



State Water Resources Control Board

NOV 27 2013

CERTIFIED MAIL # 7004 2510 0003 9147 1329
Return Receipt Requested

MARINER COVE MARINA, LLC
936-B SEVENTH STREET #560
NOVATO, CA 95945

Dear Mariner Cove Marina, LLC:

ORDER ISSUING ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO FILE THREE SUPPLEMENTAL STATEMENTS OF WATER DIVERSION AND USE, TAYLOR SLOUGH IN CONTRA COSTA COUNTY

Enclosed is a copy of Administrative Civil Liability (ACL) Order WR 2013-0006-DWM issued to Mariner Cove Marina, LLC (Cove Marina) pursuant to California Water Code sections 1055 and 5107 and the authority granted to me by State Water Resources Control Board (State Water Board) Resolution 2012-0048. On October 15, 2013, the State Water Board sent a letter providing Cove Marina notice and opportunity to request a hearing on the ACL Complaint alleging Cove Marina's failure to file a Supplemental Statement of Water Diversion and Use for S017959, S017962, and S017973.

Cove Marina did not submit a hearing on the ACL Complaint, or accept the conditional offer of settlement to return the signed acceptance and waiver form, remit the expedited payment amount, and electronically file the required statements of water diversion and use. Therefore, Cove Marina should immediately:

- 1) Remit full payment of \$10,000 within 30 days from the date of the ACL Order; and
- 2) File electronically the three Supplemental Statements of Water Diversion and Use for 2010, 2011, and 2012, as required by California Water Code sections 5100-5107.

If Cove Marina fails to comply, the State Water Board may apply to the clerk of the appropriate court for a judgement to collect the ACL and/or seek other remedies, civil or criminal.

If you have any questions concerning this matter or you would like to discuss settlement options, please contact me at (916) 445-5962 or at craig.wilson@waterboards.ca.gov.

Sincerely,

Craig M. Wilson
Delta Watermaster

Enclosure: Administrative Civil Liability Order w/ Exhibit A

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE OFFICER

ec: John O'Hagan, Manager
Enforcement Section
Division of Water Rights

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

DELTA WATERMASTER

ORDER WR 2013-0006-DWM

ADMINISTRATIVE CIVIL LIABILITY

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

Mariner Cove Marina, LLC

SOURCE: Taylor Slough

COUNTY: Contra Costa

State Water Resources Control Board (State Water Board) Delta Watermaster Craig M. Wilson, through authority delegated by the State Water Resources Control Board, hereby issues an Administrative Civil Liability (ACL) Order against Mariner Cove Marina, LLC (Cove Marina). On October 15, 2013, the Delta Watermaster issued an ACL Complaint against Cove Marina (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 October 15, 2013, the Delta Watermaster issued an ACL Complaint against Cove Marina, which proposes to collect \$10,000 from Cove Marina for the failure to file the required Supplemental Statements of Water Diversion and Use, pursuant to California Water Code sections 5104(a) and 5107(c)(1) respectively.
2. Pursuant to California Water Code section 85230, the State Water Board is authorized to delegate authority to the Delta Watermaster. State Water Resources Control Board Resolution No. 2012-0048 (Resolution) delegates some of the State Water Board's authority to the Delta Watermaster. Section 1.6 of the Resolution authorizes the Delta Watermaster 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 et seq.
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. 2012-0048 authorize the Delta Watermaster to issue an ACL Order for \$10,000, the amount proposed in the October 15, 2013 ACL Complaint. Accordingly, the Delta Watermaster is authorized to issue this final ACL Order imposing liability.
4. Parties aggrieved by this Order may, within 30 days from the date of adoption, petition the State Water Board for reconsideration of all or a portion of this Order in accordance with California Water Code section 1122, or seek judicial review in accordance with California Water Code section 1126.


IT IS HEREBY ORDERED THAT:

1. The ACL 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, have 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 Cove Marina shall be assessed the civil liability of \$10,000.
3. Cove Marina shall remit, within 30 days of the date of this Order, a cashier's check or money order payment of the full penalty of \$10,000 to:

State Water Resources Control Board
Office of Delta Watermaster
Attn : Craig M. Wilson
P.O. Box 100
Sacramento, CA 95812-0100

4. Fulfillment of Cove Marina's obligations under this Order constitutes full and final satisfaction of any and all liability for each of the alleged violations specifically identified in this Order. It does not alleviate Cove Marina's requirement to submit Supplemental Statements of Water Diversion and Use to the State Water Board Delta Watermaster. The State Water Board reserves the right to take further future enforcement for any future violations.
5. The Delta Watermaster 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 Cove Marina fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD


Craig M. Wilson
Delta Watermaster

Dated: **NOV 27 2013**

Attachment

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

MARINER COVE MARINA, LLC

SOURCE: Taylor Slough

COUNTY: Contra Costa

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. Mariner Cove Marina, LLC (Cove Marina) 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 (ACL) Complaints to persons who divert water in the Delta, and impose an ACL, in accordance with Water code section 1851 et seq. Pursuant to State Water Board Resolution 2012-0048, Delta Watermaster 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.

