

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2020-0042-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Failure to File Annual Diversion and Use Report(s)
for the 2018 Reporting Year by

FRANCIS REALTY INC PROFIT SHARING PLAN

Statement S002593

Assistant Deputy Director Julé Rizzardo, Division of Water Rights (“Division”), through authority delegated by the State Water Resources Control Board (“State Water Board”), hereby issues an Administrative Civil Liability Order (“ACL Order”) to FRANCIS REALTY INC PROFIT SHARING PLAN (“Diverter”). On July 1, 2019, the Division of Water Rights issued an Administrative Civil Liability Complaint (“ACL Complaint”) against Diverter (attached), which is hereby incorporated by reference as part of this Order.

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. In 2010, the State Water Board adopted regulations mandating electronic reporting of water diversion and use information. (California Code of Regulations, Title 23, Chapter 2.7, Article 1, section 907 et seq.)
2. Diverter is the owner of record for Statement S002593 (“subject claim of right”).
3. Diverter must, pursuant to Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations, file Supplemental Statements of Diversion and Use (“Annual Reports”) before July 1 of each year electronically on forms available at the State Water Board’s website.
4. On February 15, 2019, the Division issued a notice to Diverter reminding Diverter of the requirement to submit Annual Reports for the subject claim of right by July 1, 2019, as required pursuant to the California Code of Regulations and notifying Diverter that the 2018 Reports must be filed online.
5. Diverter failed to file the Annual report for the subject claim of right by July 1, 2019.
6. On August 30, 2019, the Division sent Diverter a Notice of Deficiency, notifying Diverter that the Annual Report for water year 2018 had not been received by the July 1, 2019, deadline.
7. On October 18, 2019, the Division Prosecution Team issued an ACL Complaint against Diverter. The ACL Complaint alleges that Diverter failed to submit the 2018 Annual Report for the subject claim of right by the July 1, 2019, deadline in violation of section 920 of the Regulations, and recommends an Administrative Civil Liability in the amount of \$2,000 for this violation.

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8. The ACL Complaint included a Conditional Settlement Offer, which allowed for a reduced liability amount of \$500, provided that Diverter file the 2018 Annual Report, submit the signed acceptance of the Conditional Settlement Offer and waiver of the right to hearing and reconsideration, and agree to pay a reduced liability amount, all within 20 days of receipt of the ACL Complaint.
9. The Division Prosecution Team sent the ACL Complaint to Diverter via certified mail. The United States Postal Service has confirmed that the ACL Complaint was delivered to Diverter on October 21, 2019.
10. Diverter did not request a hearing within 20 days of receipt of the ACL Complaint, in accordance with Water Code section 1055(b).
11. Diverter did not file the Annual Report for the subject claim of right and did not return the signed Conditional Settlement Offer within 20 days of receipt of the ACL Complaint.
12. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Resources Control Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing Administrative Civil Liability when a Complaint has been issued and no hearing has been requested in the period provided by California Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights. This authority has been redelegated to the Assistant Deputy Director of Water Rights.
13. California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order to Diverter assessing an administrative civil liability in the amount proposed in the October 18, 2019, ACL Complaint.
14. California Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
15. In this case, Diverter did not submit the 2018 Annual Report for the subject claim of right, and did not accept the Conditional Settlement Offer. In consideration of these relevant circumstances, the State Water Board has determined that the appropriate proposed penalty is \$2,000.

IT IS HEREBY ORDERED THAT:

1. The attached Administrative Civil Liability Complaint is fully incorporated herein and made part of this Order.


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2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including but not limited to those specifically identified in the ACL Complaint, as required by California Water Code section 1055.3 in determining that Diverter shall be assessed the civil liability of \$2,000.
3. Diverter shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$2,000 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of Diverter's obligations under this Order constitutes full and final satisfaction liability for the alleged violation specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if Diverter fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: May 8, 2020

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to File Supplemental Statement of Diversion and Use
for the 2018 Reporting Year

FRANCIS REALTY INC PROFIT SHARING PLAN

Divisions Reported Under Statement S002593

YOU ARE HEREBY GIVEN NOTICE THAT:

