



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JUN 17 2013

CERTIFIED MAIL NO. 7004-2510-0003-9146-6967
Return Receipt Requested

Deep Violet Farms, Inc.
2212 Shorebird Drive
Sacramento, CA 95833

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2011 ANNUAL WATER USE REPORT FOR LICENSE 6778 BY JUNE 30, 2012, AND CONDITIONAL SETTLEMENT OFFER, HUTCHINSON CREEK IN YUBA COUNTY

This provides legal notice to Deep Violet Farms, Inc. (Licensee) of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2011 annual use report (Annual Use Report) for the subject right by June 30, 2012. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act or face additional liability.** Therefore, this matter requires Licensee's immediate attention.

VIOLATION DESCRIPTION:

Division records show that Licensee was notified in March 2012 of the requirement to submit the 2011 Annual Use Report electronically by June 30, 2012. Having not received the 2011 Annual Use Report by June 30, 2012, the Division mailed a notification including a draft Cease and Desist Order (Draft CDO) to Licensee requiring Licensee to submit the 2011 Annual Use Report within 20 days or request a hearing. Licensee failed to submit the 2011 Annual Use Report for the subject right within 20 days and did not request a hearing. On April 3, 2013, the Division issued a Final CDO and mailed Licensee a copy by Certified Mail. To date, Licensee has failed to submit its 2011 Annual Use Report.

STATUTORY LIABILITY:

California Water Code section 1845(b)(1) authorizes the State Water Board to administratively impose a \$1,000 per day civil liability for violation of a CDO. As discussed above, the Final CDO was issued to Licensee on April 3, 2013. Accordingly, as of May 31, 2013, the maximum civil liability for which Licensee may be liable for failing to submit the 2011 Annual Use Report is \$59,000.

Based on Licensee's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$10,000 be imposed for Licensee's failure to file the 2011 Annual Use Report. If Licensee fails to respond to the ACL Complaint in one of the manners discussed below within 20 days of receiving this notice, then the State Water Board will issue an ACL Order and seek recovery of this proposed liability amount as authorized by California Water Code section 1055.4.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

JUN 17 2013

CONDITIONAL OFFER OF SETTLEMENT:

To promote resolution of the alleged 2011 Annual Use Report submittal violation, obtain compliance with the annual use filing requirements, and promote administrative efficiency, including avoiding the time and expense of holding a hearing, I am offering Licensee the opportunity to accept a Conditional Settlement Offer (Conditional Offer). This Conditional Offer, as detailed in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver), enclosed as Exhibit "A" to the ACL Complaint, provides that Licensee waive the right to a hearing and reconsideration of the violations alleged in the ACL Complaint and avoid further formal enforcement by agreeing to submit the 2011 Annual Use Report and paying an Expedited Payment Amount of \$1,000.

SUMMARY OF OPTIONS FOR RESPONDING TO ACL COMPLAINT AND CONDITIONAL OFFER OF SETTLEMENT:

In summary, Licensee has two options in responding:

1. Accept the Conditional Offer by:
 - a. (1) Electronically filing the 2011 Annual Use Report within 20 days of receiving this complaint; and
 - b. (2) Signing and submitting the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Licensee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Licensee can contact John O'Hagan, Enforcement Section Manager, at (916) 341-5368 with that information as soon as possible, but no later than 20 days from receiving the enclosed ACL Complaint;

OR

2. Submit a written request for hearing signed by, or on the behalf of, Licensee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Licensee does not respond with one of these two options, then the State Water Board will issue an ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

Sincerely,



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

Enclosure:

- Administrative Civil Liability Complaint with Exhibit A

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

Deep Violet Farms, Inc.

