

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

Fred F Podesta Jr

SOURCE: Unnamed Stream

COUNTY: San Joaquin

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Fred F Podesta Jr (referred to herein as Licensee) is alleged to have violated Order WR 2012-0010-DWR, a Cease and Desist Order (CDO) issued on July 3, 2012, 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. Water Code section 1845, subdivision (b)(1), provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$1,000 for each day in which the violation occurs. Water Code section 1845, subdivision (b)(3) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. 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, 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 February 2011, the Division mailed out an initial notice to the Licensee notifying of: the recent annual use reporting change, instructions on how to access the RMS system and submit, at a minimum, the 2010 use report online. The Licensee was also notified that if they had any questions on the new reporting process, they could contact the Division by phone or email. The deadline to submit the 2010 use report online was July 1, 2011.
6. In September 2011, the Division started to mail delinquency letters, which also included a copy of the February 2011 letter, to all the Licensees who had not submitted the 2010 use report by July 1, 2011. The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
7. On May 23, 2012, the Division, having not received the Licensee's 2010 annual use report, issued a draft CDO requiring Licensee to submit the 2010 annual use report within 20 days of receipt of the draft CDO, and/or request a hearing to contest the notice as provided by Water Code section 1834(a).
8. The United States Postal Service confirmed receipt of the draft CDO on June 6, 2012 at 11:38 a.m. via certified mail (Certificate No. 70042510000391460279). The deadline to submit the 2010 annual use report and/or request a hearing was 11:59 p.m. on June 27, 2012.
9. As of July 3, 2012, 27 days after confirmed receipt of the draft CDO, the Division had not received the 2010 annual use report or a request for hearing, and proceeded with finalizing the draft CDO by way of Order WR 2012-0010-DWR.
10. Order WR 2012-0010-DWR was mailed on July 3, 2012 by certified mail (Certificate No. 70042510000391465403) with reported delivery on July 9, 2012 at 11:22:00 a.m.
11. Licensee submitted the 2010 annual use report on July 10, 2012, 7 days after the July 3, 2012 final CDO was issued.

PROPOSED CIVIL LIABILITY

12. Licensee failed to submit the required 2010 Annual Use report by July 1, 2011. The Division issued a draft CDO on May 23, 2012 requesting compliance within 20 days of receipt. Having not received the 2010 annual use report within the 20-day period, the Division issued the final CDO on July 3, 2012. California Water Code section 1845(b)(1) provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$1,000 for each day in which the violation occurs.
13. As of July 10, 2012, the date the 2010 annual use report was submitted, Licensee had violated the July 3, 2012 Final CDO for 7 days.
14. Based on the days of violation described in the previous paragraph, the potential maximum liability for the violations alleged is \$7,000 (7 days at \$1000/day).
15. In determining the appropriate amount of a civil liability, California Water Code section 1845, subdivision (c), requires 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.

16. In this case, no annual use report was filed prior to issuance of the Final CDO despite three notifications (one in February 2011, one in September 2011, and the third through the May 23, 2012 draft CDO).
17. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Division recommends the imposition of \$7,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

18. To promote resolution of the alleged annual use filing violations, the Division makes the following conditional settlement offer (Conditional Offer). Fred F Podesta Jr can avoid further enforcement action and settle the alleged failure to file the annual use 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."
19. The Conditional Offer requires Fred F Podesta Jr to pay an expedited payment amount (Expedited Payment Amount) of \$500 and waive the right to a hearing and reconsideration of the alleged violations.
20. To accept the Conditional Offer, Fred F Podesta Jr must sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this complaint.
21. If there are extenuating circumstances that Fred F Podesta Jr would like to discuss, such as an inability to pay the Expedited Payment Amount, then Fred F Podesta Jr may contact the Division's 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

22. Fred F Podesta Jr 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).)
23. If Fred F Podesta Jr requests a hearing, Fred F Podesta Jr 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 Division may convene a settlement conference prior to noticing a hearing date.
24. If Fred F Podesta Jr 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.
25. If Fred F Podesta Jr does not wish to request a hearing within 20 days of receipt of this complaint, Fred F Podesta Jr shall 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 19 above, to:

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

- 26. If Fred F Podesta Jr does not remit the Acceptance and Waiver, the Expedited Payment Amount, 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

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

Dated:

RIGHT TO HEARING

Fred F Podesta Jr 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. (d).)

If Fred F Podesta Jr requests a hearing, Fred F Podesta Jr 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 Division may convene a settlement conference prior to entering a hearing date.

If Fred F Podesta Jr 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, 175 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.

If Fred F Podesta Jr does not wish to request a hearing within 20 days of receipt of this complaint, Fred F Podesta Jr shall waive the right 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 18 above, to:

ATTACHMENT A

ORDER WR 2012- 32 -DWR

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

**Fred F Podesta Jr
Source: Unnamed Stream
County: SAN JOAQUIN**

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), Fred F Podesta Jr (Licensee) 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 Licensee (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Licensee 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 1845(b)(1), in the sum of \$500** (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 1845(b)(1) that otherwise might be assessed for the violations described in the ACL Complaint.

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

Licensee understands that the failure to submit payment of the Expedited Payment Amount 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 Licensee'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.

Licensee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint.

Upon execution by Licensee, the Acceptance and Waiver along with the Expedited Payment Amount 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**

email BCOATS@waterboard.ca.gov

Licensee 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 Licensee in the making and giving of this Acceptance and Waiver.

Fred F Podesta Jr _____
(Licensee) *Make corrections as appropriate.

By: Fred Podesta
(Signed Name)

10/2/12
(Date)

Fred Podesta
(Printed or typed name)

Owner
(Title)

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 Water Code, or violation of the terms of the Acceptance and Waiver.

By: James W. Kassel
James W. Kassel
Assistant Deputy Director for Water Rights

10/30/12
(Date)