1. FRANCIS REALTY INC PROFIT SHARING PLAN ("Diverter") is alleged to have violated Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations.
2. Water Code section 5101 states, in part, "Each person who...diverts water shall file with the State Water Board, prior to July 1 of the succeeding year, a statement of his or her diversion and use...."
3. Water Code section 5104 states, in part, "Supplemental statements shall be filed annually, before July 1 of each year."
4. Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations states that Supplemental Statements of Water Diversion and Use shall be filed electronically with the State Water Board annually, detailing the amount of water diverted and used within the twelve-month reporting period.
5. Title 23, Chapter 2.7 Article 1, section 908 of the California Code of Regulations states, "Failure to meet the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water code section 1846."
6. Water Code section 1846 states, "A person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs:...(2) a regulation or order adopted by the [State Water Board]." Civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
7. The Executive Director for the Board may issue an Administrative Civil Liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed. (Water Code section 1055)
8. The Executive Director delegated this authority to the Deputy Director for Water Rights. 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. This authority has been redelegated to the Assistant Deputy Director.

ALLEGATIONS

9. Diverter, or Diverter's predecessor in interest, previously filed an initial Statement of Water Diversion and Use report for Statement S002593 ("subject claim of right"), as required under Water Code section 5101.

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10. Diverter must, pursuant to Water Code section 5104, file a Supplemental Statement of Water Diversion and Use annually before July 1 of each year.
11. In 2010, the State Water Board adopted regulations mandating electronic reporting of water diversion and use information. (California Code of Regulations; Title 23, Chapter 2.7, Article 1, section 907 et seq.)
12. Diverter must, pursuant to Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations, file the Supplemental Statement of Water Diversion and Use before July 1 of each year electronically on forms available at the State Water Boards website.
13. Diverter was required to file the Supplemental Statement of Water Diversion and Use report for calendar year 2018 no later than July 1, 2019.
14. Diverter failed to file the Supplemental Statements of Water Diversion and Use report for the subject claim of right by July 1, 2019, electronically on forms available at the State Water Board's website as required.
15. On August 30, 2019, the State Water Board Division of Water Rights sent Diverter a Notice of Deficiency, notifying Diverter that the Supplemental Statement of Water Diversion and Use report for 2018 had not been received by the July 1, 2019, deadline.
16. The Notice of Deficiency informed Diverter of that the failure to file Supplemental Statement of Water Diversion and Use is a violation of a regulation adopted by the Board for which the potential civil liability of five hundred dollars (\$500) may be assessed for each day that each report was not submitted past the July 1, 2019, deadline.
17. As of October 17, 2019, Diverter has still not filed the Supplemental Statement of Water Diversion and Use report for the subject claim of right. The Supplemental Statement of Water Diversion and Use report is now 108 days late.

PROPOSED CIVIL LIABILITY

18. Water Code section 1846 states that a person or entity may be liable for a violation of a regulation adopted by the State Water Board in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
19. Diverter violated Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations by failing to file a Supplemental Statement of Water Diversion and Use by the July 1, 2019, deadline for each subject claim of right. Each day that each Supplemental Statement of Water Diversion and Use report is not filed past the July 1, 2019, deadline is a day that the violation of the regulation occurs.
20. Each Supplemental Statement of Water Diversion and Use report not filed electronically with the Board by the July 1, 2019, deadline represents a separate violation. Diverter failed to file one Supplemental Statement of Water Diversion and Use report and has thus violated the regulation one time.
21. As of October 17, 2019, the violation continues unabated for 108 days. The maximum liability for each violation alleged is \$54,000 (108 days x \$500). The total maximum potential liability for all violations is \$54,000.
22. In determining the appropriate amount of a civil liability, both Water Code section 1848(d) and Water Code section 1055.3 provide that the State Water Board shall consider all relevant circumstances, including, but not limited to, all of the following factors: 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 any corrective action undertaken by the violator.

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23. The water diversion and use regulations were adopted by the Board for the purpose of developing a publicly available database that allows the Board and the water user community access to the information and help make informed water management decisions. The value of the database is directly tied to the amount and accuracy of information the Board collects through compliance with the reporting regulations.
24. Water diversion and use information is critical to understanding and planning ahead for limited water supplies, identifying water conservation opportunities, assuring compliance with the quantity and seasonal use limitations of existing water rights, protecting water right holders' priority of right, and providing for efficient management and use of water during times of shortages.
25. The value of the data contained within the Supplemental Statement of Water Diversion and Use to the public and the State Water Board correspond(s) to its timely submittal, and therefore an increased time lapse between the deadline and the ultimate submittal date results in increased harm to the regulatory program. The State Water Board's forecasting of water availability during peak water use times of the year and ability to regulate the resources it is required to protect is diminished by the failure to submit the Supplemental Statement of Water Diversion and Use.
26. The Supplemental Statement of Water Diversion and Use report was due by July 1, 2019, but has still not been filed with the State Water Board. The length of time over which this violation occurs is significant; the Supplemental Statement of Water Diversion and Use report is now 108 days late. Moreover, no action has been taken to correct this violation despite the August 30, 2019, Notice of Deficiency putting Diverter on notice of the potential for formal enforcement action if the violation continued.
27. Having taken into consideration all relevant circumstances, including but not limited to the failure of Diverter to submit the Supplemental Statement of Water Diversion and Use report, the harm of the missing data to the State Water Board'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 Division of Water Rights Prosecution Team recommends the imposition of \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

