

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

O'Brien Ranch, LLC

Statement Number: S004693

SOURCE: Prairie Creek tributary to South Honcut Creek

COUNTY: Yuba

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. O'Brien Ranch, LLC has filed an Initial Statement, as required by California Water Code section 5101, and is 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...

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 1055 subdivision (a) provides that the Executive Director for the State Water Board may issue a Complaint to any person or entity on whom an 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

5. O'Brien Ranch, LLC is on record with the Division of Water Rights (Division) as being the primary owner of Statement S004693. Statement S004693 was filed in 1969 for diversions under a riparian claim of right at Carmichael Diversion Dam on Prairie Creek. Division records show that triennial Supplemental Statements have been filed by representatives of O'Brien Ranch, LLC from 1990 through 2005.

6. On March 5, 2012, the Division mailed O'Brien Ranch, LLC a letter notifying you of the requirement to electronically file your Supplemental Statement for 2009, 2010, and 2011 prior to July 1, 2012.
7. On August 20, 2012, the Division mailed O'Brien Ranch, LLC a second letter, which indicated that O'Brien Ranch, LLC's Supplemental Statement had not been received by the July 1, 2012 deadline and that you would be subject to an additional \$500 per day civil liability commencing 30 days from the date of the August 20 letter if no Supplemental Statement is submitted.
8. On December 10, 2012, Division staff contacted Mr. Donald Ekstrom, primary contact for O'Brien Ranch, LLC, to seek information pertaining to Statement S004693. Division staff documented the phone conversation in a Division Contact Report. On December 10, 2012, Mr. Ekstrom stated: that he is the property owner; that the mailing and property addresses on file with the Division are correct; that he received the Division's March 5, 2012 and August 20, 2012 letters; and that he diverted water in 2009, 2010, and 2011. Mr. Ekstrom concluded that he spoke to someone at the State Water Board, but he didn't remember who it was. Also, he thought that his consultant might have submitted a Supplemental Statement on his behalf.
9. To date, no Supplemental Statement has been filed for 2009 through 2011 by, or on behalf of, O'Brien Ranch, LLC.

PROPOSED CIVIL LIABILITY

10. O'Brien Ranch, LLC failed to submit the required Supplemental Statement by April 30, 2013. The deadline for submittal was July 1, 2012. 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 20, 2012.
11. The potential maximum liability for the violations alleged is in excess of \$37,000.
12. 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.
13. In this case, no Supplemental Statement was filed despite two notices being sent and telephone contact by Division staff. 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 notifications to O'Brien Ranch, LLC of the reporting requirements and potential liability for failure to submit a Supplemental Statement, O'Brien Ranch, LLC to date has failed to comply.
14. Having taken into consideration all relevant circumstances, including but not limited to the failure of O'Brien Ranch, LLC to submit the Supplemental Statement, the harm of the missing Supplemental 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

15. To promote resolution of the alleged Statement filing violations, the Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). O'Brien Ranch, LLC can avoid further enforcement action and settle the alleged Statement 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" (hereafter "Acceptance and Waiver"), attached hereto as Exhibit "A."

16. The Conditional Offer requires O'Brien Ranch, LLC to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$1,000, file the necessary Statement, and waive the right to a hearing and reconsideration of the alleged violations.
17. To accept the Conditional Offer, you must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Statement within 20 days of receipt of this Complaint.
18. If there are extenuating circumstances that you would like to discuss, such as an inability to pay the Expedited Payment Amount, then you 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

19. O'Brien Ranch, LLC may request a hearing on this matter before the State Water Board. Any such request for a hearing must be received or postmarked within 20 days of the date that you receive this Complaint. (California Water Code §1055, subd. (b).)
20. If O'Brien Ranch, LLC requests a hearing, O'Brien Ranch, LLC 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, a 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.
21. If O'Brien Ranch, LLC 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 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.
22. If O'Brien Ranch, LLC does not remit the Acceptance and Waiver, the necessary Supplemental Statement and the Expedited Payment Amount, 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, Assistant Deputy Director
Division of Water Rights

Dated: **JUL 03 2013**

EXHIBIT A

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

O'Brien Ranch, LLC
Attn: Donald Ekstrom
Source: Prairie Creek tributary to South Honcut Creek
County: Yuba

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), O'Brien Ranch, LLC 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 (ACL Complaint) issued to O'Brien Ranch, LLC to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

O'Brien Ranch, LLC 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 \$1,000** (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 Supplemental Statement of Water Diversion and Use (Statement) for the 2009, 2010, and 2011 diversion seasons**, as required by California Water Code section 5107 (b).

O'Brien Ranch, LLC understands that this Acceptance and Waiver waives the O'Brien Ranch, LLC right to contest the allegations in the ACL Complaint and the civil liability amount for such violations.

O'Brien Ranch, LLC understands that the failure to submit payment of the Expedited Payment Amount, signed copies of the necessary 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 O'Brien Ranch, LLC 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.

O'Brien Ranch, LLC 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 Statement with the State Water Board does not in any way establish or constitute evidence of a right to divert or use water. (California Water Code § 5106 (a).)

Upon execution by O'Brien Ranch, LLC, the Acceptance and Waiver, Expedited Payment Amount, and necessary Statements shall be returned to the following:

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

O'Brien Ranch, LLC understands that this Acceptance and Waiver is not final until it is formally endorsed by the Division of Water Rights.

I hereby affirm that I am duly authorized to act on behalf of and to bind the O'Brien Ranch, LLC in the making and giving of this Acceptance and Waiver.

O'Brien Ranch, LLC _____

*Please make corrections as appropriate.

By: Donald C Ekstrom
Signed Name

7-16-2013
Date

DONALD C. EKSTROM
Printed or typed name

SINGLE OWNER
Title

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 Water Code, or violation of the terms of the Acceptance and Waiver.

By: Philip Cassel FOR
James W. Kassel, Assistant Deputy Director
Division of Water Rights

8-12-2013
(Date)