

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

DIVISION OF WATER RIGHTS

ORDER WR 2018-0120-DWR

In the Matter of Violation of Annual Reporting Requirements by

RICHARD L JENNINGS

Assistant Deputy Director Julé Rizzardo, Division of Water Rights (Division), through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability Order (ACL Order) to RICHARD L JENNINGS ("Licensee"). On October 19, 2018, the Division of Water Rights issued an Administrative Civil Liability Complaint (ACL Complaint) against Licensee (attached), which is hereby incorporated by reference as part of this Order.

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. Licensee is the owner of record for License 53.
2. In February 2018, the Division of Water Rights issued a notice to Permittee reminding Licensee of the requirement to submit the 2017 Report of Licensee ("Report") by April 1, 2018, as required pursuant to the California Code of Regulations and notifying Licensee that the 2017 Report must be filed online.
3. Licensee failed to submit the 2017 Report by the April 1, 2018, deadline.
4. On July 27, 2018, the Division mailed out a deficiency letter requesting that the 2017 Report for License 53 be submitted within 20 days and warned of the potential for enforcement with monetary penalties should the violation persist.
5. On September 17, 2018, the Division mailed out a final Notice of Deficiency, putting Licensee on notice of imminent enforcement should the violation continue.
6. On October 19, 2018, the Division Prosecution Team issued an ACL Complaint against Licensee. The ACL Complaint alleges that Licensee failed to submit the 2017 Report for License 53 by the April 1, 2018, deadline in violation of section 929 of the Regulations, and recommends an Administrative Civil Liability in the amount of \$1,500 for this violation.
7. The ACL Complaint included a Conditional Settlement Offer, which allowed for a reduced liability amount of \$500, provided that Licensee file the 2017 Report, submit the signed acceptance of the Conditional Settlement Offer and waiver of the right to hearing and reconsideration, and pay the reduced liability amount, all within 20 days of receipt of the ACL Complaint.
8. The Division Prosecution Team sent the ACL Complaint to Licensee via certified mail. The United States Postal Service has confirmed that the ACL Complaint was delivered to Licensee on November 1, 2018.
9. Licensee did not request a hearing within 20 days of receipt of the Complaint, in accordance with Water Code section 1055(b).
10. Licensee did not complete all three conditions of the Conditional Settlement Offer (full settlement payment, report submittal and return of signed Conditional Settlement Offer) within 20 days of receipt of the Complaint.
11. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Resources Control Board Resolution No. 2012-0029

(Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing Administrative Civil Liability when a Complaint has been issued and no hearing has been requested in the period provided by California Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights. This authority has been redelegated to the Assistant Deputy Director of Water Rights.

12. California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order to Licensee assessing an administrative civil liability in the amount proposed in the October 19, 2018, ACL Complaint.
13. California Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
14. In this case, Licensee did not submit the 2017 Report, accept the Conditional Settlement Offer, or pay the reduced settlement amount after receiving the ACL Complaint. In consideration of these relevant circumstances, the State Water Board has determined that the appropriate proposed penalty is \$1,500.

IT IS HEREBY ORDERED THAT:

1. The attached Administrative Civil Liability Complaint is fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, have considered all relevant circumstances, including but not limited to those specifically identified in the ACL Complaint, as required by California Water Code section 1055.3 in determining that Licensee shall be assessed the civil liability of \$1,500.
3. Licensee shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$1,500 to:

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

4. Fulfillment of Licensee's obligations under this Order constitutes full and final satisfaction liability for the alleged violation specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if Licensee fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: December 6, 2018

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violation of Annual Reporting Requirements by

RICHARD L JENNINGS
(Application A000486, License 53)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. RICHARD L JENNINGS, hereinafter referred to as "You", is/are alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations, which requires every water right License holder to submit a water diversion and use report by April 1 of each subsequent year for each water right License.
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 929.
6. The purpose of the regulation is to develop a publicly available database that 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 to 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 right 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 License 53, and You are required to comply with the annual water diversion and use reporting regulation.
9. In February 2018, the Division of Water Rights mailed out a notice reminding You of the requirement to submit the 2017 Annual Report of Licensee ("Report") by April 1, 2018, online by logging into the electronic Water Rights Information and Management System, with the provided Username and Password.
10. You failed to submit the Report by the April 1, 2018, deadline.
11. On July 27, 2018, the Division mailed out a Notice of Deficiency, warning of the potential for

enforcement if the Report was not submitted.

12. On September 17, 2018, the Division mailed out a final Notice of Deficiency, putting You on notice of imminent enforcement should the violation continue.
13. As of October 22, 2018, 190 days after the April 1, 2018, deadline, the Report has still not been submitted.

PROPOSED CIVIL LIABILITY

14. 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))
15. As of October 19, 2018, You have been in violation for 201 days. The maximum liability for the violations alleged is **\$100,500** (201 days at \$500/day).
16. 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.
17. In this case, the Report was due by April 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 that the Report 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.
18. Having taken into consideration all relevant circumstances, the Division recommends the imposition of **\$1,500** in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

19. 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).
20. 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.
21. 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.
22. 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

23. 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 \$500, 2) filing the Report, and 3) signing a waiver of the right to a hearing on the matter.
24. 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****RICHARD L JENNINGS (“Diverter”)****APPLICATION A000486, LICENSE 53**

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 Report of Licensee for 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 \$500 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 (\$1,500) 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 (\$1,500) 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)