

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

DIVISION OF WATER RIGHTS

ORDER WR 2017-0008- DWR

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**ORDER APPROVING SETTLEMENT AGREEMENT**

In the Matter of Violation of Annual Reporting Requirements by

Parties Listed in Attachment A

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**BY THE ASSISTANT DEPUTY DIRECTOR FOR WATER RIGHTS<sup>1</sup>**

The Assistant Deputy Director for the Division of Water Rights of the State Water Resources Control Board (State Water Board) issued an [Administrative Civil Liability Complaint](#) (Complaint) to the parties listed in Attachment A (collectively Parties) for failure to file Annual Use Reports for the year 2015 by the June 30, 2016 deadline in violation of Title 23, Chapter 2.7, Article 2, section 925 or 929 of the California Code of Regulations.

The Complaint contained a [Conditional Settlement Offer](#) and Waiver of Right to Hearing and Reconsideration (Conditional Settlement) that required that the Parties take certain actions within 20 days of receipt of the Complaint in order to accept the Conditional Settlement. The Parties have filed their 2015 Annual Use Reports with the State Water Board, signed the [Acceptance of Conditional Settlement Offer](#) and Waiver of Right to Hearing and Reconsideration, and remitted required payment of reduced liability. Some of the above actions were completed by the Parties after the 20-day deadline set in the Conditional Settlement.

The circumstances here support accepting the Conditional Settlement, as the State Water Board has received the 2015 Annual Use Report and the signed Conditional Settlement. This approval of the Conditional Settlement Offer is based on the unique circumstances presented by each party, and is not intended to be precedential.

I hereby approve the Conditional Settlement pursuant to my delegated authority. This approval shall not limit the authority of the Executive Director or the Deputy Director for Water Rights, as delegated, to initiate enforcement action for any violations not specified in the Complaint, or for violation of the terms of the Conditional Settlement.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

MAR 23 2017

Dated:

Attachment A: List of Parties

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<sup>1</sup> Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. The Executive Director has delegated this authority to the Deputy Director for Water Rights, who has redelegated this authority to the Assistant Deputy Director for Water Rights. State Water Board Resolution No. 2012 - 0029 authorizes the Deputy Director for Water Rights 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. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Director for Water Rights pursuant to State Water Board Resolution 2012-0029.

## Attachment A

Application ID	Permit/License	Party Name
A001291	License 167	FRANK BUSHMAN
A016072	License 5787	MASSIMO DESIMONI
A017627	License 7092	LOCKHEED AIRCRAFT CORPORATION
A019376	License 7093	LOCKHEED AIRCRAFT CORPORATION
A019911	License 7873	HESTER RANCH
A024482A	Permit 18067A	CHARLES CARPENTER
A025882	License 13286	FRIANT POWER AUTHORITY
A026054	License 12034	DREAM RANCH WEST LLC
A029255	Permit 20759	FANDANGO LLC
A029256	Permit 20621	FANDANGO LLC
A029257	Permit 20758	FANDANGO LLC
A030593	Permit 20967	FRIANT POWER AUTHORITY
A031186	Permit 21126	FRIANT POWER AUTHORITY



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:12:A001291

Certified Mail No. 7004-2510-0003-9145-5145  
Return Receipt Requested

FRANK BUSHMAN  
P.O. BOX 1593  
SANTA ROSA, CA 95402

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 167 (APPLICATION A001291), DIVERSION OF WATER FROM ROBINSON CREEK IN MENDOCINO COUNTY

This provides legal notice to FRANK BUSHMAN of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$500.

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

In summary, Licensee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount 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 Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka".

Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures: 1) Administrative Civil Liability Complaint  
2) Conditional Settlement Offer  
3) Confidential User Information Sheet  
4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FRANK BUSHMAN**  
(Application A001291, License 167)

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SOURCE: ROBINSON CREEK

COUNTY: MENDOCINO

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. FRANK BUSHMAN (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, 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

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

Dated: **November 28, 2016**

EXHIBIT A

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

**FRANK BUSHMANC**  
**Source: ROBINSON CREEK**  
**County: MENDOCINO**  
**License: 167**

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), FRANK BUSHMAN, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

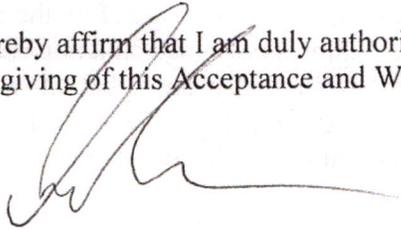
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd  
Chk #  
12958555  
\$500.00  
3-6-17 JJ

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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



\_\_\_\_\_  
Signature

3/2/2017  
\_\_\_\_\_  
Date

Frank Busman  
\_\_\_\_\_  
Printed or typed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

Please return the completed Acceptance and Waiver by mail to the address above.



