

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

DIVISION OF WATER RIGHTS

ORDER WR 2017-0024-DWR

ORDER APPROVING SETTLEMENT AGREEMENT

In the Matter of Violation of Annual Reporting Requirements by

Parties Listed in Attachment A

BY THE ASSISTANT DEPUTY DIRECTOR FOR WATER RIGHTS¹

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

Dated: 3/30/17

Attachment A: List of Parties

¹ 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
A026638	License 12403	BELL'ACQUA INC
A023038	Permit 15913	BROOKTRAILS COMMUNITY SERVICES DISTRICT
A018383	License 6804	DAVID DONAHUE ZWALD
A018384	License 6805	DAVID DONAHUE ZWALD
A020680	License 8708	KARYNN L BARMBY
A018455	License 7523	STEVEN L TATREAU
A020916	License 10783	THE MCARTHUR 1989 TRUST
A014118	License 5469	WILLIAM E JARVIS
A018197	License 7173	WILLIAM E JARVIS
A026423	Permit 18523	WILLIAM E JARVIS
A026424	Permit 18524	WILLIAM E JARVIS
A029182	Permit 20414	WILLIAM E JARVIS
A016787	License 5512	YVETTE GREEN



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 28, 2016

In Reply Refer to:
BRC:1:484:A026638

Certified Mail No. 7004-2510-0003-9145-2489
Return Receipt Requested

BELL'ACQUA INC
2740 FULTON AVE STE 101-2
SACRAMENTO, CA 95821

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 12403 (APPLICATION A026638), DIVERSION OF WATER FROM DRY CREEK IN SACRAMENTO COUNTY

This provides legal notice to BELL'ACQUA INC 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 1st 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

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 \$1,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

BELL'ACQUA INC

(Application A026638, License 12403)

SOURCE: DRY CREEK

COUNTY: SACRAMENTO

YOU ARE HEREBY GIVEN NOTICE THAT:

1. BELL'ACQUA INC (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 1st 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 \$1,000, 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

VV
A020638
ACL

Record: 484

EXHIBIT A

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

BELL'ACQUA INC
Source: DRY CREEK
County: SACRAMENTO
License: 12403

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), BELL'ACQUA INC, (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 \$1000** (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# 6316
\$1,000.00
4-17-17#
ACC & waiver
Fee
A020638

VV
A026638
ACL

A026638
Acceptance and Waiver

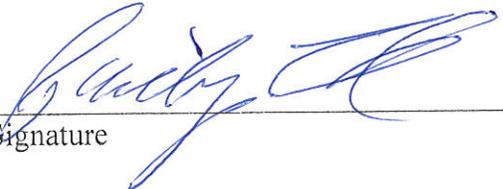
Page 2 of 2

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

SWRCB - DWR
'17 APR 17 PM 1:44

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

4/14/17

Date

Phillip Todd

Printed or typed name

Vice President

Title

(Relationship to Recipient, if not Recipient)

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

Rec'd
Chk # 6316
\$ 1,000.00
A026638
4-17-17 ft
ACC & Waiver
Fee

[Faint, illegible text]



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 28, 2016

In Reply Refer to:
BRC:1:391:A023038

Certified Mail No. 7004-2510-0003-9145-8948
Return Receipt Requested

BROOKTRAILS COMMUNITY SERVICES DISTRICT
24860 BIRCH ST
WILLITS, CA 95490

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 15913 (APPLICATION A023038), DIVERSION OF WATER FROM WILLITS CREEK IN MENDOCINO COUNTY

This provides legal notice to BROOKTRAILS COMMUNITY SERVICES DISTRICT 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 1st 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

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 \$1,500.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

BROOKTRAILS COMMUNITY SERVICES DISTRICT

(Application A023038, Permit 15913)

SOURCE: WILLITS CREEK

COUNTY: MENDOCINO

YOU ARE HEREBY GIVEN NOTICE THAT:

1. BROOKTRAILS COMMUNITY SERVICES DISTRICT (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 1st 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 \$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 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**

STATE WATER RESOURCES
CONTROL BOARD

DEC 22 AM 12:51

CIVIL LIABILITY RIGHTS
SACRAMENTO

BROOKTRAILS COMMUNITY SERVICES DISTRICT

Source: WILLITS CREEK

County: MENDOCINO

License: 15913

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), BROOKTRAILS COMMUNITY SERVICES DISTRICT, (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:

*\$1,500.00
CH# 327159
ACM*

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


Date


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:1:282:A018383

Certified Mail No. 7004-2510-0003-9145-7859
Return Receipt Requested

DAVID DONAHUE ZWALD
9973 E SONORA RD
FARMINGTON, CA 95230

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 6804 (APPLICATION A018383), DIVERSION OF WATER FROM UNXX IN CALAVERAS COUNTY

This provides legal notice to DAVID DONAHUE ZWALD 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 1st 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

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.

