



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAR 06 2012

CERTIFIED MAIL NO.7004-2510-0003-9152-9242
Return Receipt Requested

Ronald E. Buhler
2828 Mills Park Drive
Rancho Cordova, CA 95670

Dear Mr. Buhler:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE, AND CONDITIONAL SETTLEMENT OFFER TOE DRAIN IN YOLO COUNTY

This provides legal notice to Ronald E. Buhler (Buhler) of the intent of the State Water Resources Control Board (State Water Board), Delta Water Master to proceed with formal enforcement for Buhler's failure to file the required Supplemental Statement(s) of Water Diversion and Use (Supplemental Statement). **Buhler has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act or face additional liability.** Therefore, this matter requires Buhler's immediate attention.

VIOLATION DESCRIPTION:

Division records show that Buhler filed Supplemental Statements for the triennial periods of 1989-1991, 1993-1995, 1999-2001, and 2005-2007. On February 28, 2011, the State Water Board mailed Buhler a letter entitled *Annual Supplemental Statement of Water Diversion and Use*. This letter formally notified Buhler, that Buhler is required to file a Supplemental Statement with the Division in accordance with Water Code section 5101 *et. seq.* by July 1, 2011. A second letter was mailed to Buhler on July 28, 2011, entitled *Failure to File Report of Water Diversion and Use*, formally notifying Buhler that Buhler's Supplemental Statement had not been received by July 1, 2011 and that Buhler would be subject to an additional \$500 per day civil liability commencing 30 days from the date of that letter if Buhler failed to submit a Supplemental Statement.

STATUTORY LIABILITY:

Water Code section 5107 authorizes the State Water Board to administratively impose an initial \$1,000 civil liability for 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. As discussed above, Buhler was provided with the statutory notice on July 28, 2011. Accordingly, the potential maximum civil liability, as of August 28, 2011, for which Buhler is liable for Buhler's failure to file the required Supplemental Statement, is \$90,500.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

MAR 06 2012

Based on Buhler's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$10,000 be imposed for Buhler's failure to file a Supplemental Statement. If Buhler fails to respond to the ACL Complaint in one of the manners discussed below within 20 days of receiving this notice, then the State Water Board will issue a final ACL Order and seek recovery of this proposed liability amount as authorized by Water Code section 1055.4.

CONDITIONAL OFFER OF SETTLEMENT:

To promote resolution of the alleged Supplemental Statement violations and obtain compliance with the Supplemental Statement filing requirements, I am offering Buhler the opportunity to accept a conditional settlement offer (Conditional Offer). The Conditional Offer, as provided in detail in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) enclosed as Exhibit "A" to the ACL Complaint, allows Buhler to avoid further formal enforcement by agreeing to pay an expedited payment amount of \$2,000, simultaneously electronically file the necessary Supplemental Statement, and waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint.

OPTIONS FOR RESPONDING TO ACL COMPLAINT AND CONDITIONAL OFFER OF SETTLEMENT:

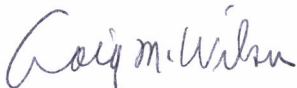
In summary, Buhler has two options in responding:

1. Accept the Offer of Conditional Settlement by: (1) signing the Acceptance and Waiver; and (2) submitting the signed Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Supplemental Statement using the State Water Board's website within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Buhler would like to discuss, such as an inability to pay the Expedited Payment Amount, then Buhler can contact me with that information as soon as possible, but no later than 20 days from receiving the enclosed ACL Complaint.
2. Submitting a written request for hearing signed by, or on the behalf of, Ronald E. Buhler to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Buhler does not remit the Acceptance and Waiver, the Expedited Payment Amount, electronically file the necessary Supplemental Statement using the State Water Board's website, nor request a hearing within 20 days of the date Buhler received this complaint, then the State Water Board will issue a final ACL Order and seek recovery of the \$10,000 in liability proposed in the ACL Complaint.

If you have any questions, please contact me at (916) 445- 5962 or CWilson@waterboards.ca.gov.

Sincerely,



Craig M. Wilson,
Delta Watermaster

Enclosure:

- Administrative Civil Liability Complaint w/Exhibit A

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

Ronald E. Buhler

SOURCE: Toe Drain

COUNTY: Yolo

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), need to file a Statement of Water Diversion and Use (Statement).
2. Ronald E. Buhler (Buhler) is alleged to have violated California Water Code section 5104(a), which states, in pertinent part:

Supplemental Statements shall be filed at three-year intervals, prior to July 1...

3. Sections 910 and 920, subdivision (a) of the California Code of Regulations require Supplemental Statements of Diversion and Use (Supplemental Statements) to be filed electronically on forms available at the State Water Resources Control Board's (State Water Board) website. The State Water Board's website provides access to the Water Rights Management System for filing Supplemental Statements.
4. California Water Code section 5107(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 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to issue administrative civil liability complaints to persons who divert water in the Delta. On October 5, 2010, the State Water Board delegated such authority to the Delta Watermaster under Resolution 2010-0048.

ALLEGATIONS

6. Cal Farms, Inc. filed a Statement (S006543) on April 5, 1971.
7. Buhler filed a Supplemental Statement for years 1989, 1990 and 1991 dated February 17, 1991. On May 24, 1996, Buhler filed a Supplemental Statement for water years 1993, 1994 and 1995. Six years later, Buhler filed a Supplemental Statement for years 1999, 2000 and 2001 dated May 20, 2002. On June 30, 2008, Buhler filed a Supplemental Statement for water years 2005, 2006 and 2007.

