

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

**ORDER WR 2014-0004-EXEC**

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In the Matter of the Diversion and Use of Water by  
**CARL A. ELKINS**

**ORDER APPROVING SETTLEMENT AGREEMENT**

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**BY THE EXECUTIVE DIRECTOR<sup>1</sup>**

**1.0 INTRODUCTION**

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of an Administrative Civil Liability (ACL) complaint to Carl A. Elkins (Elkins). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Elkins have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

**2.0 BACKGROUND**

Elkins owns water right License 682. Elkins failed to timely submit the 2010 annual use report for License 682. On May 23, 2012, the Division of Water Rights issued a draft Cease and Desist Order (CDO) requiring Elkins to submit the 2010 annual use report within 20 days of receipt. Elkins did not submit the report within the deadline and on July 3, 2012, the Division of Water Rights finalized the draft CDO by way of Order WR 2012-0003-DWR.

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<sup>1</sup> State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On September 13, 2012, the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACLCL") against Elkins, alleging that Elkins violated Order WR 2012-0003-DWR by failing to submit the 2010 annual use report for License 682.

On October 2, 2012, Elkins timely requested hearings on the ACLCL. At the time of this Settlement Agreement, the State Water Board has not scheduled hearing for the ACLCL.

Elkins and the Division Prosecution Team engaged in settlement discussions and mutually agreed to settle the matters identified in the ACLCL in lieu of hearing.

### **3.0 SETTLEMENT AGREEMENT**

Elkins and the Division Prosecution Team executed the Settlement Agreement attached hereto. The general terms of the settlement are that Elkins: (1) withdraws its request for hearing on the ACLCL, and (2) is subject to administrative civil liability in the amount of \$3,000, payable within 30 days of issuance of this Order, to be deposited into the Water Rights Fund pursuant to Water Code section 1054, et seq.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the attached Settlement Agreement between the Division's Prosecution Team and Elkins is approved and is incorporated by reference into this Order.

STATE WATER RESOURCES CONTROL BOARD

  
Thomas Howard  
Executive Director

Dated: 2/12/14

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Carl A. Elkins ("Elkins") and the Prosecution Team of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division Prosecution Team") and is executed this 13<sup>th</sup> day of December, 2013.

### RECITALS

1. 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.
2. In February 2011, the Division mailed out as an initial notice to Elkins 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. Elkins 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.
3. 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.
4. On May 23, 2012, the Division, having not received Elkins' 2010 annual use report for License 682, issued a draft CDO requiring Elkins to submit the 2010 annual use report within 20 days of the receipt of the draft CDO, and/or request a hearing to contest the notice as provided by Water Code section 1834(a).
5. The United States Postal Service confirmed receipt of the draft CDO on May 25, 2012 at 1:05 p.m. via certified mail (Certificate No. 70042510000391529617). The deadline to submit the 2010 annual use report and/or request a hearing was 11:59 p.m. on June 15, 2012.
6. As of July 3, 2012, 39 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 2012-0003-DWR.

## Elkins Settlement Agreement

7. Order WR 2012-0003-DWR was mailed on July 3, 2012 by certified mail (Certificate No. 70042510000361465328) with reported delivery on July 9, 2012 at 2:05:00 p.m.
8. As of September 7, 2012, 65 days after the July 3, 2012, final CDO was issued, the Division had not received Elkins' 2010 annual use report.
9. On September 13, 2012, the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACLC") against Elkins, alleging that Elkins violated Order WR 2012-0003-DWR. The ACLC recommends an Administrative Civil Liability in the amount of \$25,000, based on the days of violation and all relevant circumstances. The ACLC also provided a conditional settlement offer of \$2,000, provided that Elkins accept within 20 days of receipt of the ACLC.
10. On October 2, 2012, Elkins timely requested hearings on the ACLC. At the time of this Settlement Agreement, the State Water Board has not scheduled hearings for the ACLC.
11. Elkins has since filed the 2010 annual use report and all others due for License 682.
12. In lieu of hearings on the matter, Elkins and the Division Prosecution Team agree to settle the matters identified in the ACLC through this Settlement Agreement.
13. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Elkins and the Division Prosecution Team do hereby agree to settle the ACLC as follows:

1. Recitals Incorporated. The preceding Recitals are incorporated herein.
2. Settlement Conditionally Confidential. Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. Administrative Civil Liability. Elkins shall be subject to administrative civil liability in the amount of \$3,000. This amount is based on the proposed conditional settlement offer plus additional costs incurred by State Water Board staff following Elkins' request for hearing.

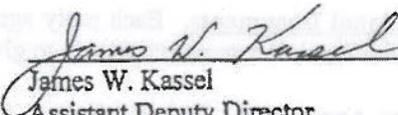
## Elkins Settlement Agreement

4. **Administrative Civil Liability Payment.** Within 30 days following the State Water Board Executive Director's approval of this Settlement Agreement, Elkins shall pay to the State Water Board \$3,000. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water code sections 1054, et seq.
5. **Satisfaction of Administrative Civil Liability Complaint.** Elkins's full payment under paragraph 4 will be a complete and final satisfaction of the administrative civil liability described in the ACLC, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLC.
6. **Hearing.** Upon execution of this Settlement Agreement by both parties, Elkins and the Division Prosecution Team shall request that the hearing in this matter be indefinitely postponed pending approval of this Settlement Agreement by the Executive Director. Upon approval of this Settlement Agreement by the State Water Board's Executive Director, Elkins's request for hearing on the ACLC.
7. **Waiver of Reconsideration.** Elkins waives its right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
8. **Successors.** This Settlement Agreement is binding on any successors or assigns of Elkins and the State Water Board.
9. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
10. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
11. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
12. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.

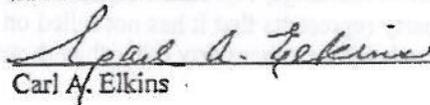
Elkins Settlement Agreement

13. Mutual Agreement. The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
14. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
15. Reasonableness of Settlement. The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
16. Section Headings. The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
17. Effective Date. This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.
18. Choice of Law. This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
19. Authorization. Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
20. State Water Board Is Not Liable. Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Elkins, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Elkins' directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

Dated: 12/13 2013

  
James W. Kassel  
Assistant Deputy Director  
State Water Board, Division of Water Rights  
Prosecution Team

Dated: 12-13-13 2013

  
Carl A. Elkins