

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

DIVISION OF WATER RIGHTS
ORDER WR 2013-0034-DWR

In the Matter of Violation of Annual Use Reporting Requirements by
Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp., and Valerie Vlot

SOURCE: Eastside Bypass

COUNTY: Madera

Assistant Deputy Director James W. Kassel, 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) against Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp., and Valerie Vlot (Vlot). On June 17, 2013, the Division of Water Rights issued an Administrative Civil Liability Complaint (ACL Complaint) against Vlot (Exhibit A, attached), which is hereby incorporated by reference as part of this Order.

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

1. On June 17, 2013, the Assistant Deputy Director for Water Rights issued an ACL Complaint against Vlot, which proposes to collect \$5,000 from Vlot for the alleged violation of Order 2013-0006-DWR, a Cease and Desist Order (CDO) issued on January 10, 2013, by the Assistant Deputy Director for Water Rights, pursuant to California Water Code section 1834 and authority delegated pursuant to State Water Resources Control Board Resolution 2012-0029, for violation of annual reporting requirements to submit a report of water use for 2011 (2011 Annual Use Report) by the requested deadline.
2. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director for 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 for 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 for Water Rights.
3. No hearing was requested within 20 days of issuance of the ACL Complaint in accordance with California Water Code section 1055(b). California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order for \$5,000, the amount proposed in the June 17, 2013 ACL Complaint.

IT IS HEREBY ORDERED THAT:

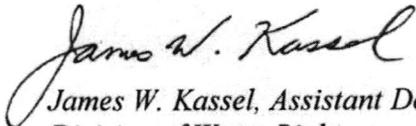
1. The Administrative Civil Liability Complaint attached hereto as Exhibit A is fully incorporated herein and made part of this Order.

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 Vlot shall be assessed the civil liability of \$5,000.
3. Vlot shall remit within 30 days of the date of this Order a check or money order payment of the full penalty of \$5,000 to:

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

4. Fulfillment of Vlot'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 for 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 Vlot fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



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

Dated:

AUG 30 2013

EXHIBIT A

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
Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp., and Valerie Vlot

SOURCE: Eastside Bypass

COUNTY: Madera

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp. and Valerie Vlot (referred to herein as Permittee) is alleged to have violated Order WR 2013-0006-DWR, a Cease and Desist Order (CDO), issued on January 10, 2013, (Final CDO) by the Assistant Deputy Director for Water Rights pursuant to California Water Code section 1834 and authority delegated, pursuant to State Water Resources Control Board (State Water Board) Resolution 2012-0029.
2. California Water Code section 1845, subdivision (b)(1) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$1,000 for each day in which the violation occurs. California Water Code section 1845, subdivision (b)(3) provides that civil liability may be imposed administratively by the State Water Board, pursuant to California Water Code section 1055.
3. 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 to whom administrative civil liability (ACL) may be imposed. On June 5, 2012, 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. 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

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 (Annual Use Report) 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. In March 2012, the Division mailed out a first notice (First Notice) to Permittee reminding Permittee of the requirement to submit the Annual Use Report by June 30, 2012, as required pursuant to the California Code of Regulations and notifying Permittee that the 2011 Annual Use Report must be filed online. The First Notice provided instructions on how to access the RMS system and submit the 2011 Annual Use Report online and also notified Permittee to contact the Division by phone or e-mail with any questions regarding the new reporting process.
6. Permittee failed to submit the 2011 Annual Use Report online by the deadline, June 30, 2012.

7. In determining that Permittee violated a term of the permit/license by failing to submit the Annual Use Report by June 30, 2012, the Division issued a second notification on October 22, 2012 of the violation (Second Notice), as provided by California Water Code section 1834(a), along with a draft CDO requesting the submission of the 2011 Annual Report within 20 days of receipt or a written request for a hearing to contest the notice (Draft CDO).
8. The United States Postal Service confirmed receipt of the Second Notice and Draft CDO on October 24, 2012 at 12:56 p.m. via certified mail (Certified Mail No. 7004-2510-0003-9146-6646).
9. Having neither received the 2011 Annual Use Report nor a request for a hearing within 20-days after receipt of the Second Notice and Draft CDO, the Division issued a Cease and Desist Order on January 10, 2013 (CDO), adopting the Draft CDO as final (Order WR 2013-0006-DWR or Final CDO).
10. The Final CDO was sent certified mail (Certified Mail No. 7004-2510-0003-9146-6912) and delivered on January 14, 2013 at 10:08 a.m.
11. Permittee violated the Final CDO by failing to immediately submit the 2011 Annual Use Report. Permittee subsequently submitted the 2011 Annual Use Report on February 4, 2013, 25 days after the Final CDO was issued on January 10, 2013.

PROPOSED CIVIL LIABILITY

12. California Water Code section 1845(b)(1) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$1,000 for each day in which the violation occurs.
13. As of February 4, 2013, Permittee has been in violation of the Final CDO for 25 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is \$25,000 (25 days at \$1,000 per day).
14. In determining the appropriate amount of a civil liability, California Water Code sections 1055.3 and 1845, subdivision (c), require 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.
15. In this case, the 2011 Annual Use Report was due by June 30, 2012. Despite two prior notifications (the First Notice in March 2012 and the Second Notice and Draft CDO in October 2012), Permittee failed to submit the 2011 Annual Use Report before the issuance of the Final CDO. Failure to comply with the reporting requirements in a timely manner harms the Division's ability to accurately track water diversions from the source and effectively regulate the resources it is required to protect. Permittee has since complied by submitting the 2011 Annual Use Report.
16. Having taken into consideration all relevant circumstances, including but not limited to the late submission of the 2011 Annual Use Report, the harm caused by the delay in submitting the Annual Use Report, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Division recommends the imposition of \$5,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

17. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following Conditional Settlement Offer (Conditional Offer). Permittee can avoid further enforcement action and settle the alleged failure to file the annual use violation 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. This Conditional Offer requires Permittee to pay an expedited payment amount (Expedited Payment Amount) of \$500 and waive the right to a hearing and reconsideration of the alleged violations. This expedited payment amount is based on staff costs incurred to date in preparing the Final CDO and this ACL.
19. To accept the Conditional Offer, Permittee must sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this Complaint.
20. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee may contact John O'Hagan, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this Complaint.

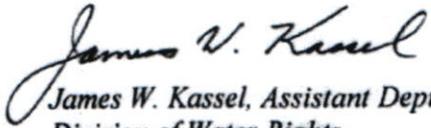
RIGHT TO HEARING

21. Permittee 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 California Water Code section 1055, subdivision (b).
22. If Permittee requests a hearing, Permittee 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 Division may convene a settlement conference prior to noticing a hearing date.
23. If Permittee 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.
24. If Permittee does not wish to request a hearing within 20 days of receipt of this Complaint, Permittee shall waive the right 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
Division of Water Rights
Attn: Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

25. If Permittee does not remit the Acceptance and Waiver, 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 an 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:

JUN 17 2013