8. On February 28, 2011, the Division of Water Rights (Division) mailed Buhler a letter notifying Buhler of the requirement to electronically file the triennial Supplemental Statement of water prior to July 1, 2011.
9. On July 28, 2011, the Division mailed Buhler a second letter which indicated that a Supplemental Statement had not been received by the July 1, 2011 deadline and that Buhler would be subject to an additional \$500 per day civil liability commencing 30 days from the date of that letter if no Supplemental Statement is submitted.
10. No Supplemental Statement was filed by Buhler as of August 28, 2011. Buhler was contacted by the Division on November 3, 2011, and he indicated that he has submitted the Supplemental Statement, but the State Water Board's website does not show it was received. Buhler was contacted a second time by the Office of Delta Watermaster on January 19, 2012 to inform him that it is required to file the Supplemental Statement online. Buhler responded informing the State Water Board that he irrigated 80 acres of pasture from May to October and flooded the property from October to February during years 2008, 2009 and 2010. Buhler was given the opportunity to refile but as of the date of this ACL, Buhler has not done so.
11. No Supplemental Statement has been electronically filed by Buhler as of February 22, 2012.

PROPOSED CIVIL LIABILITY

12. Buhler failed to submit the required *Supplemental Statement of Water Diversion and Use* by August 28, 2011. The deadline for submittal was July 1, 2011. California Water Code section 5107(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, 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 provided on July 28, 2011.
13. The potential maximum liability for the violations alleged is \$90,500.
14. 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.
15. In this case, no Supplemental Statement was filed despite two notices being sent.
16. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Delta Watermaster recommends the imposition of \$10,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

17. To promote resolution of the alleged Supplemental Statement filing violations, the Delta Watermaster makes the following conditional settlement offer (Conditional Offer). Buhler can avoid further enforcement action and settle the alleged failure to file the Statements violations 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."
18. The Conditional Offer requires Buhler to pay an expedited payment amount (Expedited Payment Amount) of \$2,000, simultaneously file the necessary Supplemental Statement electronically and waive the right to a hearing and reconsideration of the alleged violations.

- 19. To accept the Conditional Offer, Buhler must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Supplemental Statement within 20 days of receipt of this complaint.
- 20. If there are extenuating circumstances that Buhler would like to discuss, such as an inability to pay the Expedited Payment Amount, then Buhler may contact Craig M. Wilson, Delta Watermaster, with that information as soon as possible but no later than the 20 days from receipt of this complaint.

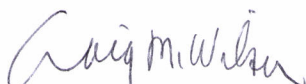
RIGHT TO HEARING

- 21. Buhler 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. (Water Code, sec. 1055, subd. (b).)
- 22. If Buhler requests a hearing, Buhler 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 Delta Watermaster may convene a settlement conference prior to noticing a hearing date.
- 23. If Buhler 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.
- 24. If Buhler does not wish to request a hearing within 20 days of receipt of this complaint, Buhler shall electronically file a Supplemental Statement using the State Water Board's website, waive his rights to a hearing and reconsideration of this matter, 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

- 25. If Buhler does not remit the Acceptance and Waiver, the Expedited Payment Amount, electronically file the necessary Supplemental Statement using the State Water Board's website, nor 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



Craig M. Wilson
Delta Watermaster

Dated:

MAR 06 2012

ATTACHMENT A

**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION;
(Proposed) ORDER**

Ronald E. Buhler
Source: Toe Drain
County: Yolo

By signing below and returning this Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) to the State Water Resources Control Board (State Water Board), Ronald E Buhler (Diverter) hereby accepts the State Water Board's conditional settlement offer (Conditional Offer), and waives the right to a hearing before and reconsideration by the State Water Board at which violations alleged in the Administrative Civil Liability Complaint issued to Diverter (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Diverter agrees to perform the following within 20 days of receipt of the ACL Complaint:

- **Pay administrative civil liability as authorized by California Water Code section 5107 (c), in the sum of \$2,000** (Expedited Payment Amount) by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into the Water Rights Fund, which shall be deemed payment in full of any civil liability pursuant to California Water Code section 5107 (c) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary Supplemental Statement of Water Diversion and Use (Statement(s)) pursuant to Statement S006543 for the 2008, 2009 and 2010 diversion season(s)** as required by Water Code sections 5104 and 5107 (b).

Diverter understands that this Acceptance and Waiver waives the Diverter's right to contest the allegations in the ACL Complaint and the civil liability amount for such violations.

Diverter understands that the failure to submit payment of the Expedited Payment Amount, electronically file the Statement(s), as identified and described above, along with the signed Acceptance and Waiver within 20 days of receipt of this notice, shall render the State Water Board's Conditional Offer void. If the State Water Board's Conditional Offer is deemed void due to Diverter's non-performance, then the State Water Board will issue a final Administrative Civil Liability order and seek recovery of the full liability amount proposed in the ACL Complaint.

Diverter understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint. The filing of a Statement of Water Diversion and Use with the State Water Board does not in any way establish or constitute evidence of a right to divert or use water. (Water Code section 5106 (a).)

Upon execution by Diverter, the Acceptance and Waiver, Expedited Payment Amount, and necessary Statement(s) shall be mailed to the following address:

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

Diverter understands that this Acceptance and Waiver is not final until it is formally endorsed by the Delta Watermaster.

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

Ronald E. Buhler _____
(Diverter) *Make corrections as appropriate.

By: _____ (Date) _____
(Signed Name)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 11415.60

Approval of the Acceptance and Waiver has been delegated to the Delta Watermaster by State Water Board Resolution 2010-0048, and approval shall not limit the authority of the Executive Director, Delta Watermaster, or the Deputy Director for Water Rights, as delegated, to initiate any enforcement actions for the unauthorized diversion or use of water, for any future violations of the Water Code, or violation of the terms of the Acceptance and Waiver.

By: _____ (Date) _____
Craig M. Wilson
Delta Watermaster