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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

IDAHO DEPARTMENT OF FISH & GAME,  
GRACE FISH HATCHERY  
Caribou County, Idaho

Respondent.

DOCKET NO: CWA-10-2009-0172

CONSENT AGREEMENT AND  
FINAL ORDER

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (g)(2)(B), an in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and the Idaho Department of Fish and Game ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.



1 Subject to Wasteload Allocations under Selected Total Maximum Daily Loads ("Current  
2 Permit"). The Facility was given the same NPDES tracking number, IDG130035.

3 3.6. The Facility, which was under Respondent's control at all times relevant to this  
4 action, discharges effluent containing pollutants from Outfall 001 into Whiskey Creek. Outfall  
5 001 is "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

6 3.7. Whiskey Creek flows into the Bear River. The Bear River is an interstate water  
7 which is susceptible to use in interstate and foreign commerce, and thus is a "navigable water" as  
8 defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a "water of the United  
9 States" as defined in 40 C.F.R. § 122.2. Therefore, Whiskey Creek is a "navigable water" as  
10 defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a "water of the United  
11 States" as defined in 40 C.F.R. § 122.2.

12 3.8. Section VI.C.2 of the Expired Permit established a monthly average concentration  
13 effluent limitation for total suspended solids ("TSS") in discharges from the Facility of 5 mg/L.  
14 When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in  
15 violation of that effluent limit each of the days of the month in which the violations occurred. In  
16 January 2004, Respondent violated the monthly average concentration effluent limit for TSS,  
17 constituting 31 violations.

18 3.9. Section VI.C.2 of the Expired Permit established a daily maximum concentration  
19 effluent limit for TSS in discharges from the Facility of 10 mg/L. On January 21, 2004,  
20 Respondent violated the daily maximum concentration effluent limit for TSS, constituting one  
21 violation.

22 3.10. Section II.B.2.e of the Current Permit prohibits the discharge of "floating,  
23 suspended or submerged matter, including dead fish, in amounts causing nuisance or  
24 objectionable condition or that may impair designated beneficial uses in the receiving water."  
25

1 On December 11, 2007, there was a fish kill at the Facility which resulted in the discharge of  
2 approximately 130 pounds of dead fish. The discharge of dead fish caused a nuisance and/or  
3 objectionable condition in violation of Section II.B.2.e of the Current Permit.

4 3.11. Section IV.A.1.a of the Current Permit requires the permittee to apply all drugs,  
5 pesticides and other chemicals in accordance with label directions. On December 11, 2007,  
6 Respondent failed to apply a disinfectant in accordance with the label directions which resulted  
7 in an accidental spill of the disinfectant into Whiskey Creek in violation of Section IV.A.1.a of  
8 the Current Permit.

9 3.12. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an  
10 administrative penalty when EPA finds that "any person ... has violated any permit condition or  
11 limitation ... in a permit issued" pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.  
12 Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent  
13 is liable for the administrative assessment of civil penalties for violations at the Facility in an  
14 amount not to exceed \$16,000 per day for each day during which the violation continues, up to a  
15 maximum of \$177,500.

#### 16 **IV. CONSENT AGREEMENT**

17 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged  
18 herein.

19 4.2. Respondent expressly waives any right to contest the allegations and to appeal the  
20 Final Order set forth in Part V, below.

21 4.3. Respondent neither admits nor denies the specific factual allegations contained in  
22 Part III of this CAFO.

23 4.4. As required under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has  
24 taken into account the nature, circumstances, extent and gravity of the alleged violations as well  
25

1 as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors.  
2 After considering these factors, EPA has determined and Respondent agrees that an appropriate  
3 penalty to settle this action is in the amount of Fourteen Thousand Dollars (\$14,000).

4 4.5. Respondent consents to issuance of the Final Order set forth in Part V, below, and  
5 agrees to pay the total civil penalty set forth in Paragraph 4.4, above, within thirty (30) days of  
6 the effective date of the Final Order.