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

In the Matter of Violation of Annual Reporting Requirements by

DAVID DONAHUE ZWALD
(Application A018383, License 6804)

SOURCE: UNXX

COUNTY: CALAVERAS

YOU ARE HEREBY GIVEN NOTICE THAT:

1. DAVID DONAHUE ZWALD (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 1st 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****DAVID DONAHUE ZWALDC****Source: UNXX****County: CALAVERAS****License: 6804**

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), DAVID DONAHUE ZWALDC, (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.
\$ 250.00
CH# 7573
AcM

STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 16 AM 12:10
WATER RIGHTS
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.

David Zwald

Signature

12/15/10

Date

David Zwald

Printed or typed name

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:1:283:A018384

Certified Mail No. 7004-2510-0003-9145-7866
Return Receipt Requested

DAVID DONAHUE ZWALD
9973 E SONORA RD
FARMINGTON, CA 95230

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 6805 (APPLICATION A018384), DIVERSION OF WATER FROM UNXX IN CALAVERAS COUNTY

This provides legal notice to DAVID DONAHUE ZWALD 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 1st 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

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.

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

In the Matter of Violation of Annual Reporting Requirements by

DAVID DONAHUE ZWALD
(Application A018384, License 6805)

SOURCE: UNXX

COUNTY: CALAVERAS

YOU ARE HEREBY GIVEN NOTICE THAT:

1. DAVID DONAHUE ZWALD (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 1st 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****DAVID DONAHUE ZWALDC****Source: UNXX****County: CALAVERAS****License: 6805**STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 19 PM 12:49
DIV. OF 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), DAVID DONAHUE ZWALD, (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 7574
12/19/16
MS

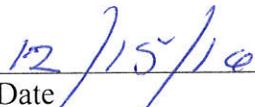
Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit
P.O. Box 2000
Sacramento, CA 95812-2000

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.



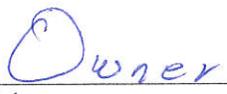
Signature



Date



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:1:342:A020680

Certified Mail No. 7004-2510-0003-9145-8450
Return Receipt Requested

KARYNN L BARMBY
P.O. BOX 627
CLEMENTS, CA 95227

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 8708 (APPLICATION A020680), DIVERSION OF WATER FROM UNNAMED STREAM IN SAN JOAQUIN COUNTY

This provides legal notice to KARYNN L BARMBY 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 1st 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

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.

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

In the Matter of Violation of Annual Reporting Requirements by

KARYNN L BARMBY

(Application A020680, License 8708)

SOURCE: UNNAMED STREAM

COUNTY: SAN JOAQUIN

YOU ARE HEREBY GIVEN NOTICE THAT:

1. KARYNN L BARMBY (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 1st 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**

KARYNN L BARMBY
Source: UNNAMED STREAM
County: SAN JOAQUIN
License: 8708

STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 15 AM 11:23
DIV OF 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), KARYNN L BARMBY, (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:

#5043 962892
12/15/16
\$100.00
AEM

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.

Karyn Barmby
Signature

12-8-2010
Date

Karyn Barmby
Printed or typed name

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:1:287:A018455

Certified Mail No. 7004-2510-0003-9145-7903
Return Receipt Requested

STEVEN L TATREAU
8500 TORO CREEK RD
ATASCADERO, CA 93422

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 7523 (APPLICATION A018455), DIVERSION OF WATER FROM TORO CREEK UNDERFLOW IN SAN LUIS OBISPO COUNTY

This provides legal notice to STEVEN L TATREAU 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 1st 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

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.

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka". The signature is written in a cursive, flowing style.

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

In the Matter of Violation of Annual Reporting Requirements by

STEVEN L TATREAU

(Application A018455, License 7523)

SOURCE: TORO CREEK UNDERFLOW

COUNTY: SAN LUIS OBISPO

YOU ARE HEREBY GIVEN NOTICE THAT:

1. STEVEN L TATREAU (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 1st 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****STEVEN L TATREAU****Source: TORO CREEK UNDERFLOW****County: SAN LUIS OBISPO****License: 7523**STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 13 AM 8:45
DIV OF 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), STEVEN L TATREAU, (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 200221845
12/13/16
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.

