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

Lloyd Pareira, Brian Bylsma, Allen Silvera, Red Carson, and Lawrence Wong

Statement Number: S021809

SOURCE: Merced River

COUNTY: Merced County

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), to file a Statement of Water Diversion and Use (Statement).

2. Lloyd Pareira, Brian Bylsma, Allen Silvera, Red Carson, and Lawrence Wong (Diverters) filed an Initial Statement (Statement number S021809), as required by California Water Code section 5101. Diverters indicated on Statement number S021809 that Lloyd Pareira should be the primary contact for the Statement. Diverters are alleged to have violated California Water Code section 5104, subdivision (a), which states, in pertinent part:

   Supplemental statements shall be filed at three-year intervals, prior to July 1 of the year next succeeding the end of each three-year interval...

3. Supplemental Statements of Diversion and Use (Supplemental Statements) are required by California Code of Regulations sections 910 and 920, subdivision (a) to be filed electronically on forms available at the State Water Resources Control Board (State Water Board) website. The State Water Board's website provides access to the Electronic Water Rights Information Management System for filing Supplemental Statements.

4. California Water Code section 5107, subdivision (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 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under California Water Code section 1055, subdivision (a). Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights 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. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

ALLEGATIONS

6. On June 30, 2010, Diverters submitted an Initial Statement for diversion and use of water in 2009 under a riparian claim, a pre-1914 claim, and a court decree. The Initial Statement covers water diverted from the Merced River, via the Jorgenson-Ferrell Ditch, at a maximum rate of 30 cubic feet per second. The Statement indicates that the water is used to irrigate 958 acres of various crops and water 2,000 head of cattle.

7. On January 30, 2013, the Division of Water Rights (Division) mailed Lloyd Pareira (Diverters' primary contact) a letter notifying Diverters of the requirement to electronically file a Supplemental Statement for 2010, 2011, and 2012 no later than June 30, 2013.

8. On July 26, 2013, the Division mailed Diverters' primary contact a second letter informing Diverters that the Division had not received a Supplemental Statement as of July 22, 2013, and of potential monetary penalties for failure to file.

9. On August 23, 2013, the Division mailed Diverters' primary contact a third letter by certified mail informing Diverters that the Division had not received a Supplemental Statement as of August 19, 2013. This letter identified that Diverters were subject to a $1,000 penalty, and if a Supplemental Statement was not received within 30 days of the date Diverters received the letter, Diverters would be subject to an additional penalty of $500 per day for each additional day the violation continues.

10. The Division's records show that the August 23, 2013 certified letter was delivered by the U. S. Postal Service on August 28, 2013 at 7:16 a.m. to Diverters' primary contact at 13700 N. Highway 59 in Merced, California.

11. California Water Code section 5106, subdivision (b)(1) provides that the State Water Board may rely on the name and address included in Statements submitted under this part for the purpose of determining the names and addresses who are to receive notices with regard to proceedings before the State Water Board. The three notice letters discussed above were all sent to the name and address listed as the primary contact in Initial Statement number S021809.

12. California Water Code section 5106, subdivision (b)(2) provides that any person may submit, in writing, a request to the State Water Board to provide notification to a different address, and the State Water Board shall provide the notification to that address. No such notice has been provided to the State Water Board since the filing of S021809.

13. California Water Code section 5104, subdivision (b) requires that if there is a change in the name or address of the person diverting the water, a Supplemental Statement informing the State Water Board of that change in name or address must be filed. No notice of change in name or address of diverter has been filed with the State Board since the filing of S021809.

14. In an October 14, 2013 phone call, Diverters' primary contact told Division staff that he attempted to complete online reporting following receipt of the August 23, 2013 certified letter, but was unable to log into his account with the username and password provided in the certified letter. He stated that he then left a message for Division staff at the phone number listed in the certified letter. Division staff found no record of any phone call or message from Diverters' primary contact.

15. In an October 15, 2013 phone call, Division staff assisted Diverters' primary contact with logging into Diverters' account to electronically file Supplemental Statements. Diverters' primary contact confirmed that he was able to log into the account using the username and password listed on the certified letter, and stated that he intended to gather the required information to submit the Supplemental Statements in the following days.

16. As of October 20, 2013, no Supplemental Statement had been filed by, or on behalf of, Diverters for the years 2010, 2011, and 2012.

PROPOSED CIVIL LIABILITY

17. The deadline for submittal of the Supplemental Statements for the years 2010 through 2012 was June 30, 2013, but Diverters failed to file Supplemental Statement by that deadline. California Water Code section 5107, subdivision (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 for the failure to file a required 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. Such notice was received by Diverters' primary contact on August 28, 2013. Diverters failed to submit the required Supplemental Statements by September 27, 2013, the 30th day after receiving notice of the violation from the State Water Board, thus starting the count for additional days of violation.

18. As of October 20, 2013, Diverters had not filed a Supplemental Statement and had been on notice of the violations for 53 days; therefore, Diverters are subject to civil liability in the amount of $1,000 for the initial violation, plus $500 per day for 23 additional days of violation (September 29, 2013 through October 20, 2013, inclusive), or an additional $11,500. The potential maximum liability for the violations alleged is $12,500.

