

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

DIVISION OF WATER RIGHTS

ORDER WR 2019-0037-EXEC

In the Matter of Administrative Civil Liability for Failure to File Annual Water Use Reports upon

Ostrom Family Trust

ORDER APPROVING SETTLEMENT AGREEMENTS

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of Administrative Civil Liability Complaints (ACL Complaints) to Ostrom Family Trust (Respondent). In accordance with the attached Settlement Agreements, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and the Respondent have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

The Respondent holds water right License 3393, License 3392, and Permit 12221.

The Respondent must, pursuant to regulations enacted by the State Water Board, submit a report online through the Board's website documenting the Respondent's water diversion and use (Annual Water Use Report) under License 3393, License 3392, and Permit 12221 by April 1 of each following calendar year. (Cal. Code Regs., tit. 23, §§ 847, 925 & 929). The Respondent was required to file the Annual Water Use Reports for the 2016 and 2017 water years by April 1, 2017 and April 1, 2018, respectively.

On July 27, 2018, the Division mailed to the Respondent a Notice of Deficiency. The Notice of Deficiency warned of the potential for enforcement if the required Annual Water Use Reports were not submitted.

On September 17, 2018, the Division mailed to the Respondent a final Notice of Deficiency, putting the Respondent on notice of imminent enforcement if the Annual Water Use Reports were not submitted.

¹ [State Water Board Resolution No. 2012-0061](#) delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On October 19, 2018, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority issued ACL Complaints to the Respondent for failing to file the required Annual Water Use Reports.

The ACL Complaints recommended administrative civil liability in the amount of \$1,500 per violation. The ACL Complaints included a cover letter explaining the violation and an offer to settle for \$500 per violation if the Respondent submitted the Annual Water Use Reports, signed and submitted a waiver of the right to a hearing on the matter, and submitted the settlement payment amount all within 20 days of receiving the ACL Complaints.

The recommended penalty of \$1,500 per violation is based on the relevant circumstances alleged in the ACL Complaints, including the failure of the Respondent to submit the Annual Water Use Reports despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

The Respondent timely requested a hearing before the State Water Board to contest the allegations within the ACL Complaints.

On December 20, 2018, the State Water Board Hearings Unit issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACL Complaints to be held on March 12, 2019.

The Respondent and the Division Prosecution Team have engaged in settlement negotiations and agreed to settle all matters identified in the ACL Complaints issued to the Respondent on October 19, 2018, through settlement agreements in lieu of a hearing.

3.0 SETTLEMENT AGREEMENTS

The Respondent and the Division Prosecution Team executed the Settlement Agreements, dated January 9, 2019 and attached hereto. The general terms of the Settlement Agreements are that the Respondent: (1) waives the right to a hearing on the ACL Complaints, waives the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreements and incorporated herein; and (2) is subject to administrative civil liability in the amount of \$3,000 payable within 20 days of receipt of the ACL Complaints, to be deposited into the Water Rights Fund pursuant to Water Code section 1054, et seq.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreements between the Division Prosecution Team and Ostrom Family Trust are approved and are incorporated by reference into this Order.

This Order constitutes a cease and desist order for purposes of division 2, part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of these Settlement Agreements and this Order will be subject to further enforcement under California Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

JUL 21 2019 _____
Date

ORIGINAL SIGNED BY _____
Eileen Sobeck
Executive Director

EXHIBIT A

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

OSTROM FAMILY TRUST ("Diverter")

APPLICATION A011120, LICENSE 3392

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 Annual Reports of Licensee 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.
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)

1/9/2019

(Date)

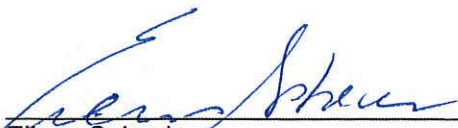
L. OSTROM

(Printed or typed name)

TRUSTEE

(Title)

(Relationship to Diverter if not Diverter)

Approved By: 

Eileen Sobeck
Executive Director

7/23/19

(Date)

EXHIBIT A

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

OSTROM FAMILY TRUST ("Diverter")

APPLICATION A011501, LICENSE 3393

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 Annual Reports of Licensee 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**
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 - Sacramento, CA 95814


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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.
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)

1/9/2019

(Date)

L. OSTROM

(Printed or typed name)

TRUSTEE

(Title)

(Relationship to Diverter if not Diverter)

Approved By: 

Eileen Sobeck
Executive Director

7/19/2019

(Date)

EXHIBIT A

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

OSTROM FAMILY TRUST ("Diverter")

APPLICATION A018782, PERMIT 12221

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 Annual Progress Reports by Permittee 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
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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.
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)

1/9/2019
(Date)


L. OSTROM

(Printed or typed name)

TRUSTEE

(Title)

(Relationship to Diverter if not Diverter)

Approved By: 

Eileen Sobeck
Executive Director

7/23/19
(Date)