

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violation of Annual Reporting Requirements by

KIRBY NEESE
(Statement S017178)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. KIRBY NEESE, hereinafter referred to as "You", is/are alleged to have violated Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations, which requires every water right Statement holder to submit a water diversion and use report by July 1 of each subsequent year for each water right Statement.
2. The State Water Resources Control Board (Board) may impose a civil liability of up to \$500 for each day in which the violation of a Board regulation occurs. (Water Code section 1846)
3. The Executive Director for the Board may issue an Administrative Civil Liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed. (Water Code section 1055)
4. 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. This authority has been redelegated to the Assistant Deputy Director.

ALLEGATIONS

5. The Board adopted the regulation mandating annual water use reporting requirements in 2010, codified in the California Code of Regulations; Title 23, Chapter 2.7, Article 2, section 920.
6. The purpose of the regulation is to develop a publicly available database, which allows both the Board and water users access to the information and make informed water management decisions. The value of the database is directly tied the amount and accuracy of information the Board collects through compliance with the regulation.
7. Water use information is critical to understanding and planning ahead for limited water supplies, identifying water conservation opportunities, assuring compliance with the quantity and seasonal use limitations of existing water rights, protecting water rights holders' priority of right, and providing for efficient management and use of water during times of shortages.
8. You are the owner of record for Statement S017178, and You are required to comply with the annual water diversion and use reporting regulation.
9. You failed to submit the 2016 Supplemental Statement of Diversion and Use ("2016 Report") by July 1, 2017.
10. In February 2018, the Division of Water Rights mailed out a notice reminding You of the requirement to submit online the 2017 Supplemental Statement of Diversion and Use ("2017 Report") by July 1, 2018, by logging into the electronic Water Rights Information and Management System, with the provided Username and Password.

11. You failed to submit the 2017 Report by the July 1, 2018, deadline.
12. On July 27, 2018, the Division mailed out a Notice of Deficiency, warning of the potential for enforcement if the 2016 and 2017 Reports were not submitted.
13. On September 17, 2018, the Division mailed out a final Notice of Deficiency, putting You on notice of imminent enforcement should the violation continue.
14. As of October 19, 2018, 475 days after the July 1, 2017, and 110 days after the July 1, 2018, deadlines, the 2016 and 2017 Reports have still not been submitted.

PROPOSED CIVIL LIABILITY

15. The Board may impose a civil liability of up to \$500 for each day in which the violation occurs for violating a Board regulation. (Water Code section 1846, subd. (a)(2))
16. As of October 19, 2018, You have been in violation for 475 days for failing to file the 2016 Report, and 110 days for failing to file the 2017 Report. The maximum liability for the violations alleged is **\$292,500** (585 days at \$500/day).
17. In determining the appropriate amount of a civil liability, California Water Code section 1848 requires that the 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.
18. In this case, the 2016 Report was due by July 1, 2017, and the 2017 Report was due by July 1, 2018. The value of the data to the public and the Board is tied to its timely submittal, and therefore an increased time lapse between the deadline and the date it is ultimately submitted results in increased harm to the regulatory program. The Board's forecasting of water availability during peak water use times of the year, and ability to regulate the resources it is required to protect is diminished by the failure to submit the Report on time. Moreover, the length of time over which the violations has occurred despite repeated attempts to contact You is significant. Finally, the report has not yet been submitted: You have made no effort to comply with the regulations.
19. Having taken into consideration all relevant circumstances, the Division recommends the imposition of **\$3,000** in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

20. You 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).
21. If You request a hearing, You will have an opportunity to contest the allegations in this complaint and the imposition of a fine by the Board. The Board will issue a notice setting the specific time and place for the hearing. The hearing notice will be mailed not less than 10 days before the hearing date.
22. At the hearing, the Board will consider whether to impose a monetary fine, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any Board order imposing an ACL shall be final and effective upon issuance.
23. If You do not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Assistant Deputy Director for the Division of Water Rights may then issue a final Administrative Civil Liability Order assessing the Proposed Liability.

CONDITIONAL SETTLEMENT OFFER

24. The Division makes the following conditional settlement offer: You may settle this matter without the need for a hearing before the Board, by 1) paying an Expedited Payment Amount of \$1,000, 2) filing the 2016 and 2017 Supplemental Statements of Diversion and Use, and 3) signing a waiver of the right to a hearing on the matter.
25. To accept this settlement offer, You must:
- a. Remit the Expedited Payment Amount within 20 days of receipt of this complaint
 - b. Submit the Report within 20 days of receipt of this complaint, and
 - c. Sign and return the Acceptance and Waiver within 20 days of receipt of this complaint.

STATE WATER RESOURCES CONTROL BOARD



*Jule Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: **October 19, 2018**

EXHIBIT A

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

KIRBY NEESE (“Diverter”)

STATEMENT S017178

By properly executing and returning this Acceptance and Waiver to the State Water Board, Diverter hereby accepts the Division of Water Right’s Conditional Settlement Offer and waives their right to a hearing before the State Water Board to contest the violations alleged in the attached ACL Complaint. Diverter also waives the right to request reconsideration of an order by the State Water Board resolving the violations alleged in the attached ACL Complaint.

In order to accept the Conditional Settlement Offer the following three (3) steps must be taken no later than 20 days following receipt of the ACL Complaint. Diverter *shall*:

- 1. File the Supplemental Statements of Diversion and Use for 2016 and 2017 by logging into the State Water Board’s website using the Username and Password identified in Username and Password Sheet mailed along with the ACL Complaint, and**
- 2. Pay \$1,000 as payment in full of the Administrative Civil Liability related to the alleged violations described in the ACL Complaint. Payment shall be made by cashier’s check, certified check, or money order made payable to the “State Water Resources Control Board,” and**
- 3. Properly execute and deliver this Acceptance and Waiver along with the payment to:**
 - State Water Resources Control Board
 - Division of Water Rights
 - Attention: Enforcement Unit – Failure to File
 - 1001 I Street, 14th Floor
 - Sacramento, CA 95814

Failure to complete all three (3) steps above shall render the Conditional Settlement Offer voidable and may subject Diverter to the full proposed liability (\$3,000) amount specified in the ACL Complaint.

By properly executing and returning this Acceptance and Waiver to the State Water Board, Diverter acknowledges and understands that:

1. This Acceptance and Waiver waives Diverter’s right to contest the allegations in the ACL Complaint and the amount of administrative civil liability for the alleged violations.
2. This Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint.

Acceptance and Waiver

- 3. The filing of a statement of water diversion and use with the State Water Board does not establish or constitute evidence of a right to divert or use water. (Water Code section 5106.)
- 4. This Acceptance and Waiver is not final and effective until it is approved by the Executive Director of the State Water Board.
- 5. Failure to complete all three steps to accept the Conditional Offer within 20 days of receipt of the ACL Complaint, shall render the Conditional Offer voidable. In such case, the State Water Board will issue a final ACL order for the full Proposed Liability amount (\$3,000) specified in the ACL Complaint.

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

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

(Relationship to Diverter if not Diverter)

Approved By: _____
Eileen Sobeck
Executive Director

(Date)