SOURCE: Hutchinson Creek

COUNTY: Yuba

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Deep Violet Farms, Inc. (referred to herein as Licensee) is alleged to have violated Order WR 2013-0017-DWR, a Cease and Desist Order (CDO), issued on April 3, 2013, (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. California Water Code section 1845, subdivision (b)(1) 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 \$1,000 for each day in which the violation occurs. California Water Code section 1845, subdivision (b)(3) provides that civil liability may be imposed administratively by the State Water Board, pursuant to California Water Code section 1055.
3. 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 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 March 2012, the Division of Water Rights (Division) mailed out a first notice (First Notice) to Licensee reminding Licensee of the requirement to submit the Annual Use Report by June 30, 2012, as required pursuant to the California Code of Regulations and notifying Licensee that the 2011 Annual Use Report must be filed online. The First Notice provided instructions on how to access the RMS system and submit the 2011 Annual Use Report online and also notified Licensee to contact the Division by phone or e-mail with any questions regarding the new reporting process.
6. Licensee failed to submit the 2011 Annual Use Report online by the deadline, June 30, 2012.

7. In determining that Licensee violated a term of the permit/license by failing to submit the Annual Use Report by June 30, 2012, the Division issued a second notification on October 22, 2012 of the violation (Second Notice), as provided by California Water Code section 1834(a), along with a draft CDO requesting the submission of the 2011 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 Second Notice and Draft CDO on February 14, 2013 at 2:16 p.m. via certified mail (Certified Mail No. 7004-2510-0003-9146-6219).
9. Having neither received the 2011 Annual Use Report nor a request for a hearing within 20 days after receipt of the Second Notice and Draft CDO, the Division issued a Cease and Desist Order on April 3, 2013 (CDO), adopting the Draft CDO as final (Order WR 2013-0017-DWR or Final CDO).
10. The Final CDO was sent certified mail (Certified Mail No. 7004-2510-0003-9146-0170) and delivered on April 4, 2013 at 2:33 p.m.
11. Licensee violated the Final CDO by failing to immediately submit the 2011 Annual Use Report, and as of May 31, 2013, Licensee remains out of compliance 59 days after the Final CDO was issued on April 3, 2013.

PROPOSED CIVIL LIABILITY

12. California Water Code section 1845(b)(1) 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 \$1,000 for each day in which the violation occurs.
13. As of May 31, 2013, Licensee has been in violation of the Final CDO for 59 days. Based on the days of violation described in the previous paragraphs, the maximum liability for the violations alleged is \$59,000 (59 days at \$1,000 per 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 2011 Annual Use Report was due by June 30, 2012. Despite two prior notifications (the First Notice in March 2012 and the Second Notice and Draft CDO in October 2012), Licensee failed to submit the 2011 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 has failed to comply. Having taken into consideration all relevant circumstances, including but not limited to the failure of Licensee to submit the 2011 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, electronically file the 2011 Annual Use Report, 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 electronically file the 2011 Annual Use Report and 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 John O'Hagan, Enforcement Section Manager, with that information as soon as possible but no later than the 20 days from receipt of this Complaint.

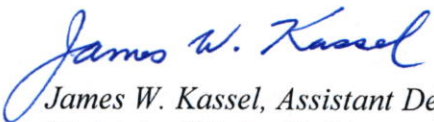
RIGHT TO HEARING

- 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 California 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, a 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 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.
- 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 2011 Annual Use Report and remit a cashier's check or money order for the Expedited Payment Amount set forth in paragraph 17 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 and Expedited Payment Amount, electronically file the 2011 Annual Use Report, or 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 California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD


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

Dated: **JUN 17 2013**

EXHIBIT A

ORDER WR 2013-____-DWR

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

**Deep Violet Farms, Inc.
Source: Hutchinson Creek
County: YUBA**

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), Deep Violet Farms, Inc. (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), 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) that otherwise might be assessed for the violations described in the ACL Complaint.
- **Electronically file the necessary 2011 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 2011 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 up to the maximum liability for the violations alleged in this ACL Complaint, \$59,000 (59 days at \$1,000 per day).

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.

Deep Violet Farms, Inc. _____
(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 the Division of 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: _____ Date _____
James W. Kassel, Assistant Deputy Director
Division of Water Rights