Sheryl Tatreau
Signature

12-7-16
Date

Sheryl Tatreau
Printed or typed name

Title

property owner / wife
(Relationship to Recipient, if not Recipient)

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

Steve Tatreau



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 28, 2016

In Reply Refer to:
BRC:1:344:A020916

Certified Mail No. 7004-2510-0003-9145-8474
Return Receipt Requested

THE MCARTHUR 1989 TRUST
c/o ROD MCARTHUR
P.O. BOX 245
MCARTHUR, CA 96056

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 10783 (APPLICATION A020916), DIVERSION OF WATER FROM EAST FORK JUNIPER CREEK, UNNAMED STREAM IN LASSEN COUNTY

This provides legal notice to THE MCARTHUR 1989 TRUST 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 1st 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

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 \$2,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

THE MCARTHUR 1989 TRUST
(Application A020916, License 10783)

SOURCE: EAST FORK JUNIPER CREEK, UNNAMED STREAM

COUNTY: LASSEN

YOU ARE HEREBY GIVEN NOTICE THAT:

1. THE MCARTHUR 1989 TRUST (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 1st 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 \$2,000, 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****THE MCARTHUR 1989 TRUST****Source: EAST FORK JUNIPER CREEK, UNNAMED STREAM****County: LASSEN****License: 10783**

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), THE MCARTHUR 1989 TRUST, (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 \$2000** (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.

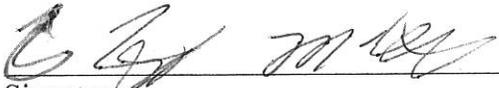
Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

STATE WATER RESOURCES CONTROL BOARD
2016 DEC -7 PM 12:50
DIV OF WATER RIGHTS
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.

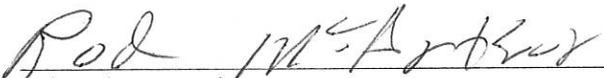
I hereby affirm that I am duly authorized to act on behalf of and to bind the Recipient in the making and giving of this Acceptance and Waiver.



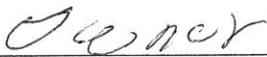
Signature



Date



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:1:161:A014118

Certified Mail No. 7004-2510-0003-9145-6630
Return Receipt Requested

WILLIAM E JARVIS
c/o DEANNA MARTINEZ
2970 MONTICELLO RD
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 5469 (APPLICATION A014118), DIVERSION OF WATER FROM UNNAMED CREEK IN NAPA COUNTY

This provides legal notice to WILLIAM E JARVIS 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 1st 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

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 \$1,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

WILLIAM E JARVIS

(Application A014118, License 5469)

SOURCE: UNNAMED CREEK

COUNTY: NAPA

YOU ARE HEREBY GIVEN NOTICE THAT:

1. WILLIAM E JARVIS (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 1st 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 \$1,000, 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****WILLIAM E JARVISC****Source: UNNAMED CREEK****County: NAPA****License: 5469**

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), WILLIAM E JARVIS, (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 \$1000** (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 #
\$1,000.00 118911425
(of \$5,000.00)
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.

DMartinez
Signature

12.8.16
Date

Deanna Martinez
Printed or typed name

General Manager
Title

employee
(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:1:273:A018197

Certified Mail No. 7004-2510-0003-9145-7767
Return Receipt Requested

WILLIAM E JARVIS
c/o DEANNA MARTINEZ
2970 MONTICELLO RD
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 7173 (APPLICATION A018197), DIVERSION OF WATER FROM UNNAMED STREAM IN NAPA COUNTY

This provides legal notice to WILLIAM E JARVIS 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 1st 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

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 \$1,000.

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.

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka". The signature is written in a cursive style.

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

In the Matter of Violation of Annual Reporting Requirements by

WILLIAM E JARVIS

(Application A018197, License 7173)

SOURCE: UNNAMED STREAM

COUNTY: NAPA

YOU ARE HEREBY GIVEN NOTICE THAT:

1. WILLIAM E JARVIS (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 1st 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 \$1,000, 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
A018197

EXHIBIT A

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

WILLIAM E JARVISC
Source: UNNAMED STREAM
County: NAPA
License: 7173

STATE WATER RESOURCES CONTROL BOARD
2016 DEC 30 AM 10:49
DIV OF 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), WILLIAM E JARVIS, (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 \$1000** (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# 118911425
\$1,000.00
(of \$5,000.00)
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.