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:216:A016072

Certified Mail No. 7004-2510-0003-9145-7187  
Return Receipt Requested

MASSIMO DESIMONI  
c/o MICHAEL J. DESIMONI, JR.  
5313 WILD HORSE VALLEY ROAD  
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 5787 (APPLICATION A016072), DIVERSION OF WATER FROM UNNAMED STREAM IN NAPA COUNTY

This provides legal notice to MASSIMO DESIMONI of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Licensee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount 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 Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**MASSIMO DESIMONI**

(Application A016072, License 5787)

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SOURCE: UNNAMED STREAM

COUNTY: NAPA

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. MASSIMO DESIMONI (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, 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**

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
 Division of Water Rights*

**Dated: November 28, 2016**

BRC  
A016072

**EXHIBIT A**

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

STATE WATER RESOURCES  
CONTROL BOARD  
2017 JAN 31 PM 1:48  
DIV OF WATER RIGHTS  
SACRAMENTO

**MASSIMO DESIMONIC**  
**Source: UNNAMED STREAM**  
**County: NAPA**  
**License: 5787**

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), MASSIMO DESIMONI, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

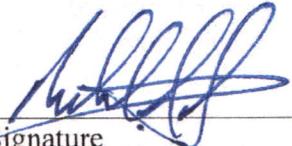
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd Chk#  
\$250.00 063531  
1/31/17  
MS

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

  
\_\_\_\_\_  
Signature

1-25-2017  
\_\_\_\_\_  
Date

Michael J. Desimoni, JR  
\_\_\_\_\_  
Printed or typed name

Co-owner  
\_\_\_\_\_  
Title

Son  
\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:260:A017627

Certified Mail No. 7004-2510-0003-9145-7637  
Return Receipt Requested

LOCKHEED AIRCRAFT CORPORATION  
c/o TIM MCNULTY  
16020 EMPIRE GRADE  
C/O: LOCKHEED MARTIN SPACE SYSTEMS  
SANTA CRUZ, CA 95060

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 7092 (APPLICATION A017627), DIVERSION OF WATER FROM MILL CREEK IN SANTA CRUZ COUNTY

This provides legal notice to LOCKHEED AIRCRAFT CORPORATION of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$1,500.

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

In summary, Licensee has two options in responding:

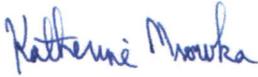
1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures: 

- 1) Administrative Civil Liability Complaint
- 2) Conditional Settlement Offer
- 3) Confidential User Information Sheet
- 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**LOCKHEED AIRCRAFT CORPORATION**  
(Application A017627, License 7092)

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SOURCE: MILL CREEK

COUNTY: SANTA CRUZ

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. LOCKHEED AIRCRAFT CORPORATION (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.

7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$1,500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, 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

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

EXHIBIT A**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER  
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION****LOCKHEED AIRCRAFT CORPORATIONC**Source: **MILL CREEK**County: **SANTA CRUZ**License: **7092**

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), LOCKHEED AIRCRAFT CORPORATION, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$1500** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

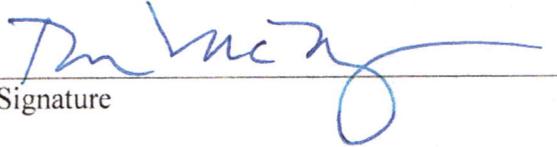
\$0 Reid  
as of 12/20/16  
MS

2016 DEC 20 PM 12:54  
SACRAMENTO

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

  
Signature

12/12/16  
Date

TIM McNULTY  
Printed or typed name

PLANT OPERATIONS SITE SUPERVISOR  
Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:312:A019376

