



State Water Resources Control Board

NOV 20 2013

In Reply Refer to:
DS: A005092

CERTIFIED MAIL # 7004-2510-0003-9147-1305
Return Receipt Requested

LAMB GIANELLI FAMILY LP
PO BOX 1607
STOCKTON, CA 95201

Dear LAMB GIANELLI FAMILY LP:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE ANNUAL WATER USE REPORT FOR 2012 BY JULY 1, 2013 FOR LICENSE 2639, AND CONDITIONAL SETTLEMENT OFFER, BEAVER SLOUGH AND SOUTH FORK MOKELUMNE RIVER IN SAN JOAQUIN COUNTY

This provides legal notice to Lamb Gianelli Family LP (Licensee) of the intent of the State Water Resources Control Board (State Water Board), Office of Delta Watermaster (Watermaster) to proceed with formal enforcement for Licensee's failure to file the required 2012 annual water use report for the subject right by July 1, 2013. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act or face additional liability.** Therefore, this matter requires Licensee's immediate attention.

VIOLATION DESCRIPTION:

State Water Board records show that Licensee was notified in January 2013 of the requirement to submit the 2012 annual use report electronically by July 1, 2013. Having not received the 2012 annual use report by July 1, 2013, the Delta Watermaster mailed a delinquency notice to the Licensee on July 26, 2013. On August 29, 2013, the Delta Watermaster mailed a draft Cease and Desist Order (CDO) to the Licensee requiring Licensee to submit the 2012 annual water use report within 20 days or request a hearing. Licensee failed to submit the 2012 annual use report for the subject right within 20 days and did not request a hearing. On October 17, 2013, the Delta Watermaster finalized the CDO and mailed the Licensee a copy by certified mail. As of November 19, 2013, the Licensee has not submitted the 2012 annual use report nor requested a hearing.

STATUTORY LIABILITY:

Water Code Section 1845(b)(1) authorizes the State Water Board to administratively impose a \$1,000 per day liability for violation of a Cease and Desist Order. As discussed above, Licensee was provided with the statutory notice on October 17, 2013. Accordingly, the potential maximum civil liability, as of November 19, 2013, for which Licensee is liable for Licensee's failure to file the required 2013 annual use report is \$33,000.

Based on Licensee's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$10,000 (amount based on

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE OFFICER

consideration of all relevant circumstances as required by Water Code Section 1845(c)) be imposed for Licensee's failure to file the 2012 annual use report. If Licensee 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 CDO 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 2012 annual use report submittal violations and obtain compliance with the annual use filing requirements, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). The Conditional Offer, as provided in detail in the Acceptance and Waiver Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed in Exhibit "A" to the ACL Complaint, allows Licensee to avoid further formal enforcement by agreeing to pay an expedited payment amount of \$2,500 and waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint.

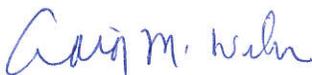
OPTIONS FOR RESPONDING TO ACL COMPLAINT AND CONDITIONAL OFFER OF SETTLEMENT:

In summary, Licensee has two options in responding:

1. Accept the Offer of Conditional Settlement by: (1) signing the Acceptance and Waiver; and (2) Submit the signed Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary 2012 annual water use report using the State Water Board's website within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact me (916) 445-5962 with that information as soon as possible, but no later than 20 days from receiving the enclosed ACL Complaint; or
2. Submit a written request for hearing signed by, or on the behalf of, Licensee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Licensee does not remit the Acceptance and Waiver, Expedited Payment Amount, nor request a hearing within 20 days of the date Licensee received this complaint, then the State Water Board will issue a final ACL Order and seek recovery of the \$10,000 in liability proposed in the ACL Complaint.

Sincerely,



Craig M. Wilson
Delta Watermaster

Enclosure: Administrative Civil Liability Complaint w/ Exhibit A

cc: Vincent M. Maples
Wagner & Bonsignore
2151 River Plaza Drive, Ste 100
Sacramento, CA 95833

Rudy Croce
501 W Weber Ave, Ste 500
Stockton, CA 95203

ec: John O'Hagan, Manager
Enforcement Section
Division of Water Rights

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violation of Annual Reporting Requirements by

Lamb Gianelli Family LP

SOURCE: Beaver Slough
South Fork Mokelumne River

COUNTY: San Joaquin

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Lamb Gianelli Family LP (referred to herein as Licensee) is alleged to have violated ORDER WR 2013-0003-DWM, a Cease and Desist Order (CDO) issued on October 17, 2013, by the Delta Watermaster pursuant to California Water Code sections 1834 and authority delegated pursuant to State Water Resources Control Board (State Water Board) Resolution 2012-0048.
2. Water Code section 1845, subdivision (b)(1), provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$1,000 for each day in which the violation occurs. Water Code section 1845, subdivision (b) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. The State Water Board delegated enforcement authority over water rights in the Delta to the Delta Watermaster. 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 and impose an ACL, in accordance with Water Code section 1831 et seq. Pursuant to State Water Board Resolution 2012-0048, the Delta Watermaster is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint.