7 4.6. Payment under this CAFO shall be made by cashier's check or certified check,  
8 payable to the order of "Treasurer, United States of America" and delivered to the following  
9 address:

10 U.S. Environmental Protection Agency  
11 Region 10  
12 Fines and Penalties  
13 Cincinnati Finance Center  
14 PO Box 979077  
15 St. Louis, MO 63197-9000

16 Respondent shall note on the check the title and docket number of this action.

17 4.7. Respondent shall serve photocopies of the check described in Paragraph 4.6,  
18 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
19 Enforcement at the following addresses:

20 Regional Hearing Clerk  
21 U.S. Environmental Protection Agency  
22 Region 10  
23 1200 Sixth Avenue, Suite 900, ORC-158  
24 Seattle, WA 98101

25 U.S. Environmental Protection Agency  
Region 10  
Office of Compliance and Enforcement  
Attn: Chris Gebhardt  
1200 Sixth Avenue, Suite 900, OCE-133  
Seattle, WA 98101

1           4.8.    If Respondent fails to pay the penalty assessed by this CAFO in full by the due  
2 date set forth in Paragraph 4.5, above, the entire unpaid balance of penalty and accrued interest  
3 shall become immediately due and owing. If Respondent fails to pay the penalty assessed,  
4 Respondent may be subject to a civil action to collect the assessed penalty under the CWA,  
5 together with interest, fees, costs, and additional penalties described below. In any collection  
6 action, the validity, amount and appropriateness of the penalty shall not be subject to review.

7           4.9.    If Respondent fails to pay any portion of the penalty assessed by this CAFO in  
8 full by the due date set forth in Paragraph 4.5, above, Respondent shall be responsible for  
9 payment of the amounts described below:

10           4.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.  
11 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate  
12 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the  
13 effective date of the Final Order set forth in Part V, below, provided, however, that no  
14 interest shall be payable on any portion of the assessed penalty that is paid within thirty  
15 (30) days of the effective date of the Final Order.

16           4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
17 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a  
18 timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondent shall  
19 pay (in addition to any assessed penalty and interest) attorneys fees and costs for  
20 collection proceedings and a quarterly nonpayment penalty for each quarter during which  
21 such failure persists. Such nonpayment penalty shall be in an amount equal to twenty  
22 percent (20%) of the aggregate amount of Respondents' penalties and nonpayment  
23 penalties which are unpaid as of the beginning of such quarter.

1 4.10. The penalty described in Paragraph 4.4, above, including any additional costs  
2 incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA  
3 and shall not be deductible for purposes of federal taxes.

4 4.11. The undersigned representative of Respondent certifies that he or she is fully  
5 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this  
6 document.

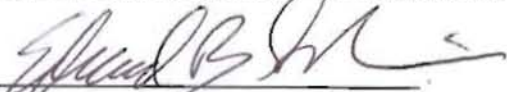
7 4.12. Except as described in Paragraph 4.9.2, above, each party shall bear its own costs  
8 in bringing or defending this action.

9 4.13. The provisions of this CAFO shall bind each Respondent and its agents, servants,  
10 employees, successors, and assigns.

11 4.14. The above provisions are STIPULATED AND AGREED upon by Respondent  
12 and EPA.

13 DATED:

IDAHO DEPARTMENT OF FISH & GAME:

14   
15 Signature Edward B Schreier  
16 Print Name: Edward B Schreier  
17 Title: Fisheries Chief

18 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

19 8/12/09



20 COURTNEY J. HAMAMOTO  
21 For Complainant

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**V. ' ' FINAL ORDER**

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA, applicable CWA regulations, and/or any permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.



1 SO ORDERED this 23 day of September, 2009.

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THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: IDAHO DEPARTMENT OF FISH & GAME, GRACE FISH HATCHERY, DOCKET NO.: CWA-10-2009-0172** was filed with the Regional Hearing Clerk on September 23, 2009.

On September 24, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:


Courtney Weber, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 24, 2009, to:

Thomas S. Frew  
Resident Hatcheries Supervisor  
Idaho Dept. of Fish & Game  
600 S. Walnut Street  
Boise, ID 83707

Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, Idaho 83707

DATED this 24<sup>th</sup> day of September 2009.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10