Certified Mail No. 7004-2510-0003-9145-8153  
Return Receipt Requested

LOCKHEED AIRCRAFT CORPORATION  
c/o TIM MCNULTY  
16020 EMPIRE GRADE  
C/O: LOCKHEED MARTIN SPACE SYSTEMS  
SANTA CRUZ, CA 95060

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 7093 (APPLICATION A019376), DIVERSION OF WATER FROM MILL CREEK IN SANTA CRUZ COUNTY

This provides legal notice to LOCKHEED AIRCRAFT CORPORATION of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Licensee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount 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 Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

### LOCKHEED AIRCRAFT CORPORATION

(Application A019376, License 7093)

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SOURCE: MILL CREEK

COUNTY: SANTA CRUZ

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#### YOU ARE HEREBY GIVEN NOTICE THAT:

1. LOCKHEED AIRCRAFT CORPORATION (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.

7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

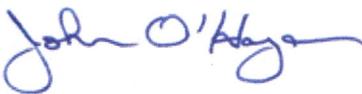
#### RIGHT TO HEARING

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

Dated: **November 28, 2016**

EXHIBIT A**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER  
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION****LOCKHEED AIRCRAFT CORPORATIONC****Source: MILL CREEK****County: SANTA CRUZ****License: 7093**

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), LOCKHEED AIRCRAFT CORPORATION, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

#0 Rec'd  
as of 12/20/16  
MJ





EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:321:A019911

Certified Mail No. 7004-2510-0003-9145-8245  
Return Receipt Requested

HESTER RANCH  
P.O. BOX 275  
STONEY FORD, CA 95979

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 7873 (APPLICATION A019911), DIVERSION OF WATER FROM UNNAMED STREAM IN GLENN COUNTY

This provides legal notice to HESTER RANCH of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$500.

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

In summary, Licensee has two options in responding:

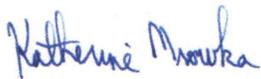
1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**HESTER RANCH**

(Application A019911, License 7873)

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SOURCE: UNNAMED STREAM

COUNTY: GLENN

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. HESTER RANCH (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, 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

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

BRC

Record: 321

A019911

**EXHIBIT A**

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

**HESTER RANHC  
Source: UNNAMED STREAM  
County: GLENN  
License: 7873**

STATE WATER RESOURCES  
CONTROL BOARD  
2015 DEC 30 AM 9:34  
WATER RIGHTS  
SACRAMENTO

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), HESTER RANCH, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd Chk# 001410  
\$500.00  
12/30/16 MS

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

Mary Hester  
Signature

12-28-2018  
Date

MARY HESTER  
Printed or typed name

co-owner  
Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:425:A024482A

Certified Mail No. 7004-2510-0003-9145-9280  
Return Receipt Requested

CHARLES CARPENTER  
200 N MAIN ST STE C  
LAKEPORT, CA 95453

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 18067A (APPLICATION A024482A), DIVERSION OF WATER FROM UNNAMED STREAM IN LAKE COUNTY

This provides legal notice to CHARLES CARPENTER of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Permittee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Permittee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$500.

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

In summary, Permittee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka".

Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

- Enclosures:
- 1) Administrative Civil Liability Complaint
  - 2) Conditional Settlement Offer
  - 3) Confidential User Information Sheet
  - 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**CHARLES CARPENTER**

(Application A024482A, Permit 18067A)

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SOURCE: UNNAMED STREAM

COUNTY: LAKE

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. CHARLES CARPENTER (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, 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

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

BRC

A024482A

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

**CHARLES CARPENTER**  
**Source: UNNAMED STREAM**  
**County: LAKE**  
**License: 18067A**

STATE WATER RESOURCES  
 CONTROL BOARD  
 2017 JAN 12 PM 1:50  
 WATER RIGHTS  
 SACRAMENTO

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), CHARLES CARPENTER, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

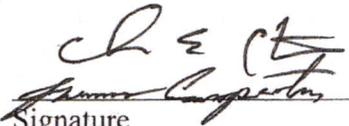
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Q Reid Chk#  
 \$500.00 0791003961  
 11/2/17 MS

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

  
\_\_\_\_\_  
Signature

1/19/17  
\_\_\_\_\_  
Date

CHARLES CARPENTER & JAMES CARPENTER  
Printed or typed name

CO-OWNERS  
\_\_\_\_\_  
Title

CO-OWNERS  
\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**State Water Resources Control Board**

