

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2013-0033-DWR**

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In the Matter of Violation of Annual Use Reporting Requirements by

**Deep Violet Farms, Inc.**

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SOURCE: Hutchinson Creek

COUNTY: Yuba

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Assistant Deputy Director James W. Kassel, 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) against Deep Violet Farms Inc. (Deep Violet). On June 17, 2013, the Division of Water Rights issued an Administrative Civil Liability Complaint (ACL Complaint) against Deep Violet (Exhibit A attached), which is hereby incorporated by reference as part of this Order.

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

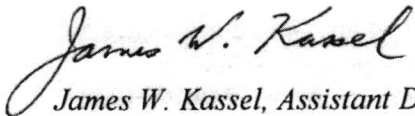
1. On June 17, 2013, the Assistant Deputy Director for Water Rights issued an ACL Complaint against Deep Violet, which proposes to collect \$10,000 from Deep Violet for the alleged violation of Order 2013-0017-DWR, a Cease and Desist Order (CDO) issued on April 3, 2013, by the Assistant Deputy Director for Water Rights, pursuant to California Water Code section 1834 and authority delegated, pursuant to State Water Resources Control Board Resolution 2012-0029, for violation of annual reporting requirements to submit a report of water use for 2011 (2011 Annual Use Report) by the requested deadline.
2. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director for 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 for 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 for Water Rights.
3. No hearing was requested within 20 days of issuance of the ACL Complaint in accordance with California Water Code section 1055(b). California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order for \$10,000, the amount proposed in the June 17, 2013 ACL Complaint.

**IT IS HEREBY ORDERED THAT:**

1. The Administrative Civil Liability Complaint attached hereto as Exhibit A is fully incorporated herein and made part of this Order.

2. In adopting this Order, the State Water Board, or its delegee, has 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 Deep Violet shall be assessed the civil liability of \$10,000.
3. Deep Violet shall remit within 30 days of the date of this Order a check or money order payment of the full penalty of \$10,000 to:  
  
State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000
4. Fulfillment of Deep Violet'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 for 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 Deep Violet fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



*James W. Kassel, Assistant Deputy Director  
Division of Water Rights*

Dated:

**AUG 30 2013**

# EXHIBIT A

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

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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In the Matter of Violation of Annual Reporting Requirements by  
**Deep Violet Farms, Inc.**

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SOURCE: Hutchinson Creek

COUNTY: Yuba

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. Deep Violet Farms, Inc. (referred to herein as Licensee) is alleged to have violated Order WR 2013-0017-DWR, a Cease and Desist Order (CDO), issued on April 3, 2013, (Final CDO) by the Assistant Deputy Director for Water Rights pursuant to California Water Code section 1834 and authority delegated, pursuant to State Water Resources Control Board (State Water Board) Resolution 2012-0029.
2. California Water Code section 1845, subdivision (b)(1) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$1,000 for each day in which the violation occurs. California Water Code section 1845, subdivision (b)(3) provides that civil liability may be imposed administratively by the State Water Board, pursuant to California Water Code section 1055.
3. California 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 March 2012, the Division of Water Rights (Division) mailed out a first notice (First Notice) to Licensee reminding Licensee of the requirement to submit the Annual Use Report by June 30, 2012, as required pursuant to the California Code of Regulations and notifying Licensee that the 2011 Annual Use Report must be filed online. The First Notice provided instructions on how to access the RMS system and submit the 2011 Annual Use Report online and also notified Licensee to contact the Division by phone or e-mail with any questions regarding the new reporting process.
6. Licensee failed to submit the 2011 Annual Use Report online by the deadline, June 30, 2012.

7. In determining that Licensee violated a term of the permit/license by failing to submit the Annual Use Report by June 30, 2012, the Division issued a second notification on October 22, 2012 of the violation (Second Notice), as provided by California Water Code section 1834(a), along with a draft CDO requesting the submission of the 2011 Annual Report within 20 days of receipt or a written request for a hearing to contest the notice (Draft CDO).
8. The United States Postal Service confirmed receipt of the Second Notice and Draft CDO on February 14, 2013 at 2:16 p.m. via certified mail (Certified Mail No. 7004-2510-0003-9146-6219).
9. Having neither received the 2011 Annual Use Report nor a request for a hearing within 20 days after receipt of the Second Notice and Draft CDO, the Division issued a Cease and Desist Order on April 3, 2013 (CDO), adopting the Draft CDO as final (Order WR 2013-0017-DWR or Final CDO).
10. The Final CDO was sent certified mail (Certified Mail No. 7004-2510-0003-9146-0170) and delivered on April 4, 2013 at 2:33 p.m.
11. Licensee violated the Final CDO by failing to immediately submit the 2011 Annual Use Report, and as of May 31, 2013, Licensee remains out of compliance 59 days after the Final CDO was issued on April 3, 2013.

#### PROPOSED CIVIL LIABILITY

12. California Water Code section 1845(b)(1) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$1,000 for each day in which the violation occurs.
13. As of May 31, 2013, Licensee has been in violation of the Final CDO for 59 days. Based on the days of violation described in the previous paragraphs, the maximum liability for the violations alleged is \$59,000 (59 days at \$1,000 per day).
14. In determining the appropriate amount of a civil liability, California Water Code sections 1055.3 and 1845, subdivision (c), require 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.
15. In this case, the 2011 Annual Use Report was due by June 30, 2012. Despite two prior notifications (the First Notice in March 2012 and the Second Notice and Draft CDO in October 2012), Licensee failed to submit the 2011 Annual Use Report before the issuance of the Final CDO. 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. Despite repeated notices, Licensee has failed to comply. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2011 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

16. 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 the 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."

17. This Conditional Offer requires Licensee to pay an expedited payment amount (Expedited Payment Amount) of \$1,000, electronically file the 2011 Annual Use Report, 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 along with staff costs incurred in preparing the Final CDO and this ACL.
18. To accept the Conditional Offer, Licensee must electronically file the 2011 Annual Use Report and sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this Complaint.
19. 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 John O'Hagan, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this Complaint.

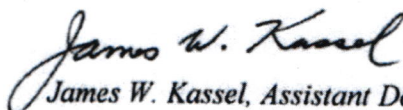
**RIGHT TO HEARING**

20. 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 California Water Code section 1055, subdivision (b).
21. 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, a separate notice setting the 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.
22. 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 California 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.
23. 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 2011 Annual Use Report and remit a cashier's check or money order for the Expedited Payment Amount set forth in paragraph 17 above, to:

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

24. If Licensee does not remit the Acceptance and Waiver and Expedited Payment Amount, electronically file the 2011 Annual Use Report, or request a hearing within 20 days of the date this Complaint is received, then the State Water Board will issue an ACL Order and seek recovery of the liability imposed as authorized by California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

  
James W. Kassel, Assistant Deputy Director  
Division of Water Rights

Dated: **JUN 17 2013**