

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

George C. Gaines

Statement Numbers: S020110, S020114, S020118, and S020122

SOURCE: Unnamed Stream(s)

COUNTY: Mendocino

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. George C. Gaines (Diverter) has filed four initial Statements (Statement numbers S020110, S020114, S020118, and S020122), as required by California Water Code section 5101, and is 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 Sections 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 October 2, 1998, the Division of Water Rights (Division) mailed Diverter a letter notifying Diverter that his four on-stream reservoirs constituted unauthorized diversions of water and that Diverter must either submit a water right application to cover the storage of water in the reservoirs or render the reservoirs incapable of storing water. Evaporation and seepage occur from the reservoirs, and water lost from the reservoirs is replenished by diversion. The water lost from and replenished to the reservoirs should be measured and reported. Diverter filed a water right application (A030859) with the Division in October 1998. Diverter filed four Initial Statements of Water Diversion and Use (S020110, S020114, S020118, and S020122) with the Division in October 2010.
7. On January 30, 2013, the Division mailed Diverter notices 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 letters, one for each statement, 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 final delinquent notice letters by certified mail (Certificate No. 7012346000035215519), which indicated that your Supplemental Statements had not been received by August 19, 2013. These letters identified that Diverter is subject to a \$1,000 penalty for each statement, and if the reports are not received within 30 days of the date Diverter received these letters, you will be subject to an additional \$500 per day for each statement, for each additional day the violation continues.
10. The U.S. Postal Service confirmed delivery of the final delinquent notice letters on August 30, 2013, at 3:15 pm. On September 4, September 26, October 8, October 9, and October 11, 2013, Division staff attempted to contact Diverter by telephone. Voice mail messages were left after each of these telephone attempts.
11. On October 1, 2013, Division staff reviewed Mendocino County Parcel records and discovered that Diverter no longer owns the property covered by Statements S020110, S020114, S020118, and S020122. A check of Division records shows the ownership of Application A030859 was updated on March 19, 2013, however the Division was not informed of the ownership change for the Statements. Regardless, since the property sold in December 2012, Diverter is still responsible for filing the Supplemental Statements for the years the property was in Diverter's ownership. In this case Diverter is still responsible for filing for 2010, 2011, and 2012.
12. On October 11, 2013, Diverter's daughter contacted Division staff and requested copies of the prior notice letters stating they may have been misplaced. During the phone conversation Division staff stated that supplemental Statements need to be filed for the years the property was in Diverter's ownership.
13. On October 14, 2013, Black Bird Farms contacted Division staff and stated they represent the current owners of the property, Pathways in Education, and that they would be filing ownership assignment forms for the Statements and filing the online reports.
14. By email dated October 15, 2013, Division staff sent Diverter's daughter copies of the three notice letters and stated that supplemental Statements need to be filed for the years Diverter owned the property.

15. On October 28, 2013, Diverter contacted Division staff and stated that he had been out of town recently. Diverter stated he didn't use the water for anything. Division staff informed him that evaporation losses occur each year and replenishment volume is a diversion of water that should be reported each year. Diverter was also notified that he was responsible for filing the online reports of the years he owned the property. Diverter stated he would get a consultant to help him file and would have the reports filed in a couple of days.
16. 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. Since Diverter owned the property for all of 2010, 2011, and most of 2012, Diverter is responsible for filing the supplemental Statements with the State Board for the years in which he diverted water to the property. The three notice letters discussed above were all sent to the name and address provided in Initial Statement numbers S020110, S020114, S020118, and S020122 filed by Diverter.
17. Water Code section 5106, subdivision (b)(2) provides that any person may submit, in writing, a request to the Board to provide notification to a different address, and the State Water Board shall provide the notification to that address. Diverter did not provide such notice to the State Water Board since the filing of Initial Statement numbers S020110, S020114, S020118, and S020122.
18. Water Code section 5104 (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 Board of that change in name or address must be filed. Diverter did not provide the State Water Board with the required notice of change in name or address of the person diverting the water for Initial Statement numbers S020110, S020114, S020118, and S020122 when the property receiving water under those statements was sold.
19. As of November 5, 2013, no Supplemental Statement has been filed for 2010 through 2012 by, or on behalf of, Diverter.