November 28, 2016

In Reply Refer to:  
BRC:1:463:A025882

Certified Mail No. 7004-2510-0003-9145-2274  
Return Receipt Requested

FRIANT POWER AUTHORITY  
c/o BILL R CARLISLE  
P.O. BOX 279  
DELANO, CA 93216

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 13286 (APPLICATION A025882), DIVERSION OF WATER FROM SAN JOAQUIN RIVER IN FRESNO COUNTY

This provides legal notice to FRIANT POWER AUTHORITY of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

**VIOLATION DESCRIPTION:**

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

**STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$3,500.

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

In summary, Licensee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount 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 Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FRIANT POWER AUTHORITY**  
(Application A025882, License 13286)

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SOURCE: SAN JOAQUIN RIVER

COUNTY: FRESNO

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. FRIANT POWER AUTHORITY (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$3,500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

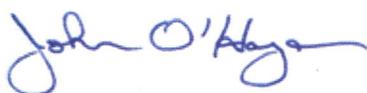
#### RIGHT TO HEARING

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

**EXHIBIT A**

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

**FRIANT POWER AUTHORITY**  
**Source: SAN JOAQUIN RIVER**  
**County: FRESNO**  
**License: 13286**

2017 JAN 26 PM 2:59  
STATE WATER RESOURCES CONTROL BOARD  
SACRAMENTO, CALIFORNIA

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), FRIANT POWER AUTHORITY, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$3500** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

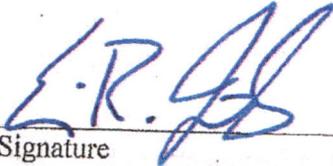
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

*Rec'd  
chk# 399101  
\$3,500.00  
1/26/17  
MS*

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

  
\_\_\_\_\_  
Signature

12/27/16  
\_\_\_\_\_  
Date

Eric R. Quinley  
\_\_\_\_\_  
Printed or typed name

General Manager, Friant Power Authority  
\_\_\_\_\_  
Title

\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

Please return the completed Acceptance and Waiver by mail to the address above.



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:469:A026054

Certified Mail No. 7004-2510-0003-9145-2335  
Return Receipt Requested

DREAM RANCH WEST LLC  
c/o ELDEN CAMPBELL  
46-E PENINSULA CTR #345  
ROLLING HILLS ESTATES, CA 90274

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 12034 (APPLICATION A026054), DIVERSION OF WATER FROM UNNAMED STREAM IN MARIPOSA COUNTY

This provides legal notice to DREAM RANCH WEST LLC of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

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** be imposed for Licensee's failure to file the 2015 Annual Use Reports. 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Licensee has two options in responding:

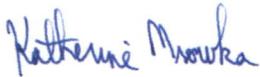
1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures: 

- 1) Administrative Civil Liability Complaint
- 2) Conditional Settlement Offer
- 3) Confidential User Information Sheet
- 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**DREAM RANCH WEST LLC**  
(Application A026054, License 12034)

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SOURCE: UNNAMED STREAM

COUNTY: MARIPOSA

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. DREAM RANCH WEST LLC (referred to herein as Licensee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations. Section 929 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Licensee reminding Licensee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Licensee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Licensee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Licensee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Licensee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Licensee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file 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."
13. This Conditional Offer requires Licensee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Licensee's failure to comply to date, maximum amount of allowed diversion under the License along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Licensee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

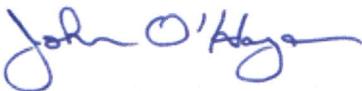
**RIGHT TO HEARING**

16. 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 this notice is received as required by Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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.
19. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Licensee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

EXHIBIT A**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER  
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION**STATE WATER RESOURCES  
CONTROL BOARD  
2016 DEC 19 PM 1:32  
WATER RIGHTS  
SACRAMENTO**DREAM RANCH WEST LLC  
Source: UNNAMED STREAM  
County: MARIPOSA  
License: 12034**

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), DREAM RANCH WEST LLC, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

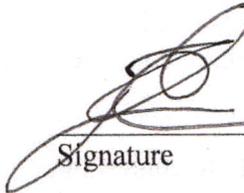
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd Chk# 1392  
\$250.00  
12/19/16  
MS

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

  
\_\_\_\_\_  
Signature

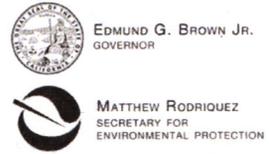
12-10-16  
Date

ELDEN CAMPBELL  
Printed or typed name

MANAGING MEMBER  
Title

\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

Please return the completed Acceptance and Waiver by mail to the address above.



## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:517:A029255

Certified Mail No. 7004-2510-0003-9145-1765  
Return Receipt Requested

FANDANGO LLC  
c/o JOANNE ROWNING  
805 SW BROADWAY STE 1200  
PORTLAND, OR 97205

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 20759 (APPLICATION A029255), DIVERSION OF WATER FROM UNNAMED STREAM IN SAN MATEO COUNTY

This provides legal notice to FANDANGO LLC of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Permittee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Permittee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Permittee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FANDANGO LLC**

(Application A029255, Permit 20759)

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SOURCE: UNNAMED STREAM

COUNTY: SAN MATEO

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. FANDANGO LLC (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, 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

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:  
  
State Water Resources Control Board  
Division of Water Rights  
Attn: Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000
20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

JY

20759

S

Record: 517

**EXHIBIT A**

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

**FANDANGO LLC**

**Source: UNNAMED STREAM**

**County: SAN MATEO**

**License: 20759**

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), FANDANGO LLC, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250 (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.**
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd  
CHK # 0061402937  
\$250.00  
2-21-17 JJ

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

Michael R. Whalen  
Signature

12/30/2016  
Date

MICHAEL R. WHALEN  
Printed or typed name

MANAGER, FANDANGO LLC  
Title

\_\_\_\_\_  
(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:518:A029256

Certified Mail No. 7004-2510-0003-9145-1772  
Return Receipt Requested

FANDANGO LLC  
c/o JOANNE ROWNING  
805 SW BROADWAY STE 1200  
PORTLAND, OR 97205

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 20621 (APPLICATION A029256), DIVERSION OF WATER FROM UNNAMED STREAM IN SAN MATEO COUNTY

This provides legal notice to FANDANGO LLC of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Permittee has **20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Permittee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Permittee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

- Enclosures:
- 1) Administrative Civil Liability Complaint
  - 2) Conditional Settlement Offer
  - 3) Confidential User Information Sheet
  - 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FANDANGO LLC**

(Application A029256, Permit 20621)

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SOURCE: UNNAMED STREAM

COUNTY: SAN MATEO

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. FANDANGO LLC (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, 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

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

JY

# 20621

S

Record: 518

EXHIBIT A

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

**FANDANGO LLC  
Source: UNNAMED STREAM  
County: SAN MATEO  
License: 20621**

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), FANDANGO LLC, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250 (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.**
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd  
CHK #0061402935  
\$250.00  
2.21.17 JH

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

Michael R. Whalen  
Signature

12/30/2016  
Date

Michael R. Whalen  
Printed or typed name

MANAGER, PANDANGO LLC  
Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:519:A029257

Certified Mail No. 7004-2510-0003-9145-1789  
Return Receipt Requested

FANDANGO LLC  
c/o JOANNE ROWNING  
805 SW BROADWAY STE 1200  
PORTLAND, OR 97205

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 20758 (APPLICATION A029257), DIVERSION OF WATER FROM UNNAMED STREAM IN SAN MATEO COUNTY

This provides legal notice to FANDANGO LLC of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. **Permittee has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act. Therefore, this matter requires Permittee's immediate attention.**

### VIOLATION DESCRIPTION:

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)



Record ID: 519

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$250.

