



## State Water Resources Control Board

October 18, 2013

CERTIFIED MAIL NO: 7004-2510-0003-9147-1671  
Return Receipt Requested

Edward Biggs Sr. - Bethel Island LLC  
4271 Valley Lane  
Fairfield, CA 94534

Dear EDWARD BIGGS SR.- BETHEL ISLAND LLC:

### ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE INITIAL STATEMENTS OF WATER DIVERSION AND USE, AND CONDITIONAL SETTLEMENT OFFER, ROCK SLOUGH IN CONTRA COSTA COUNTY

This provides legal notice to Edward Biggs Sr.- Bethel Island LLC (Biggs) of the intent of the State Water Resources Control Board (State Water Board), Delta Water Master to proceed with formal enforcement for Biggs's failure to file the required Initial Statement(s) of Water Diversion and Use (Statement). Biggs has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act or face additional liability. Therefore, this matter requires Biggs's immediate attention.

#### **VIOLATION DESCRIPTION:**

Division records show that Biggs has not filed Initial Statements for his two parcels (020-150-003, 020-140-048) both located on Hotchkiss Tract in Contra Costa County. On August 8, 2013, the State Water Board spoke with Biggs about filing his *Initial Supplemental Statements of Water Diversion and Use*. Biggs requested a fax with a summary of the requirements sent the same day. On August 28, the Office of Delta Watermaster (Watermaster) mailed Biggs a certified letter notifying Biggs of the requirement to file the three Initial Water Diversion and Use Statements for the two parcels Biggs owns on Hotchkiss Tract. Biggs did not respond by the October 7, 2013 deadline, therefore Biggs is subject to an additional \$500 per day civil liability for each failure to file; commencing 30 days from the receipt of the letter.

#### **STATUTORY LIABILITY:**

Water Code section 5107 authorizes the State Water Board to administratively impose an initial \$1,000 civil liability for failure to file a Statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. As discussed above, Biggs was provided with the statutory notice on August 28, 2013. Accordingly, the potential maximum civil liability, as of October 18, 2013, for which Biggs's is liable for Biggs's failure to file the required Initial Statements, is \$18,000 (\$3,000 for each failure to file plus an additional \$15,000 for the 10-days of being put on notice to file these Statements from October 7 to October 18). Based on Biggs's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$9,000 be imposed for Biggs's failure to file Initial Statements. If Biggs fails to respond to the ACL Complaint in one of the manners discussed below within 20 days of receiving this notice, then the State Water Board will issue a final ACL Order and seek recovery of this proposed liability amount as authorized by Water Code section 1055.4.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE OFFICER

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

**CONDITIONAL OFFER OF SETTLEMENT:**

To promote resolution of the alleged failure to file Initial Statement violations and obtain compliance with the Statement filing requirements, I am offering Biggs the opportunity to accept a conditional settlement offer (Conditional Offer). The Conditional Offer, as provided in detail in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, allows Biggs to avoid further formal enforcement by agreeing to pay an expedited payment amount of \$3,000, simultaneously file the necessary Initial Statements, and waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint.

**OPTIONS FOR RESPONDING TO ACL COMPLAINT AND CONDITIONAL OFFER OF SETTLEMENT:**

In summary, Biggs has two options in responding:

1. Accept the Offer of Conditional Settlement by: (1) signing the Acceptance and Waiver; and (2) submitting the signed Acceptance and Waiver along with the Expedited Payment Amount and file the necessary Initial Statement using the State Water Board's website within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Biggs would like to discuss, such as an inability to pay the Expedited Payment Amount, then Biggs can contact me with that information as soon as possible, but no later than 20 days from receiving the enclosed ACL Complaint.
2. Submitting a written request for hearing signed by, or on the behalf of, Edward Biggs Sr.- Bethel Island LLC to the State Water Board within 20 days of receiving the enclosed ACL Complaint. If Biggs does not remit the Acceptance and Waiver, the Expedited Payment Amount, file the necessary Statements using the State Water Board's website, nor request a hearing within 20 days of the date Biggs received this complaint, then the State Water Board will issue a final ACL Order and seek recovery of the \$9,000 in liability proposed in the ACL Complaint.

If you have any questions regarding this matter, please contact me at (916) 445-5962.

Sincerely,



Craig M. Wilson  
Delta Watermaster

Enclosures

- Administrative Civil Liability Complaint w/Exhibit A

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Failure to File a Statement of Water Diversion and Use by

**Edward Biggs Sr. Bethel Island LLC**

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SOURCE: Rock Slough

COUNTY: Contra Costa

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. California Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream or a subterranean stream flowing through a known and definite channel (with a few limited exceptions), need to file a Statement of Water Diversion and Use (Statement) for each point of diversion.
2. Biggs is alleged to have violated California Water Code section 5107(a), which states, in pertinent part:

*Any person who **fails to file a statement** required to be filed under this part for diversion or use that occurs after January 1, 2009...*

3. California Water Code section 5107(c)(1) provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in the amount of \$1,000 for the failure to file a statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the State Water Board has called the violation to the attention of that person.
4. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to issue administrative civil liability complaints to persons who divert water in the Delta. On October 5, 2010, the State Water Board delegated such authority to the Delta Watermaster under Resolution 2010-0048.

**ALLEGATIONS**

5. In February, 2013 a review of aerial photographs of Hotchkiss Tract was undertaken by the State Water Resources Control Boards, Office of Delta Watermaster (Watermaster). The review provided evidence that Contra Costa Assessor's Parcel Numbers 020-150-003, 020-140-048 were being irrigated by a lessee Mr. David Dal Porto. According to Contra Costa County, the Biggs- Bethel Island LLC are the current owners of parcels 020-150-003, 020-140-048. From a review of water rights filed with the Division of Water Rights, the Watermaster concluded that there was no record of statements of water use having been filed in accordance with Water Code section 5101 et. Seq. for these two parcels.
6. On February 26, 2013 Staff spoke with Dal Porto about his lease agreement with Biggs- Bethel Island LLC about the parcels in question and Dal Porto agreed to file three new Initial Water Diversion and Use Statements for his three diversion points. Watermaster staff e-mail Dal Porto the

same day with information about how to file. Dal Porto responded that he would file by mid-March and would file his Supplemental Statement by the July 1<sup>st</sup> deadline.

7. On August 8, 2013, Watermaster staff contacted Biggs and verbally notified him about his responsibility to file the Initial Water Diversion Statements for his two parcels (APN: 020-150-003, 020-140-048). Biggs requested a fax to confirm this information along with Watermaster staff contact information.
8. On August, 28, the Watermaster mailed Biggs a certified letter notifying Biggs of the requirement to file the three Initial Water Diversion and Use Statements for the two parcels he owns on Hotchkiss Tract. Biggs did not respond by the October 7, 2013 deadline, therefore Biggs is subject to an additional \$500 per day civil liability for each of the water diversion points, commencing 30 days from the receipt of the letter.
9. No Initial Statements have been filed by Biggs as of October 7, 2013. Biggs was given the opportunity to file but as of the date of this ACL, Biggs has not done so.

#### PROPOSED CIVIL LIABILITY

11. Biggs failed to submit the required *Initial Statements of Water Diversion and Use* by October 7, 2013. The deadline for submittal was July 1, 2013. California Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability pursuant to section 1055 in an amount not to exceed \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statements within 30 days after the State Water Board has called the violation to the attention of that person. Such notice was provided on August 28, 2013.
12. The maximum civil liability for the violations alleged is \$18,000 (\$3,000 for each failure to file plus an additional \$15,000 for the 10-days of being put on notice to file these Statements from October 7 to October 18).
13. In determining the appropriate amount of a civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances.
14. In this case, the leesee Dal Porto confirmed that he is diverting water from Rock Slough to irrigate pasture and to this date Biggs or Dal Porto have not filed the required statements despite notification being sent.
15. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Delta Watermaster recommends the imposition of \$9,000 in administrative civil liability (Proposed Liability). This amount is necessary to cover staff costs and to

#### CONDITIONAL SETTLEMENT OFFER

16. To promote resolution of the alleged Supplemental Statement filing violations, the Delta Watermaster makes the following conditional settlement offer (Conditional Offer). Biggs can avoid further enforcement action and settle the alleged failure to file the Statements violations by agreeing to comply with the terms of the Conditional Offer, provided below, as well as in the *Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration* (Acceptance and Waiver) enclosed hereto as Exhibit "A".
17. The Conditional Offer requires Biggs to pay an expedited payment amount (Expedited Payment Amount) of \$3,000, simultaneously file the necessary Initial Statements and waive the right to a hearing and reconsideration of the alleged violations.