ALLEGATIONS

4. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under permits and licenses, and developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual permittee and licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, sections 925 and 929 of the California Code of Regulations.
5. On January 30, 2013, the Division of Water Rights (Division) mailed an initial notice to Licensee notifying of: the requirement to file annual use report, and instructions on how to access the RMS system and submit the 2012 use report online. Licensee was also notified that if Licensee had

any questions on the reporting process, Licensee could contact the Division by phone or email. The deadline to electronically file the 2012 annual water use report was July 1, 2013.

6. On July 26, 2013, the Office of Delta Watermaster (Delta Watermaster) mailed Licensee a delinquency letter which included a copy of the January 2012 letter, to all the Licensees, including Licensee, who had not submitted the 2012 water use report by the July 1, 2013 deadline. The delinquent letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
7. On August 29, 2013, the Delta Watermaster, having not received Licensee's 2012 annual water use report, issued a draft Cease and Desist Order (CDO) requiring Licensee to submit the 2012 annual water use report within 20 days of receipt of the draft CDO, and/or request a hearing to contest the notice as provided by Water Code section 1834(a).
8. The United States Postal Service confirmed receipt of the draft CDO on August 30, 2013 at 8:15 am, via certified mail (Certificate No. 70042510000391471084). The deadline to submit the 2012 annual water use report and/or request a hearing was 11:59 p.m. on September 20, 2013.
9. As of October 17, 2013, 48 days after confirmed receipt of the draft CDO, the State Water Board had not received the 2012 annual water use report or a request for a hearing. The Delta Watermaster proceeded with finalizing the draft CDO by adopting ORDER WR 2013-0003-DWM.
10. ORDER WR 2013-0003-DWM was mailed on October 17, 2013 by certified mail (Certificate No. 70042510000391471282). The United States Postal Service confirmed receipt of the adopted or Final Order on October 18, 2013, at 8:53 am.
11. Licensee has failed to submit the 2012 annual water use report as November 19, 2013, 33 days after the October 17, 2013 final CDO was issued.

PROPOSED CIVIL LIABILITY

12. Licensee failed to submit the 2012 Annual Water Use report by July 1, 2013. The Delta Watermaster issued a draft CDO on August 29, 2013 requesting compliance within 20 days of receipt. Having not received the 2012 annual use report within the 20-day period, the Delta Watermaster issued the final CDO on October 17, 2013. California Water Code section 1845(b)(1) provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$1,000 for each day in which the violation occurs.
13. As of November 19, 2013, Licensee has been in violation of the final CDO for 33 days.
14. Based on the days of violation described in the previous paragraph, the potential maximum liability for the violations alleged is \$33,000 (\$1,000/day).
15. In determining the appropriate amount of a civil liability, California Water Code section 1845, subdivision (c), requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.
16. In this case, the 2012 Annual Use Report was due by July 1, 2013. No 2012 annual water use report was filed prior to issuance of the final CDO. Despite the three notifications (one in January 2013, one in July 2013, and the third through the August 2013 draft CDO, Licensee has failed to comply with the annual reporting requirements.

17. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Delta Watermaster recommends the imposition of \$10,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

18. To promote resolution of the alleged annual water use filing violations, the Delta Watermaster makes the following conditional settlement offer (Conditional Offer). Lamb Gianelli Family LP (Licensee) can avoid further enforcement action and settle the alleged failure to file annual water use violation/s by agreeing to comply with the terms of the Conditional Settlement Offer, provided below, as well as in the "Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration" (hereafter "Acceptance and Waiver") attached hereto as Exhibit "A."
19. The Conditional Offer requires Licensee to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$2,500, simultaneously file the required 2012 annual water use report at 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.
20. To accept the Conditional Offer, Licensee must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the required annual water use report for 2012 within 20 days of receipt of this complaint.
21. If there are extenuating circumstances that Licensee would to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact the Delta Watermaster with that information as soon as possible but no later than the 20 days from receipt of this complaint.

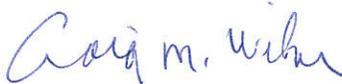
RIGHT TO HEARING

22. Lamb Gianelli Family LP (Licensee) 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 you receive this complaint. (Water Code, sec. 1055, subd. (b).)
23. If Licensee requests a hearing, Licensee 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 State Water Board may convene a settlement conference prior to noticing a hearing date.
24. If Licensee 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.
25. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the 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 19 above, to:

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

26. If Licensee does not remit the Acceptance and Waiver, the Expedited Payment Amount, electronically file the 2012 annual use report 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
Craig M. Wilson
Delta Watermaster

Dated: **NOV 20 2013**

EXHIBIT A

**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION**

Lamb Gianelli Family LP
Source: Beaver Slough,
South Fork Mokelumne River
County: San Joaquin

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), Lamb Gianelli Family LP (Licensee) 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 Licensee (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Licensee 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 1845(b)(1), in the sum of \$2,500** (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 1845 (b)(1) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2012 Annual Use Report**

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

Licensee understands that the failure to electronically file the 2012 Annual Use Report, submit payment of the Expedited Payment Amount 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 Licensee'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.

Licensee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Upon execution by Licensee, the Acceptance and Waiver along with the Expedited Payment Amount shall be returned to the following address:

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

Licensee 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 Licensee in the making and giving of this Acceptance and Waiver.

Lamb Gianelli Family LP _____
(Licensee) *Please make corrections as appropriate

By: _____ (Date)
(Signed Name)

(Printed or typed name)

(Title)

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