

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

**DELTA WATERMASTER**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Failure to File a Statement of Water Diversion and Use by

**J. W. Silveira and B. O. Silveira**

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SOURCE: San Joaquin River

COUNTY: San Joaquin

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. California Water Code sections 5100-5107 establish a program requiring persons (with some exceptions not relevant to you) who divert water from a surface stream to file statements of their water diversion and use (statement).
2. J.W. Silveira and B. O. Silveira (the Silveiras) are alleged to have violated California Water Code section 5107(b), which states, in part:  
  
*Any person **who fails to file a statement** required to be filed under this part for diversion or use that occurs after January 1, 2009...*
3. California Water Code section 5107(c)(1) provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in the amount of \$1,000 for the failure to file a statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the State Water Board has called the violation to the attention of that person.
4. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to issue administrative civil liability complaints to persons who divert water in the Delta. On October 5, 2010, the State Water Board delegated such authority to the Delta Watermaster under Resolution 2010-0048.

**ALLEGATIONS**

5. In July of 2011, a review of aerial photographs of the southern Sacramento-San Joaquin Delta for the years 2009 and 2010 was undertaken by the State Water Resources Control Board, Division of Water Rights (Division). The review provided evidence that San Joaquin County Assessors Parcel Numbers 191-190-01 and 191-200-02 were being irrigated. According to San Joaquin County, the Silveiras are the current owners of parcels 191-190-01 and 191-200-02. From a review of water rights filed with the Division, the Division concluded that there was no record of a statement of water use having been filed in accordance with Water Code section 5101 et. seq. for these parcels.

6. On August 15, 2011, the Division mailed the Silveiras a letter which indicated that the Silveiras appeared to be diverting water for irrigation of APNs 191-190-01 and 191-200-02 during water years 2009 and 2010. If the Silveiras diverted water for irrigation in 2009 and 2010, the letter advised them of the requirements to file a statement and potential penalties for failure to file a statement pursuant to Water Code section 5100, et.seq. The letter informed them that the State Water Board did not have any record of a statement being filed on the Silveiras behalf for the subject property. The letter advised the Silveiras that if they failed to file a statement, or evidence indicating that a statement was not required within 30 days of the receipt of the letter, potential enforcement may include civil liability of an initial \$1,000, plus an additional \$500 per day commencing 30 days from the date of the letter.
7. On October 10, 2011, State Water Board staff telephoned the Silveiras' residence and spoke with Mr. J. W. Silveira. Mr. Silveira confirmed that he and his wife, Barbara O. Silveira (B.O. Silveira) own the subject property and irrigate grass using water pumped from the San Joaquin River. Staff also asked Mr. Silveira if he had filed a statement and he could not confirm that he did.
8. By October 20, 2011, the State Water Board's records indicate that the letter was not returned by the U.S. Postal Service, and that the Silveiras had not filed a statement.

#### **PROPOSED CIVIL LIABILITY**

9. The Silveiras failed to file a statement for their diversion and use of water from the San Joaquin River for either the 2009 or 2010 irrigation season by the deadline of July 1 of either year. The California Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability pursuant to section 1055 in an amount not to exceed \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the State Water Board has called the violation to the attention of that person. Such notice was provided on August 15, 2011.
10. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances. By October 20, 2011, the Silveiras have been on notice of the requirements for filing a statement for 35 days, therefore the maximum civil liability that can be considered for this time is \$1,000 plus 35 days (\$500), or \$18,500.
11. In this case, the Silveiras confirmed that they divert water from the San Joaquin River to irrigate grass and to this date they have not filed the required statement despite notification being sent.
12. Having taken into consideration all relevant circumstances, including staff costs, the Delta Watermaster recommends an administrative civil liability of not less than \$10,000, if this matter goes to hearing. This amount is necessary to recover staff costs and to impose a disincentive for continued violations of the new statement law. At hearing, the State Water Board may consider up to the maximum amount provided by law:
  - a. However, if within 20 days of receipt of this complaint, the Silveiras file a statement for their diversion and use of water from the San Joaquin River with the State Water Board, including a payment of \$1,500, and a written statement agreeing to waive their rights to hearing and reconsideration of this matter, the remaining \$8,500 in administrative civil liability is suspended.

**RIGHT TO HEARING**

13. The Silveiras 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 this notice is received. (Water Code, sec. 1055, subd. (b).)
14. If the Silveiras request a hearing, the Silveiras will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, a separate notice setting the time and place for the hearing will be mailed no later than 10 days before the hearing date.
15. If the Silveiras request 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 its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
16. If the Silveiras do not wish to request a hearing, within 20 days of the date of this Complaint the Silveiras shall file a statement, waive their rights to hearing and reconsideration of this matter, and remit a cashier's check or money order for the amount of the ACL set forth in paragraph 12(a) above, to:

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

17. If the Silveiras do not request a hearing and do not remit the ACL, the State Water Board may seek recovery of the full amount of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Craig M. Wilson*  
*Delta Watermaster*

Dated: NOV 01 2011