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

Jeff and Kathleen Kennedy
Statement Number: S017085

SOURCE: Stanislaus River tributary to San Joaquin River

COUNTY: San Joaquin

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. Jeff and Kathleen Kennedy (Diverter) has filed an initial Statement (Statement number S017085), 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 June 30, 2010 the Division of Water Rights (Division) received S017805 from Diverter, who reported diverting water from Stanislaus River under claims of riparian and Pre-1914 water rights. The reported diversion period began in February of 2009 and continued until October 2009. A total of 104 acre-feet were reportedly diverted for irrigation of 29 acres of agriculture crops.

7. On January 30, 2013, the Division mailed Diverter, or Diverter's designated representative, a letter notifying you of the requirement to electronically file a Supplemental Statement 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, or Diverter's designated representative, a second letter informing you that the Division had still not received a Supplemental Statement as of July 22, 2013, and informed you of the potential monetary penalties for failure to file a Statement.

9. On August 23, 2013, the Division mailed Diverter a third letter by certified mail which indicated that your Statement had not been received by August 19, 2013. This letter identified that you were subject to a $1,000 penalty, and if your report is not received within 30 days of the date you receive this letter, you will be subject to an additional $500 per day, for each additional day the violation continues.

10. The Division's records show that the August 23, 2013 certified letter was delivered by the U. S. Postal Service on August 29, 2013 to 6926 Trahern Road in Manteca, CA. The certified letter was signed by Kathleen Kennedy. Division staff also attempted to contact Mr. and Mrs. Kennedy by phone on October 15, 1013, but was only able to leave a message.

11. California 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. The three notice letters discussed above were all sent to the name and address provided in initial Statement number S017085 filed by you.

12. California Water Code section 5106, subdivision (b)(2) provides that any person may submit, in writing, a request to the State Water Board to provide notification to a different address, and the State Water Board shall provide the notification to that address. No such notice has been provided to the State Water Board since the filing of S017085.

13. California Water Code section 5104, subdivision (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 Water Board of that change in name or address must be filed. No notice of change in name or address of diverter has been filed with the State Water Board since the filing of S017085.

14. As of October 20, 2013, no Supplemental Statement has been filed for the years 2010 through 2012 by, or on behalf of, Diverter.

PROPOSED CIVIL LIABILITY

15. The deadline for submittal of Supplemental Statements for the years 2010 through 2012 was June 30, 2013, but Diverter failed to file the Statement by that deadline. 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 a 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 29, 2013. Diverter failed to submit the required Supplemental Statements by September 28, 2013, the 30th day after receiving notice of the violation from the State Water Board, thus starting the count for additional days of violation.

25. 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 California 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.

26. 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 California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel

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

Dated: NOV 1 2 2013

16. As of October 20, 2013, Diverter had not filed the Supplemental Statement and had been on notice of the violations for 52 days; therefore Diverter is subject to civil liability in the amount of $1,000 for the initial violation, plus $500 per day for 22 additional days of violation (for September 29 through October 20, inclusive), or an additional $11,000. The potential maximum liability that can be considered for the violations alleged is $12,000.

17. 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 notification to Diverter of the reporting requirements and potential liability for failure to submit a Supplemental Statement, Diverter failed to comply in a timely manner.

18. 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 Statement 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

19. To promote resolution of the alleged Supplemental Statement filing violations, the 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 Supplemental Statement violation 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."

20. The Conditional Offer requires Diverter to pay an expedited payment amount (hereinafter "Expedited Payment Amount") of $1,000, file the necessary Statement(s), and waive the right to a hearing and reconsideration of the alleged violations.

21. To accept the Conditional Offer, you must sign and return the Acceptance and Waiver along with the Expedited Payment Amount and electronically file the necessary Statement(s) within 20 days of receipt of this complaint.

22. If there are extenuating circumstances that you would like to discuss, such as an inability to pay the Expedited Payment Amount, then you 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

23. 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. (Wat. Code, § 1055, subd. (b).)

24. 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.

ORDER NO. 20xx-00xx-DWR

EXHIBIT A

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

Jeff and Kathleen Kennedy
Source: Stanislaus River
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), Jeff and Kathleen Kennedy (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 $1,000** 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 S017085,** 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.

Jeff and Kathleen Kennedy* _____
*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, Date
Assistant Deputy Director
Division of Water Rights