19. 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. In this case, no Statement was filed despite three notices being sent. Failure to comply with the Supplemental Statement reporting requirements in a timely manner harms the Division's ability to accurately track water diversions from the water course and effectively regulate the resources it is required to protect. Despite repeated notification to Diverters of the reporting requirements and potential liability for failure to submit a Supplemental Statement, Diverters failed to comply in a timely manner.

20. Diverters' primary contact confirmed receipt of the January 30, 2013 letter, as well as the July 26, 2013 failure to file notice. However, Diverters' primary contact did not attempt to submit a Supplemental Statement until after receipt of the certified letter on August 28, 2013. Diverters' primary contact claims that he was unable to log into their account to electronically file a Supplemental Statement and that they attempted to contact Division staff to resolve the issue. Division staff found no record of any attempt made by Diverters to contact the Division. Furthermore, on October 15, 2013 Diverters' primary contact was able to log into Diverters' account to electronically file Supplemental Statements with the same user name and password that was provided in all three notice letters. Diverters' primary contact did not have the information necessary to complete the Supplemental Statement on October 15, 2013, and as of October 20, 2013, no Supplemental Statement had been filed.

21. Having taken into consideration all relevant circumstances, including but not limited to the Diverters' failure to submit the Supplemental Statement, the harm of the missing Statement to the Division's effectiveness in regulating water diversions, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Assistant Deputy Director of Water Rights recommends the imposition of $10,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

22. To promote resolution of the alleged statement filing violations, the Assistant Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). Diverters can avoid further enforcement action and settle the alleged failure to file Statement of Water Diversion and Use (Statement) violation(s) 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" (hereafter "Acceptance and Waiver") attached hereto as Exhibit "A."

23. The Conditional Offer requires Diverters to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of $1,000, file the necessary Statement(s), and waive the right to a hearing and reconsideration of the alleged violations.

24. To accept the Conditional Offer, Diverters must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Statement(s) within 20 days of receipt of this complaint.

25. If there are extenuating circumstances that Diverters would like to discuss, such as an inability to pay the Expedited Payment Amount, then Diverters can contact the Division with that information as soon as possible but no later than the 20 days from receipt of this complaint.

RIGHT TO HEARING

26. Diverters 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 Diverters receive this complaint. (Wat. Code,§ 1055, subd. (b).)

27. If Diverters request a hearing, Diverters 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.

28. If Diverters request 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 California 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.

29. If Diverters do not remit the Acceptance and Waiver, the Expedited Payment Amount, and electronically file the necessary Statement, or 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 California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel

James W. Kassel, Assistant Deputy Director
Division of Water Rights

Dated: NOV 12 2013

ORDER NO. 20xx-00xx-DWR

EXHIBIT A

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

Lloyd Pareira, Brian Bylsma, Allen Silvera, Red Carson, and Lawrence Wong

Source: Merced River
County: Merced County

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), Lloyd Pareira, Brian Bylsma, Allen Silvera, Red Carson, and Lawrence Wong (Diverters) hereby accept the State Water Board's conditional settlement offer (Conditional Offer) and waive 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 Diverters (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Diverters agree 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, subdivision (c) in the sum of $1,000** (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, subdivision (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 (Supplemental Statement) for the 2010, 2011, and 2012 calendar years under S021809,** as required by Water Code sections 5104 and 5107, subdivision (b).

Diverters understand that this Acceptance and Waiver waives the Diverters' right to contest the allegations in the ACL Complaint and the civil liability amount proposed for those violations.

Diverters understand that the failure to submit payment of the Expedited Payment Amount, electronic copy of the necessary Supplemental Statement 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 Diverters' non-performance, then the State Water Board will issue a final ACL order and seek recovery of the full liability amount proposed in the ACL Complaint.

Diverters understand 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 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. (Wat. Code, § 5106, subd. (a).)

Upon execution by Diverters, the Acceptance and Waiver and Expedited Payment Amount shall be mailed to the following:

Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Enforcement Section
P. O. Box 2000
Sacramento, CA 95812-2000
Attn: John O'Hagen

Diverters understand that this Acceptance and Waiver is not final until it is formally endorsed by the Division of Water Rights.

We hereby affirm that we are duly authorized to act on behalf of and to bind the Diverters in the making and giving of this Acceptance and Waiver. This Acceptance and Waiver may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Lloyd Pareira, Brian Bylsma, Allen Silvera, Red Carson, and Lawrence Wong*
*Please make corrections as appropriate.

By: _____ _____
Lloyd Pareira Date

_____
Printed or typed name

_____
Title

By: _____ _____
Brian Bylsma Date

_____
Printed or typed name

_____
Title

By: _____ _____
Allen Silvera Date

_____
Printed or typed name

_____
Title

By: _____ _____
Red Carson Date

_____
Printed or typed name

_____
Title

By: _____ _____
Lawrence Wong Date

_____
Printed or typed name

_____
Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 11415.60.

Approval of the Acceptance and Waiver has been delegated to the Assistant Deputy director for Water Rights by State Water Board Resolution 2012-0029, and approval shall not limit the authority of the Executive Director 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 California Water Code, or violation of the terms of the Acceptance and Waiver.

By: _____ _____
James W. Kassel, Date
Assistant Deputy Director
Division of Water Rights