

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2014-0027-DWR**

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**ADMINISTRATIVE CIVIL LIABILITY**

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

**Richard L. Freschet**

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SOURCE: Yellowjacket Creek

COUNTY: Sonoma

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The Assistant Deputy Director, Division of Water Rights, through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability (ACL) Order against Richard L. Freschet.

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

1. On November 22, 2013, the Assistant Deputy Director, Division of Water Rights issued an ACL Complaint against Richard L. Freschet, which proposed to collect \$10,000 from Richard L. Freschet for the alleged failure to file Statements of Water Diversion and Use. California Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream or a subterranean stream flowing through a known and definite channel (with a few limited exceptions) to file Statements of Water Diversion and Use (Statement/s).
2. Richard L. Freschet has filed an initial Statement (Statement Number S015198), as required by California Water Code section 5101, and is alleged to have violated California Water Code section 5104, subdivision (a), which requires the filing of Supplemental Statements of Water Diversion and Use (Supplemental Statements) at three-year intervals. The ACL Complaint was served via certified mail and received by Richard L. Freschet on November 25, 2013. A copy of the ACL Complaint is attached hereto as Exhibit A.
3. The State Water Board is authorized to delegate authority to the Deputy Director of Water Rights, pursuant to California Water Code section 7. State Water Board Resolution No. 2012-0029 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. This authority has been redelegated to the Assistant Deputy Director of Water Rights.
4. No hearing has been requested, and the time period for requesting a hearing as provided in California Water Code section 1055 (20 days from receiving service of the ACL Complaint) has passed. California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order imposing liability for up to \$10,000, the amount proposed in the ACL Complaint. However, Richard L. Freschet filed his Supplemental Statements within 24 hours of a subsequent phone conversation with State Water Board to come into compliance. The unique facts of this case coupled with Mr. Freschet's subsequent filing of the required online reports, leads the Assistant Deputy Director to conclude that \$5,000 is a more appropriate penalty here. Accordingly, the Assistant Deputy Director hereby issues this final ACL Order imposing liability of \$5,000.

**IT IS HEREBY ORDERED THAT:**

1. The ACL Complaint 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 Richard L. Freschet shall be assessed the civil liability of \$5,000.
3. Richard L. Freschet shall remit, within 30 days of the date of this Order, a cashier's check or money order payment of the full penalty of \$5,000 to:  

State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000
4. Fulfillment of Richard L. Freschet's obligations under this Order will constitute full and final satisfaction of any and all liability for each of the alleged violations specifically identified in this Order. It does not alleviate Richard L. Freschet of his obligation to file the necessary Statements and to comply with California Water Code section 5104, subdivision (a), which requires the filing of Supplemental Statements at three-year intervals. The State Water Board reserves the right to take further future enforcement for any future violations.
5. Richard L. Freschet or any interested person or entity may petition the State Water Board for reconsideration of this Order in accordance with California Water Code section 1120 et seq. Such petition shall be filed not later than 30 days from the date of this Order.
6. The Assistant Deputy Director is authorized to seek recovery of the liability imposed, pursuant to California Water Code section 1055.4 or refer this matter to the Office of Attorney General for further enforcement action if Richard L. Freschet fails to either pay the full penalty or petition for reconsideration within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

Dated: **JUL 08 2014**

Enclosure: 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 Failure to File a Statement of Water Diversion and Use by

**Richard L. Freschet**  
**Statement Number: S015198**

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SOURCE: Yellowjacket Creek

COUNTY: Sonoma

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### YOU ARE HEREBY GIVEN NOTICE THAT:

1. California Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream or a subterranean stream flowing through a known and definite channel (with a few limited exceptions), to file a Statement of Water Diversion and Use (Statement).
2. Richard L. Freschet (Diverter) has filed an initial Statement (Statement number S015198), as required by California Water Code section 5101, and is/are alleged to have violated California Water Code section 5104 subdivision (a), which states, in pertinent part:  

*Supplemental statements shall be filed at three-year intervals, prior to July 1 of the year next succeeding the end of each three-year interval...*
3. Supplemental Statements of Diversion and Use (Supplemental Statements) are required by California Code of Regulations Section 910 and 920, subdivision (a) to be filed electronically on forms available at the State Water Resources Control Board (State Water Board) website. The State Water Board's website provides access to the Electronic Water Rights Information Management System for filing Supplemental Statements.
4. California Water Code section 5107, subdivision (c)(1) provides that the 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.
5. 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 on whom Administrative Civil Liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under California Water Code section 1055, subdivision (a). 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