ALLEGATIONS

6. Cove Marina filed three Initial Statements of Water Diversion and Use (S017959, S017962, and S017973) on June 30, 2010.

7. On January 28, 2013, the Division of Water Rights (Division) mailed Cove Marina separate letters for S017959, S017962, and S017973, notifying Cove Marina of the requirement to electronically file the triennial Supplemental Statement of water diversion and use prior to July 1, 2013. Each letter contained the information required to access the online account for each individual statement. The letter indicated that if there are multiple water rights, water use must be reported separately for each right.
8. On July 26, 2013, the Division mailed Cove Marina individual letters, for each statement, which indicated that a triennial Supplemental Statement (Statement) had not been received by the July 1, 2013 deadline and that Cove Marina may be subject to civil liability for failure to file a statement, if no Statement is submitted.
9. On August 23, 2013, the Division mailed Cove Marina a final delinquent notice letter for each statement by certified mail which indicated that a Statement had not been received by the July 1, 2013 deadline and that Cove Marina would be subject to a \$1,000 penalty, plus an additional \$500 per day civil liability commencing 30 days from the receipt of the letter if no Statement is submitted.
10. The United States Postal Service confirmed receipt of the final delinquent notice letters (which were mailed in the same envelope) on August 26, 2013 at 11:45 am, via certified mail (Certificate # 7012346000035215083). The deadline to submit the triennial Statements was September 26, 2013.
11. On October 2, 2013, Office of Delta Watermaster (Watermaster) staff telephoned and spoke with Cove Marina staff, who informed Watermaster staff that Cove Marina had been informed that the statement reports had to be filed by October 7, 2013. Watermaster staff confirmed with Cove Marina staff that Cove Marina had until October 7, 2013 to file the statement reports for the three statements (and one other statement under owner name of Island Resort Properties, LLC). On Friday, October 4, 2013, staff telephoned and left a message on Cove Marina's answering machine that due to updates to the State Water Board' computer servers, the reporting system would be unavailable for the weekend, so Cove Marina had until October 9, 2013 to file the statement reports.
12. No Supplemental Statements were electronically filed by Cove Marina. Cove Marina was given the opportunity to file, but by October 11, 2013, Cove Marina has not done so.

PROPOSED CIVIL LIABILITY

13. Cove Marina failed to submit the required *Supplemental Statements of Water Diversion and Use* by September 26, 2013. The deadline for submittal was July 1, 2013. 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 August 23, 2013.
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. By October 11, 2013, Cove Marina has been on notice of the requirements for filing a statement for 15 days, therefore the maximum civil liability that can be considered for this time is \$1,000 plus 15 days (\$500), or \$8,500 for each statement, with the combined maximum civil liability for three statements of \$25,500.

15. In this case, no Statements were filed as of the date of this ACL Complaint, despite nine notices being sent on three different dates (three in January 2013, three in July 2013, and the last three in August 2013).
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 Statements filing violations, the Delta Watermaster makes the following conditional settlement offer (Conditional Offer). Cove Marina 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 Cove Marina to pay an expedited payment amount (Expedited Payment Amount) of \$3,500, simultaneously file the necessary Supplemental Statements electronically by accessing the State Water Board's Report Management System at www.waterboards.ca.gov/rms using the User IDs and Passwords shown on the User Information Sheets accompanying this ACL Complaint, and waive the right to a hearing and reconsideration of the alleged violations.
19. To accept the Conditional Offer, Cove Marina must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Supplemental Statements within 20 days of receipt of this complaint.
20. If there are extenuating circumstances that Cove Marina would like to discuss, such as an inability to pay the Expedited Payment Amount, then Cove Marina 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

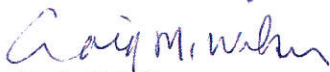
21. Cove Marina may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that this notice is received. (Water Code, sec. 1055, subd. (b).)
22. If Cove Marina requests a hearing, Cove Marina will have an opportunity 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 Cove Marina 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 Cove Marina does not wish to request a hearing within 20 days of receipt of this Complaint, Cove Marina shall electronically file the required Supplemental Statements 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 18 above, to:

State Water Resources Control Board
Office of Delta Watermaster
Attn: Craig Wilson
P.O. Box 100
Sacramento, CA 95812-0100

25. If Cove Marina 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: **OCT 15 2013**

Enclosures