28. Diverter 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 as required by Water Code section 1055, subdivision (b).
29. If Diverter requests a hearing, Diverter will have an opportunity to contest the allegations in this complaint and the imposition of a fine by the Board. The Board will issue a notice setting the specific time and place for the hearing. The hearing notice will be mailed not less than 10 days before the hearing date.
30. At the hearing, the Board will consider whether to impose a monetary fine, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any Board order imposing an ACL shall be final and effective upon issuance.
31. If Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Assistant Deputy Director for the Division of Water Rights may then issue a final Administrative Civil Liability Order assessing the Proposed Liability.

EXPEDITED SETTLEMENT OFFER

32. The Division of Water Rights Prosecution Team makes the following conditional settlement offer: Diverter may settle this matter without the need for a hearing before the Board by 1) filing the outstanding Supplemental Statement of Water Diversion and Use report, 2) signing a waiver of the right to a hearing on this matter, and 3) paying an Expedited Settlement Amount of \$500.
33. To accept this settlement offer, You must:
- a. Submit the outstanding Supplemental Statement of Water Diversion and Use report within 20 days of receipt of this complaint, and
 - b. Sign and return the Acceptance and Waiver within 20 days of receipt of this complaint (do not include payment), and
 - c. Remit the Expedited Settlement Amount within 30 days of the State Water Board's Issuance of a Stipulated Administrative Civil Liability order.

STATE WATER RESOURCES CONTROL BOARD



Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Dated: **October 18, 2019**

EXHIBIT A

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

FRANCIS REALTY INC PROFIT SHARING PLAN (“Diverter”)

Statement ID: S002593

By properly executing and returning this Acceptance and Waiver to the State Water Resources Control Board (“State Water Board”), Diverter hereby accepts the Division of Water Right’s Settlement Offer and waives the right to contest the violations alleged in the attached ACL Complaint at a hearing before the State Water Board. Diverter also waives the right to request reconsideration of an order by the State Water Board resolving the violations alleged in the attached ACL Complaint.

Settlement Offer:

The Division of Water Rights Prosecution Team makes the following offer to settle this matter without the need for a formal hearing. The terms of the settlement are as follows:

1. File the deficient report, and
2. Pay settlement amount of \$500 upon receipt of the State Water Board’s Order Approving Settlement.

How to accept the Settlement Offer:

1. File the Supplemental Statement of Diversion and Use for the claim of right identified by the Statement IDs above by logging into the State Water Board’s website using the Username(s) and Password(s) identified in the enclosed Confidential User Information Sheet.
2. Properly execute and deliver this Acceptance and Waiver to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit – Failure to File 2018
P.O. Box 2000
Sacramento, CA 95812-2000

Do not send your payment with the Acceptance and Waiver.

3. After Diverter files the deficient report and delivers the executed Acceptance and Waiver, the State Water Board will issue an Order approving this settlement agreement. Diverter shall remit payment of the settlement amount as directed by the Order within 30 days of the State Board issuing the Order.

Failure accept the Settlement Offer within 20 days of receiving the ACL Complaint shall render this Settlement Offer void, and may subject Diverter to the full proposed liability amount (\$2,000) specified in the ACL Complaint.

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Acceptance and Waiver

By properly executing and returning this Acceptance and Waiver to the State Water Board, Diverter acknowledges and understands that:

1. This Acceptance and Waiver waives Diverter's right to contest the allegations in the ACL Complaint and the amount of administrative civil liability for the alleged violations.
2. This Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint.
3. This Acceptance and Waiver is not final and effective until it is approved by the State Water Board, or its delegee.

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

By:

Signature

Date

Printed or typed name

Title

Relationship to Diverter if not Diverter