6. On June 24, 2001, Paul L. Smith filed Statement S015198, with the Division and reported a diversion from Yellowjacket Creek, tributary to Redwood Creek, for domestic purposes. On July 30, 2004, the Diverter notified the Division of the change in ownership of the diversion and filed their Supplemental Statements for the 2001 through 2003 period. The Diverter reported an annual use of 938,500 gallons of water for all three years, used for domestic purposes. According to the Division's records no Supplemental Statements have been filed by the Diverter since 2003.
7. On January 30, 2013, the Division of Water Rights (Division) mailed Diverter, a letter notifying you of the requirement to electronically file your Supplemental Statements of water diversion and use for 2010, 2011 and 2012 no later than June 30, 2013.
8. On July 26, 2013, the Division mailed Diverter, a second letter informing you that the Division had still not received your Supplemental Statements as of July 22, 2013, and the letter informed you of the potential monetary penalties.
9. On August 23, 2013, the Division mailed Diverter a third letter by certified mail which indicated that your Supplemental Statements had not been received by August 19, 2013. This letter identified that you were subject to a \$1,000 penalty, and if your report is not received within 30 days of the date you receive this letter, you will be subject to an additional \$500 per day, for each additional day the violation continues.
10. The Division's records show that the August 23, 2013 Certified letter was delivered by the U. S. Postal Service on August 26, 2013 to Richard L. Freschet. On October 17 and 24, 2013, Division staff left messages with the Diverter notifying them of the requirement to file their Supplemental Statements for the 2010 through 2012 period. On October 25, 2013, the Diverter contacted Division staff and stated that they were still diverting water and had received the Division's January 30, 2013, July 26, 2013 and August 23, 2013 letters. Division staff notified the Diverter that they still needed to file their Supplemental Statements and in an email on the same day provided them with the information on how to file their Supplemental Statements and attached a copy of their initial Statement for their review.
11. Water Code section 5106, subdivision (b)(1) provides that the State Water Board may rely on the name and address included in Statements submitted under this part for the purpose of determining the names and addresses who are to receive notices with regard to proceedings before the State Water Board. The three notice letters discussed above were all sent to the name and address provided in initial Statement number S015198 filed by you or your designated representative.
12. Water Code section 5106, subdivision (b)(2) provides that any person may submit, in writing, a request to the State Water Board to provide notification to a different address, and the State Water Board shall provide the notification to that address. No such notice has been provided to the State Water Board since the notification of change in ownership of Statement S015198 filed on July 30, 2004.
13. Water Code section 5104, subdivision (b) requires that if there is a change in the name or address of the person diverting the water, a Supplemental Statement informing the State Water Board of that change in name or address must be filed. No notice of change in name or address of diverter has been filed with the State Water Board since the notification of change in ownership of Statement S015198 filed on July 30, 2004.

14. As of October 20, 2013, no Supplemental Statements have been filed for the 2010 through 2012 period by, or on behalf of, Diverter.

#### **PROPOSED CIVIL LIABILITY**

15. The deadline for submittal of the Supplemental Statements was June 30, 2013. California Water Code section 5107, subdivision (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 for the failure to file a required 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. Such notice was received by Diverter on August 26, 2013. Diverter failed to submit the required Supplemental Statements by September 25, 2013, the 30th day after receiving notice of the violation from the State Water Board.
16. As of October 20, 2013, Diverter has not filed Supplemental Statements and has been on notice of the violation for 55 days; therefore Diverter is subject to civil liability in the amount of \$1,000 for each initial violation, plus \$500 per day for 25 additional days of violation (September 25, 2013 through October 20, 2013, inclusive). The potential maximum liability for the violations alleged is \$13,500.00.
17. In determining the appropriate amount of a civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances.
18. In this case, no Supplemental Statements were filed despite three notices being sent. Failure to comply with the Supplemental Statement reporting requirements in a timely manner harms the Division's ability to accurately track water diversions from the water course and effectively regulate the resources it is required to protect. Despite repeated notification to Diverter of the reporting requirements and potential liability for failure to submit Supplemental Statements, Diverter failed to comply in a timely manner.
19. Having taken into consideration all relevant circumstances, including but not limited to the Diverter's failure to submit the Supplemental Statements, the harm of the missing Supplemental Statements 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 Assistant Deputy Director of Water Rights recommends the imposition of \$10,000.00 in administrative civil liability (Proposed Liability).

#### **CONDITIONAL SETTLEMENT OFFER**

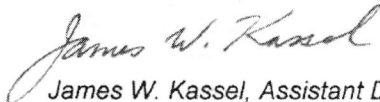
20. To promote resolution of the alleged Statement filing violations, the Assistant Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). Diverter can avoid further enforcement action and settle the alleged failure to file Statement of water diversion and use violation/s by agreeing to comply with the terms of the Conditional Settlement Offer, provided below, as well as in the "Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration" (hereafter "Acceptance and Waiver") attached hereto as Exhibit "A."
21. The Conditional Offer requires Diverter to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$1,000.00, file the necessary Supplemental Statement(s), and waive the right to a hearing and reconsideration of the alleged violations.
22. To accept the Conditional Offer, you must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Supplemental Statement(s) within 20 days of receipt of this complaint.

23. If there are extenuating circumstances that you would like to discuss, such as an inability to pay the Expedited Payment Amount, then you can contact the Division with that information as soon as possible but no later than the 20 days from receipt of this complaint.

**RIGHT TO HEARING**

24. Diverter 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 you receive this complaint. (Water Code, sec. 1055, subd. (b).)
25. If Diverter requests a hearing, Diverter 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, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date. The State Water Board may convene a settlement conference prior to noticing a hearing date.
26. If Diverter 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 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.
27. If Diverter does not remit the Acceptance and Waiver, the Expedited Payment Amount and electronically file the necessary Supplemental Statements or request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: **NOV 22 2013**