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

In summary, Permittee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

- Enclosures:
- 1) Administrative Civil Liability Complaint
  - 2) Conditional Settlement Offer
  - 3) Confidential User Information Sheet
  - 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FANDANGO LLC**

(Application A029257, Permit 20758)

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SOURCE: UNNAMED STREAM

COUNTY: SAN MATEO

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. FANDANGO LLC (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$250, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, 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

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

JY

20758

S

Record: 519

EXHIBIT A

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

**FANDANGO LLC**  
**Source: UNNAMED STREAM**  
**County: SAN MATEO**  
**License: 20758**

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), FANDANGO LLC, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$250 (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.**
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd  
CHK# 0061402936  
\$ 250.00  
2-21-17 JH

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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

Michael R. Whalen  
Signature

12/30/2016  
Date

MICHAEL R. WHALEN  
Printed or typed name

MANAGER, FANDAUSSO LLC  
Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:545:A030593

Certified Mail No. 7004-2510-0003-9145-2045  
Return Receipt Requested

FRIANT POWER AUTHORITY  
c/o BILL R CARLISLE  
P.O. BOX 279  
DELANO, CA 93216

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 20967 (APPLICATION A030593), DIVERSION OF WATER FROM SAN JOAQUIN RIVER IN FRESNO COUNTY

This provides legal notice to FRIANT POWER AUTHORITY of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Permittee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Permittee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$3,500.

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

In summary, Permittee has two options in responding:

1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,



Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FRIANT POWER AUTHORITY**  
(Application A030593, Permit 20967)

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SOURCE: SAN JOAQUIN RIVER

COUNTY: FRESNO

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. FRIANT POWER AUTHORITY (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$3,500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

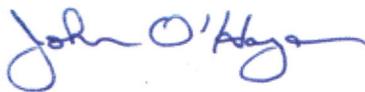
#### RIGHT TO HEARING

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

Dated: **November 28, 2016**

EXHIBIT A

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

**FRIANT POWER AUTHORITY**  
**Source: SAN JOAQUIN RIVER**  
**County: FRESNO**  
**License: 20967**

2017 JAN 26 PM 2:59  
STATE WATER RESOURCES CONTROL BOARD

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), FRIANT POWER AUTHORITY, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$3500** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

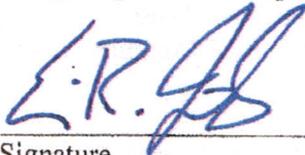
*Rec'd  
Chk# 399099  
\$3,500.00  
1/26/17  
MS*

Conditional Settlement Offer  
State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Unit  
P.O. Box 2000  
Sacramento, CA 95812-2000

2017 JAN 26 PM 2:59  
SACRAMENTO, CA  
DIVISION OF WATER RIGHTS  
ENFORCEMENT UNIT

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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



Signature

12/27/16

Date

Eric R. Quinley

Printed or typed name

General Manager, Friant Power Authority

Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:551:A031186

Certified Mail No. 7004-2510-0003-9145-2106  
Return Receipt Requested

FRIANT POWER AUTHORITY  
c/o BILL R CARLISLE  
P.O. BOX 279  
DELANO, CA 93216

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 21126 (APPLICATION A031186), DIVERSION OF WATER FROM SAN JOAQUIN RIVER IN FRESNO COUNTY

This provides legal notice to FRIANT POWER AUTHORITY of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Permittee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Permittee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Permittee's immediate attention.

### **VIOLATION DESCRIPTION:**

Division records show that Permittee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Permittee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Permittee failed to submit the 2015 Annual Use Report for the subject rights.

### **STATUTORY LIABILITY:**

Title 23, Chapter 2.7, Article 2, Section 925 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Accordingly, as of today's date, the maximum civil liability for which Permittee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

Based on Permittee'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** be imposed for Permittee's failure to file the 2015 Annual Use Reports. If Permittee 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 ACL 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 2015 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Permittee the opportunity to accept a conditional settlement offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, provides that Permittee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to pay an Expedited Payment Amount of \$3,500.

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

In summary, Permittee has two options in responding:

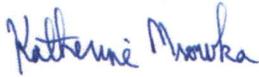
1. Accept the Conditional Offer by:
  - a. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee can contact Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not respond with one of these two options, then the State Water Board will issue a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka".

Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

- Enclosures:
- 1) Administrative Civil Liability Complaint
  - 2) Conditional Settlement Offer
  - 3) Confidential User Information Sheet
  - 4) Hearing Information Sheet

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by

**FRIANT POWER AUTHORITY**  
(Application A031186, Permit 21126)

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SOURCE: SAN JOAQUIN RIVER

COUNTY: FRESNO

---

### YOU ARE HEREBY GIVEN NOTICE THAT:

1. FRIANT POWER AUTHORITY (referred to herein as Permittee) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 925 of the California Code of Regulations. Section 925 requires annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right Permit.
2. Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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 January 2016, the Division of Water Rights (Division) mailed out a notice to Permittee reminding Permittee of the requirement to submit the 2015 Annual Use Report by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Permittee that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Permittee to contact the Division by phone or email with any questions regarding the new reporting process.
6. Permittee failed to submit the 2015 Annual Use Report online by the deadline, June 30, 2016.
7. On August 25, 2016, the Division mailed out a deficiency letter requesting that the 2015 Annual Use

Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist. As of November 28, 2016, 95 days after the date of the August 25, 2016, letter, Permittee has failed to submit their 2015 Annual Use Report to the Report Management System.

