

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

Frank J Gomes Dairy
(Application 11555, License 3459)

SOURCE: Merced River

COUNTY: Merced

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Frank J Gomes Dairy (referred to herein as Licensee) is alleged to have violated Order WR 2014-0047-DWR, a Cease and Desist Order (CDO) issued on December 12, 2014, (Final CDO) 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)(A), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$10,000 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 (Annual Use Report), 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 January 2014, the Division of Water Rights (Division) mailed out a first notice (First Notice) to Licensee reminding Licensee of the requirement to submit the 2013 Annual Use Report by June 30, 2014, as required pursuant to the California Code of Regulations and notifying

Licensee that the 2013 Annual Use Report must be filed online. The First Notice provided instructions on how to access the RMS system and submit the 2013 Annual Use Report online and also notified Licensee to contact the Division by phone or email with any questions regarding the new reporting process.

6. Licensee failed to submit the 2013 Annual Use Report online by the deadline, June 30, 2014.
7. In determining that Licensee violated a term of the permit/license by failing to submit the 2013 Annual Use Report by June 30, 2014, the Division issued a draft CDO requesting the submission of the 2013 Annual Report within 20 days of receipt or a written request for a hearing to contest the notice (Draft CDO).
8. The United States Postal Service confirmed receipt of the Draft CDO on October 20, 2014 at 1:21pm via certified mail (Cert# 7004-2510-0003-9147-3606).
9. Having neither received the 2013 Annual Use Report nor a request for a hearing within 20-days after receipt of the Draft CDO, the Division issued a Cease and Desist Order on December 12, 2014 (CDO), adopting the Draft CDO as final (Order WR 2014-0047-DWR or Final CDO).
10. The Final CDO was sent certified mail (Cert# 7004-2510-0003-9144-6853) and delivered on December 16, 2014 at 11:53am.
11. Licensee violated the Final CDO by failing to immediately submit the 2013 Annual Use Report and Licensee remains out of compliance 33 days after the Final CDO was issued on December 12, 2014.

PROPOSED CIVIL LIABILITY

12. California Water Code section 1845(b)(1)(A) provides that the State Water Board may administratively impose civil liability to any person or entity who violates a CDO in an amount not to exceed \$10,000 for each day in which the violation occurs.
13. As of January 14, 2015, Licensee has been in violation of the Final CDO for 33 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is \$330,000 (33 days at \$10,000/day).
14. In determining the appropriate amount of a civil liability, California Water Code sections 1055.3 and 1845, subdivision (c), require 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.
15. In this case, the 2013 Annual Use Report was due by June 30, 2014. Despite two prior notifications (January 2014 notification letter and the October 2014 Draft CDO), Licensee failed to submit the 2013 Annual Use Report before the issuance of the Final CDO. Failure to comply with the reporting requirements in a timely manner harms the Division's ability to accurately track water diversions from the source and effectively regulate the resources it is required to protect. Despite repeated notices Licensee, Licensee to date, has failed to comply. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2013 Annual Use Report, the harm of the missing Annual Report 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 Division recommends the imposition of \$10,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

16. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following conditional settlement offer (Conditional Offer). Licensee can avoid further enforcement action and settle the alleged failure to file the annual use violation 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."
17. This Conditional Offer requires Licensee to pay an expedited payment amount (Expedited Payment Amount) of \$1,000 and waive the right to a hearing and reconsideration of the alleged violations. This expedited payment amount is based on Licensee's failure to comply to date along with staff costs incurred in preparing the Final CDO and this ACL.
18. To accept the Conditional Offer, Licensee must sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this complaint.
19. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee may contact Kathy Mrowka, 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

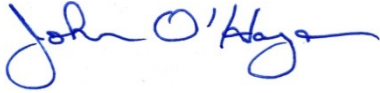
20. Licensee may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that this notice is received as required by Water Code section 1055, subdivision (b).
21. If Licensee requests a hearing, Licensee will 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.
22. If Licensee 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.
23. If Licensee does not wish to request a hearing within 20 days of receipt of this complaint, Licensee shall waive the right to a hearing and reconsideration of this matter, and electronically file the necessary 2013 Annual Use Report 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
Division of Water Rights
Attn : Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

24. If Licensee 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 an ACL Order and seek recovery of the liability imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in blue ink, appearing to read "John O'Hagan". The signature is fluid and cursive, with a large initial "J" and "O".

*John O'Hagan, Assistant Deputy Director
Division of Water Rights*

Dated: **January 14, 2015**

EXHIBIT A

ORDER WR 2015-____-DWR

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

Frank J Gomes Dairy
Source: Merced River
County: MERCED
License 3459

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), Frank J Gomes Dairy (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)(A), in the sum of \$1,000** (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 1845(b)(1)(A) that otherwise might be assessed for the violations described in the ACL Complaint.

- **Electronically file the necessary 2013 Annual Use Report**

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 electronically file the 2013 Annual Use Report, 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**

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.

Frank J Gomes Dairy _____
(Licensee) *Make corrections as appropriate.

By: _____ (Date) _____
(Signed Name) _____

(Printed or typed name)

(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: _____ (Date) _____
John O'Hagan
Assistant Deputy Director for Water Rights