluent limitation violations which occurred from 1 January 2008 through 31 December 2008.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **26 June 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting both the waiver and a letter describing the issues to be discussed to this office by **26 June 2009**; **or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Central Valley Water Board receive 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. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are

California Environmental Protection Agency



not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 26 June 2009**), then a hearing will be scheduled for the **13/14 August 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has prepared the enclosed draft Hearing Procedure to govern the conduct of such a hearing. Any objections to this draft Hearing Procedure must be received by Lori Okun, whose contact information is listed in the draft Hearing Procedure, by **5 p.m. on 3 June 2009**.

Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the draft Hearing Procedure, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762.

WENDY WYELS
Supervisor
Compliance and Enforcement Section

Enclosure: ACLC R5-2009-0543
Draft Hearing Procedure
Hearing Waiver

cc w/o encl: Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Kenneth Landau, Adjudicatory Team, Central Valley Water Board, Rancho Cordova
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Solano County Department of Resource Management, Fairfield
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton