



State Water Resources Control Board

OCT 15 2013

CERTIFIED MAIL NO.7004-2510-0003-9147-1275
Return Receipt Requested

ISLAND RESORT PROPERTIES LLC
936-B SEVENTH STREET #560
NOVATO, CA 94945

Dear Island Resort Properties, LLC:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE, AND CONDITIONAL SETTLEMENT OFFER PIPER SLOUGH IN CONTRA COSTA COUNTY

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

VIOLATION DESCRIPTION:

State Water Board records show that Island Resort filed an Initial Statement of Water Diversion and Use for the period of 2009. On January 30, 2013, the State Water Board mailed Island Resort a letter entitled *Notice to Statement of Water Diversion and Use Holders*. This letter formally notified Island Resort, that Island Resort is required to file a Supplemental Statement with the State Water Board in accordance with Water Code section 5101 *et. seq.* by July 1, 2013. A second letter was mailed to Island Resort on July 26, 2013, entitled *Failure to File Report of Water Diversion and Use*, notifying Island Resort that Island Resort's Supplemental Statement had not been received by July 1, 2013 and that Island Resort would be subject to civil liability for failure to file a statement, if the statement is not filed by Island Resort. A third letter entitled *Final Notice of Failure to File Report of Water Diversion and Use and Potential Administrative Civil Liability* was mailed to Island Resort on August 23, 2013, formally notifying Island Resort that Island Resort's Supplemental Statement had not been received, and that Island Resort would be submit to civil liability of \$1,000 plus an additional \$500 per day for each additional day that the violation continues if the person fails to file a statement within 30 days after the board calls the violation to the attention of that person.

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, Island Resort was provided with the statutory notice on August 23, 2013. Accordingly, the potential maximum civil liability, as of October 11, 2013, for which Island Resort is liable for Island Resort's failure to file the required Supplemental Statement, is \$8,500.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE OFFICER

Based on Island Resort's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$3,500 be imposed for Island Resort's failure to file the Supplemental Statement. If Island Resort 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.

CONDITIONAL OFFER OF SETTLEMENT:

To promote resolution of the alleged Supplemental Statement violations and obtain compliance with the Supplemental Statement filing requirements, I am offering Island Resort 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 Island Resort to avoid further formal enforcement by agreeing to pay an expedited payment amount of \$1,500, simultaneously electronically file the necessary Supplemental Statement 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, Island Resort 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 electronically file the necessary Supplemental Statement using the State Water Board's website within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Island Resort would like to discuss, such as an inability to pay the Expedited Payment Amount, then Island Resort 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, Island Resort Properties, LLC to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Island Resort 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 Island Resort received this complaint, then the State Water Board will issue a final ACL Order and seek recovery of the \$3,500 in liability proposed in the ACL Complaint.

If you have any questions, please contact me at (916) 445- 5962 or craig.wilson@waterboards.ca.gov.

Sincerely,



Craig M. Wilson,
Delta Watermaster

Enclosure:

- Administrative Civil Liability Complaint w/Exhibit A
- User Information Sheet

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

ISLAND RESORT PROPERTIES, LLC

SOURCE: Piper Slough

COUNTY: Contra Costa

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).
2. Island Resort Properties, LLC (Island Resort) is alleged to have violated California Water Code section 5104(a), which states, in pertinent part:

Supplemental Statements shall be filed at three-year intervals, prior to July 1...
3. Sections 910 and 920, subdivision (a) of the California Code of Regulations require Supplemental Statements of Diversion and Use (Supplemental Statements) to be filed electronically on forms available at the State Water Resources Control Board's (State Water Board) website. The State Water Board's website provides access to the Water Rights Management System for filing Supplemental Statements.
4. California Water Code section 5107(c)(1) provides that the 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.
5. 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 (ACL) Complaints to persons who divert water in the Delta, and impose an ACL, in accordance with Water code section 1831 et seq. Pursuant to State Water Board Resolution 2012-0048, Delta Watermaster is authorized to issue an order imposing an ACL when a Complaint is has been issued and no hearing has been requested within 20 days of receipt of the Complaint.

ALLEGATIONS

6. Island Resort filed an Initial Statement of Water Diversion and Use (S021445) on June 30, 2010.

7. On January 28, 2013, the Division of Water Rights (Division) mailed Island Resort a letter notifying Island Resort of the requirement to electronically file the triennial Supplemental Statement of water diversion and use prior to July 1, 2013.
8. On July 26, 2013, Division mailed Island Resort a second letter which indicated that a triennial Supplemental Statement (Statement) had not been received by the July 1, 2013 deadline and that Island Resort may be subject to civil liability for failure to file a statement, if no Statement is submitted.
9. On August 23, 2013, the Division mailed Island Resort a final delinquent notice letter by certified mail which indicated that a Statement had not been received by the July 1, 2013 deadline and that Island Resort would be subject to a \$1,000 penalty, plus an additional \$500 per day civil liability commencing 30 days from the receipt of the letter if no Supplemental Statement is submitted.
10. The United States Postal Service confirmed receipt of the final delinquent notice letter on August 26, 2013 at 11:45 am, via certified mail (Certificate # 70123460000035215083). The deadline to submit the triennial Statement was September 26, 2013.
11. On October 2, 2013, Office of Delta Watermaster (Watermaster) staff attempted to contact Island Resort through the contact number listed on the Initial Statement but was unable to leave a message as Island Resort's mail box was full. Watermaster (Watermaster) staff telephoned and spoke with Mariner Cove Marina staff (through the contact number listed on the Mariner Cove Marina website), who informed Watermaster staff that Mariner Cove Marina (who is the same owner as Island Resort) had been informed that the statement reports had to be filed by October 7, 2013. Watermaster staff confirmed with Mariner Cove Marina staff that Island Resort, or Mariner Cove Marina had until October 7, 2013 to file the Supplemental Statement for the statement (and three other statements under owner name of Mariner Cove Marina). On Friday, October 4, 2013, staff telephoned and left a message on Mariner Cove Marina's answering machine that due to updates to the State Water Board' computer servers, the reporting system would be unavailable for the weekend, so Mariner Cove Marina had until October 9, 2013 to file the statement reports.
12. No Supplemental Statement was filed by Island Resort. Island Resort was given the opportunity to file, but by October 11, 2013, Island Resort has not done so.

PROPOSED CIVIL LIABILITY

13. Island Resort failed to submit the required *Supplemental Statement of Water Diversion and Use* by 9/27/2013. 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 Statement within 30 days after the State Water Board has called the violation to the attention of that person. Such notice was provided on August 23, 2013.
14. 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. By October 11, 2013, Cove Marina has been on notice of the requirements for filing a statement for 15 days, therefore the maximum civil liability that can be considered for this time is \$1,000 plus 15 days (\$500), or \$8,500.
15. In this case, no Supplemental Statement was filed as of the date of this ACL Complaint, despite three notices being sent (one in January 2013, one in July 2013, and the third in August 2013).

16. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Delta Watermaster recommends the imposition of \$3,500 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

17. To promote resolution of the alleged Supplemental Statement filing violations, the Delta Watermaster makes the following conditional settlement offer (Conditional Offer). Island Resort 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".
18. The Conditional Offer requires Cove Marina to pay an expedited payment amount (Expedited Payment Amount) of \$1,500, simultaneously file the necessary Supplemental Statement electronically by accessing the State Water Board's Report Management System at www.waterboards.ca.gov/rms using the User ID and Password shown on the User Information Sheet accompanying this ACL Complaint, and waive the right to a hearing and reconsideration of the alleged violations.
19. To accept the Conditional Offer, Island Resort must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Supplemental Statement within 20 days of receipt of this complaint.
20. If there are extenuating circumstances that Island Resort would like to discuss, such as an inability to pay the Expedited Payment Amount, then Island Resort 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

21. Island Resort 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).)
22. If Island Resort requests a hearing, Island Resort 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.
23. If Island Resort 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.
24. If Island Resort does not wish to request a hearing within 20 days of receipt of this Complaint, Island Resort shall electronically file a Supplemental Statement 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 18 above, to:

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

25. If Island Resort 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: **OCT 15 2013**

Enclosures

EXHIBIT A

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

ISLAND RESORT PROPERTIES, LLC

Source: Piper 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), ISLAND RESORT PROPERTIES, LLC (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 \$1,500 (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.**
- **Electronically file the necessary Supplemental Statement of Water Diversion and Use (Statement(s)) pursuant to Statement S021445 for the 2010, 2011 and 2012 diversion season(s) 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, electronically file the 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, and Expedited Payment Amount shall be mailed to the following address, and necessary Statement(s) electronically filed:

**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.

ISLAND RESORT PROPERTIES, LLC _____
(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