PROPOSED CIVIL LIABILITY

20. 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 the 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 30, 2013. Diverter failed to submit the required supplemental Statements by September 29, 2013, the 30th day after receiving notice of the violation from the State Water Board.
21. As of November 1, 2013, Diverter has not filed a Supplemental Statement and has been on notice of the violation for 63 days; therefore, Diverter is subject to civil liability in the amount of \$1,000 for each violation (4 violations, for a total of \$4,000) plus \$500 per day for 33 days (September 29 through November 1, inclusive) of additional violations, or \$16,500 for each violation (4 violations, for a total of \$66,000). The potential maximum liability for the violations alleged is \$70,000 (\$17,500 per Statement).
22. 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. In this case, no supplemental Statement was 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 notifications to Diverter of the reporting requirements and potential liability for failure to submit a supplemental statement, Diverter failed to comply in a timely manner.

23. Diverter sold the property on which the four reservoirs are located on or about December 3, 2012. This does not absolve Diverter from having to file supplemental statements for the years in which Diverter owned the property.
24. Having taken into consideration all relevant circumstances, including but not limited to the Diverter's failure to submit the supplemental Statement, the harm of the missing 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 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

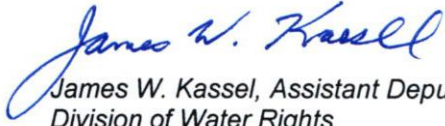
25. To promote resolution of the alleged statement filing violations, the Assistant Deputy Director of Water Rights makes the following conditional settlement offer (Conditional Offer). Diverter can avoid further enforcement action and settle the alleged failure to file statement of water diversion and 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."
26. The Conditional Offer requires Diverter to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of \$4,000, file the necessary Statements, and waive the right to a hearing and reconsideration of the alleged violations.
27. To accept the Conditional Offer, Diverter must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Statements within 20 days of receipt of this complaint.
28. If there are extenuating circumstances that Diverter would like to discuss, such as an inability to pay the Expedited Payment Amount, then Diverter 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

29. 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).)
30. 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.
31. 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.

32. If Diverter does not remit the Acceptance and Waiver, the Expedited Payment Amount, and electronically file the necessary Statement(s), 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 13 2013**

ORDER NO. 20xx-00xx-DWR

EXHIBIT A

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

George C. Gaines

Source: Unnamed Stream(s)

County: Mendocino

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), George C. Gaines (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, subdivision (c) in the amount of \$4,000** 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 (Supplemental Statement) for the 2010, 2011, and 2012 calendar years under Statements S020110, S020114, S020118, and S020122**, as required by Water Code sections 5104 and 5107, subdivision (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 proposed for those violations.

Diverter understands that the failure to submit payment of the Expedited Payment Amount, electronic copies of the necessary Supplemental Statements 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 ACL 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 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. (Wat. Code, § 5106, subd. (a).)

Upon execution by Diverter, the Acceptance and Waiver and Expedited Payment Amount shall be mailed to the following:

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

Diverter understands that this Acceptance and Waiver is not final until it is formally endorsed by the Division of Water Rights.

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.

George C. Gaines*

*Please make corrections as appropriate.

By: _____
Signed Name Date

Printed or typed name

Title

IT IS SO ORDERED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 11415.60.

Approval of the Acceptance and Waiver has been delegated to the Assistant Deputy Director for Water Rights by State Water Board Resolution 2012-0029, and approval shall not limit the authority of the Executive Director 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 California Water Code, or violation of the terms of the Acceptance and Waiver.

By: _____
James W. Kassel,
Assistant Deputy Director
Division of Water Rights Date