

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

DIVISION OF WATER RIGHTS

ORDER WR 2019-0043-EXEC

In the Matter of Administrative Civil Liability for Failure to File Annual Water Use Reports upon

Delbert L. Mearse

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

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 Complaint (ACL Complaint) to Delbert L. Mearse (Respondent). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and the Respondent 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

The Respondent holds water right License 11129.

The Respondent must, pursuant to regulations enacted by the State Water Board, submit a report online through the Board's website documenting the Respondent's water diversion and use (Annual Water Use Report) under License 11129 by April 1 of each following calendar year. (Cal. Code Regs., tit. 23, §§ 847 & 929). The Respondent was required to file the Annual Water Use Reports for the 2016 and 2017 water years by April 1, 2017 and April 1, 2018, respectively.

On July 27, 2018, the Division mailed to the Respondent a Notice of Deficiency. The Notice of Deficiency warned of the potential for enforcement if the required Annual Water Use Reports were not submitted.

On September 17, 2018, the Division mailed to the Respondent a final Notice of Deficiency, putting the Respondent on notice of imminent enforcement if the Annual Water Use Reports were not submitted.

On October 19, 2018, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority issued an ACL Complaint to the Respondent for failing to file the required Annual Water Use Reports.

¹ [State Water Board Resolution No. 2012-0061](#) delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

The ACL Complaint recommended administrative civil liability in the amount of \$1,500 per violation. The ACL Complaint included a cover letter explaining the violation and an offer to settle for \$500 per violation if the Respondent submitted the Annual Water Use Reports, signed and submitted a waiver of the right to a hearing on the matter, and submitted the settlement payment amount all within 20 days of receiving the ACL Complaint.

The recommended penalty of \$1,500 per violation is based on the relevant circumstances alleged in the ACL Complaint, including the failure of the Respondent to submit the Annual Water Use Reports despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

The Respondent timely requested a hearing before the State Water Board to contest the allegations within the ACL Complaint.

On December 20, 2018, the State Water Board Hearings Unit issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACL Complaint to be held on February 7, 2019.

The Respondent and the Division Prosecution Team have engaged in settlement negotiations and agreed to settle all matters identified in the ACL Complaint issued to the Respondent on October 19, 2018, through a settlement agreement in lieu of a hearing.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Division Prosecution Team executed the Settlement Agreement, dated January 25, 2019, and attached hereto. The general terms of the Settlement Agreement are that the Respondent: (1) waives the right to a hearing on the ACL Complaint, waives the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement and incorporated herein; and (2) is subject to administrative civil liability in the amount of \$1,000 payable within 20 days of receipt of the ACL Complaint, 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 Prosecution Team and Delbert L. Mearse is approved and is incorporated by reference into this Order.

This Order constitutes a cease and desist order for purposes of division 2, part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and this Order will be subject to further enforcement under California Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

JUL 23 2019

Date

ORIGINAL SIGNED BY

Eileen Sobeck
Executive Director

EXHIBIT A**ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING AND RECONSIDERATION****DELBERT L. MEARSE ("Diverter")****APPLICATION A023269, LICENSE 11129**

By properly executing and returning this Acceptance and Waiver to the State Water Board, Diverter hereby accepts the Division of Water Right's Conditional Settlement Offer and waives their right to a hearing before the State Water Board to contest the violations alleged in the attached ACL Complaint. Diverter also waives the right to request reconsideration of an order by the State Water Board resolving the violations alleged in the attached ACL Complaint.

In order to accept the Conditional Settlement Offer the following three (3) steps must be taken no later than 20 days following receipt of the ACL Complaint. Diverter shall:

1. **File the Annual Reports of Licensee for 2016 and 2017 by logging into the State Water Board's website using the Username and Password identified in Username and Password Sheet mailed along with the ACL Complaint, and**
2. **Pay \$1,000 as payment in full of the Administrative Civil Liability related to the alleged violations described in the ACL Complaint. Payment shall be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board," and**
3. **Properly execute and deliver this Acceptance and Waiver along with the payment to:**
State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit – Failure to File
1001 I Street, 14th Floor
Sacramento, CA 95814

Failure to complete all three (3) steps above shall render the Conditional Settlement Offer voidable and may subject Diverter to the full proposed liability (\$3,000) amount specified in the ACL Complaint.

By properly executing and returning this Acceptance and Waiver to the State Water Board, Diverter acknowledges and understands that:

1. This Acceptance and Waiver waives Diverter's right to contest the allegations in the ACL Complaint and the amount of administrative civil liability for the alleged violations.
2. This Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ACL Complaint.
3. The filing of a statement of water diversion and use with the State Water Board does not establish or constitute evidence of a right to divert or use water. (Water Code section 5106.)

DELBERT L MEARSE
Acceptance and Waiver

- 4. This Acceptance and Waiver is not final and effective until it is approved by the Executive Director of the State Water Board.
- 5. Failure to complete all three steps to accept the Conditional Offer within 20 days of receipt of the ACL Complaint, shall render the Conditional Offer voidable. In such case, the State Water Board will issue a final ACL order for the full Proposed Liability amount (\$3,000) specified in the ACL Complaint.

I hereby affirm that I am duly authorized to act on behalf of and to bind Diverter in the making and giving of this Acceptance and Waiver.

By: Delbert Mearse
(Signed Name)

1-25-2019
(Date)

DELBERT MEARSE
(Printed or typed name)

LAND OWNER
(Title)

SELF
(Relationship to Diverter if not Diverter)

Approved By: Eileen Sobeck
Eileen Sobeck
Executive Director

7/23/19
(Date)