#### PROPOSED CIVIL LIABILITY

8. California Water Code section 1846(a)(2) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board in an amount not to exceed \$500 for each day in which the violation occurs.
9. As of November 28, 2016, Permittee has been in violation for 150 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is **\$75,000** (150 days at \$500/day).
10. 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, 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.
11. In this case, the 2015 Annual Use Report was due by June 30, 2016. Despite the January 2016 initial notification and August 25, 2016 deficiency letter, Permittee to date has failed to submit the 2015 Annual Use Report. 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. Having taken into consideration all relevant circumstances, including but not limited to the failure of Permittee to submit the 2015 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of **\$10,000** in administrative civil liability (Proposed Liability).

#### CONDITIONAL SETTLEMENT OFFER

12. 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 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."
13. This Conditional Offer requires Permittee to pay an Expedited Payment Amount of \$3,500, file the Annual Use Report within 20 days of receipt of this complaint, and waive the right to a hearing and reconsideration of the alleged violations. This Expedited Payment Amount is based on Permittee's failure to comply to date, maximum amount of allowed diversion under the Permit along with staff costs incurred in preparing the ACL complaint.
14. To accept the Conditional Offer, Permittee must:
  - a. Submit the 2015 annual use report online within **20** days of receipt of this complaint
  - b. Sign and return the Acceptance and Waiver within **20** days of receipt of this complaint, and
  - c. Remit the Expedited Payment Amount within **20** days of receipt of this complaint.

15. 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 Kathy Mrowka, 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

16. 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 Water Code section 1055, subdivision (b).
17. 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, your hearing date will be one of the dates referenced in our included hearing notice. A separate notice setting the specific 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.
18. 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 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.
19. 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 electronically file the necessary 2015 Annual Use Report and remit a cashier's check or money order for the Proposed Liability set forth in paragraph 11 above, to:

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

20. If Permittee neither requests a hearing within 20 days of the date this complaint is received nor accepts the Conditional Settlement Offer, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

**Dated: November 28, 2016**

EXHIBIT A

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

**FRIANT POWER AUTHORITY**

**Source: SAN JOAQUIN RIVER**

**County: FRESNO**

**License: 21126**

2017 JAN 26 PM 2:59

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), FRIANT POWER AUTHORITY, (Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint issued to Recipient (ACL Complaint), to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the settlement agreement. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

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

Recipient 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 1846(a)(2), in the sum of \$3500** (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 1846(a)(2) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2015 Annual Use Report**

Recipient understands that failure to fulfill the above obligations and submit the signed Acceptance and Waiver within 20 days of receipt of the ACL Complaint shall render the Conditional Offer void. If the Conditional Offer is deemed void due to Recipient's non-performance, then the Assistant Deputy Director for Water Rights will issue a final ACL Order for the amount of \$10,000 for the failure to file violation and shall seek recovery.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the settlement agreement.

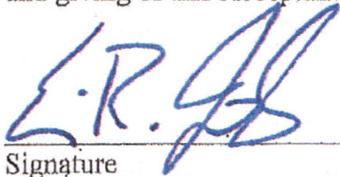
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Rec'd  
Chk# 399100  
\$3,500.00  
1/26/17 MS

**Conditional Settlement Offer**  
**State Water Resources Control Board**  
**Division of Water Rights**  
**Attention: Enforcement Unit**  
**P.O. Box 2000**  
**Sacramento, CA 95812-2000**

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under redelegated authority.

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



Signature

12/27/16

Date

Eric R. Quinley

Printed or typed name

General Manager, Friant Power Authority

Title

(Relationship to Recipient, if not Recipient)

**Please return the completed Acceptance and Waiver by mail to the address above.**