18. To accept the Conditional Offer, Biggs must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and file the necessary Initial Statements within 20 days of receipt of this complaint.
19. If there are extenuating circumstances that Biggs would like to discuss, such as an inability to pay the Expedited Payment Amount, then Biggs may contact Craig M. Wilson, Delta Watermaster, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

**RIGHT TO HEARING**

20. Biggs may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that this notice is received. (Water Code, sec. 1055, subd. (b).)
21. If Biggs requests a hearing, Biggs will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date. The Delta Watermaster may convene a settlement conference prior to noticing a hearing date.
22. If Biggs requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code and/or its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
23. If Biggs does not wish to request a hearing within 20 days of receipt of this Complaint, Biggs shall file Initial Statements using the State Water Board's website, waive his rights to a hearing and reconsideration of this matter, and remit a cashier's check or money order for the Expedited Payment Amount set forth in paragraph 17 above, to:

State Water Resources Control Board  
Office of Delta Watermaster  
Attn : Enforcement Section  
P.O. Box 100  
Sacramento, CA 95812-0100

24. If Biggs does not remit the Acceptance and Waiver, the Expedited Payment Amount, electronically file the necessary Supplemental Statement using the State Water Board's website, nor request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

**STATE WATER RESOURCES CONTROL BOARD**

  
Craig M. Wilson  
Delta Watermaster

Dated: October 18, 2013

EXHIBIT A

ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER  
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION:  
(Proposed) ORDER

**Edward Biggs Sr.- Bethel Island LLC**  
**Source: Rock Slough**  
**County: CONTRA COSTA**

By signing below and returning this Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) to the State Water Resources Control Board (State Water Board), Edward Biggs (Diverter) hereby accepts the State Water Board's conditional settlement offer (Conditional Offer), and waives the right to a hearing before and reconsideration by the State Water Board at which violations alleged in the Administrative Civil Liability Complaint issued to Diverter (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Diverter agrees to perform the following within 20 days of receipt of the ACL Complaint:

- **Pay administrative civil liability as authorized by California Water Code section 5107 (c), in the sum of \$3,000** (Expedited Payment Amount) by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into the Water Rights Fund, which shall be deemed payment in full of any civil liability pursuant to California Water Code section 5107 (c) that otherwise might be assessed for the violations described in the ACL Complaint.
- **File the necessary Initial Statements of Water Diversion and Use (Statement(s)) pursuant to parcels (020-150-003, 020-140-048)** as required by Water Code sections 5104 and 5107 (b).

Diverter understands that this Acceptance and Waiver waives the Diverter's right to contest the allegations in the ACL Complaint and the civil liability amount for such violations.

Diverter understands that the failure to submit payment of the Expedited Payment Amount, file the Initial Statement(s), as identified and described above, along with the signed Acceptance and Waiver within 20 days of receipt of this notice, shall render the State Water Board's Conditional Offer void. If the State Water Board's Conditional Offer is deemed void due to Diverter's non-performance, then the State Water Board will issue a final Administrative Civil Liability order and seek recovery of the full liability amount proposed in the ACL Complaint.

Diverter understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. The filing of a Statement of Water Diversion and Use with the State Water Board does not in any way establish or constitute evidence of a right to divert or use water. (Water Code section 5106 (a).)

Upon execution by Diverter, the Acceptance and Waiver, Expedited Payment Amount, and necessary Statement(s) shall be mailed to the following address:

**Conditional Settlement Offer  
State Water Resources Control Board  
Office of Delta Watermaster  
Attention: Craig M. Wilson  
P. O. Box 100  
Sacramento, CA 95812-0100**

Diverter understands that this Acceptance and Waiver is not final until it is formally endorsed by the Delta Watermaster.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Diverter in the making and giving of this Acceptance and Waiver.

Owner \_\_\_\_\_  
(Diverter) \*Make corrections as appropriate.

By: \_\_\_\_\_ (Date) \_\_\_\_\_  
(Signed Name)

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 11415.60

Approval of the Acceptance and Waiver has been delegated to the Delta Watermaster by State Water Board Resolution 2012-0048, and approval shall not limit the authority of the Executive Director, Delta Watermaster, or the Deputy Director for Water Rights, as delegated, to initiate any enforcement actions for the unauthorized diversion or use of water, for any future violations of the Water Code, or violation of the terms of the Acceptance and Waiver.

By: \_\_\_\_\_ (Date) \_\_\_\_\_  
Craig M. Wilson  
Delta Watermaster