J. Mackin
Signature

12-8-16
Date

Deanna Martinez
Printed or typed name

General Mgr.
Title

employee
(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:1:477:A026423

Certified Mail No. 7004-2510-0003-9145-2410
Return Receipt Requested

WILLIAM E JARVIS
2970 MONTICELLO RD
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 18523 (APPLICATION A026423), DIVERSION OF WATER FROM UNNAMED STREAM IN NAPA COUNTY

This provides legal notice to WILLIAM E JARVIS 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 1st 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

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 \$1,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

WILLIAM E JARVIS

(Application A026423, Permit 18523)

SOURCE: UNNAMED STREAM

COUNTY: NAPA

YOU ARE HEREBY GIVEN NOTICE THAT:

1. WILLIAM E JARVIS (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 1st 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 \$1,000, 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****WILLIAM E JARVIS****Source: UNNAMED STREAM****County: NAPA****License: 18523**

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), WILLIAM E JARVIS, (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 \$1000** (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# 118911425
\$1,000.00
(of \$5,000.00)
12/30/16
MS

STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 30 AM 10:49
WATER RIGHTS
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.

DMartinez
Signature

12-8-16
Date

Deanna Martinez
Printed or typed name

General Mgr.
Title

employee
(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 RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 28, 2016

In Reply Refer to:
BRC:1:478:A026424

Certified Mail No. 7004-2510-0003-9145-2427
Return Receipt Requested

WILLIAM E JARVIS
c/o DEANNA MARTINEZ
2970 MONTICELLO RD
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 18524 (APPLICATION A026424), DIVERSION OF WATER FROM UNNAMED STREAM IN NAPA COUNTY

This provides legal notice to WILLIAM E JARVIS 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 1st 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

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 \$1,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

WILLIAM E JARVIS

(Application A026424, Permit 18524)

SOURCE: UNNAMED STREAM

COUNTY: NAPA

YOU ARE HEREBY GIVEN NOTICE THAT:

1. WILLIAM E JARVIS (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 1st 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 \$1,000, 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.

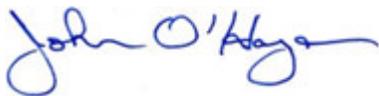
RIGHT TO HEARING

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****WILLIAM E JARVIS****Source: UNNAMED STREAM****County: NAPA****License: 18524**

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), WILLIAM E JARVIS, (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 \$1000** (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# 118911425
\$1,000.00
(of \$5,000.00)
12/30/16
MS

STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 30 AM 10:49
DIV OF WATER RIGHTS
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.

DMartinez
Signature

12.8.16
Date

DeannaMartinez
Printed or typed name

General Mgr.
Title

employee
(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:1:514:A029182

Certified Mail No. 7004-2510-0003-9145-1734
Return Receipt Requested

WILLIAM E JARVIS
c/o DEANNA MARTINEZ
2970 MONTICELLO RD
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER PERMIT 20414 (APPLICATION A029182), DIVERSION OF WATER FROM UNNAMED STREAM IN NAPA COUNTY

This provides legal notice to WILLIAM E JARVIS 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 1st 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

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 \$1,000.

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.

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

In the Matter of Violation of Annual Reporting Requirements by

WILLIAM E JARVIS

(Application A029182, Permit 20414)

SOURCE: UNNAMED STREAM

COUNTY: NAPA

YOU ARE HEREBY GIVEN NOTICE THAT:

1. WILLIAM E JARVIS (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 1st 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 \$1,000, 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
A029182

EXHIBIT A

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

STATE WATER RESOURCES
CONTROL BOARD
2016 DEC 30 AM 10:49
DIV OF WATER RIGHTS
SACRAMENTO

WILLIAM E JARVIS
Source: UNNAMED STREAM
County: NAPA
License: 20414

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), WILLIAM E JARVIS, (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 \$1000** (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#
\$1,000.00 118911425
(of \$5,000.00)
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.

DMartinez
Signature

12.8.16
Date

Deanna Martinez
Printed or typed name

General Mgr.
Title

employee
(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:1:237:A016787

Certified Mail No. 7004-2510-0003-9145-7392
Return Receipt Requested

YVETTE GREEN
6188 CENTERVILLE RD
FERNDALE, CA 95536

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 5512 (APPLICATION A016787), DIVERSION OF WATER FROM FLEENER CREEK IN HUMBOLDT COUNTY

This provides legal notice to YVETTE GREEN 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 1st 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

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.

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

In the Matter of Violation of Annual Reporting Requirements by

YVETTE GREEN

(Application A016787, License 5512)

SOURCE: FLEENER CREEK

COUNTY: HUMBOLDT

YOU ARE HEREBY GIVEN NOTICE THAT:

1. YVETTE GREEN (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 1st 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****YVETTE GREENC****Source: FLEENER CREEK****County: HUMBOLDT****License: 5512**

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), YVETTE GREEN, (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 108601053
1/4/17 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.

Yvette Green
Signature

12/5/16
Date

Yvette Green
Printed or typed name

Title

(Relationship to Recipient, if not Recipient)

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