



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 28, 2016

In Reply Refer to:  
BRC:1:479:A026431

Certified Mail No. 7004-2510-0003-9145-2434  
Return Receipt Requested

NANETTE WHEELER  
1616 CAPELL VALLEY ROAD  
NAPA, CA 94558

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2015 ANNUAL USE REPORT UNDER LICENSE 12812 (APPLICATION A026431), DIVERSION OF WATER FROM CAPELL CREEK IN NAPA COUNTY

This provides legal notice to NANETTE WHEELER of the intent of the State Water Board, Division of Water Rights (Division) to proceed with formal enforcement for Licensee's failure to file the required 2015 annual use report (Annual Use Report) for the subject rights by June 30, 2016. Licensee **has 20 days from receipt of the enclosed Administrative Civil Liability (ACL) Complaint to act.** Therefore, this matter requires Licensee's immediate attention.

### VIOLATION DESCRIPTION:

Division records show that Licensee was notified on January 30, 2016 of the requirement to submit the 2015 Annual Use Report electronically by June 30, 2016. Having not received the 2015 Annual Use Report by June 30, 2016, the Division mailed a deficiency letter on August 25, 2016 requiring Licensee to submit the 2015 Annual Use Report within 30 days. As of the date of this letter, 95 days after the August 25, 2016 deficiency letter was mailed, Licensee failed to submit the 2015 Annual Use Report for the subject rights.

### STATUTORY LIABILITY:

Title 23, Chapter 2.7, Article 2, Section 929 of the California Code of Regulations require annual use reports to be filed by July 1<sup>st</sup> of the succeeding year for every water right License.

Water Code section 1846, subdivision (a)(2), provides that the State Water Board may administratively impose civil liability to any person or entity who violates a regulation or order adopted by the State Water Board not to exceed \$500 for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

Accordingly, as of today's date, the maximum civil liability for which Licensee may be liable for failing to submit the 2015 Annual Use Report is \$75,000 (150 days at \$500/day).

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

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 2015 Annual Use Reports. 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 a ACL Order and seek recovery of this proposed liability amount as authorized by Water Code section 1055.4.

**CONDITIONAL OFFER OF SETTLEMENT:**

To promote resolution of the alleged 2015 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 pay an Expedited Payment Amount of \$250.

**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. Signing the Acceptance and Waiver;
  - b. Electronically filing the necessary 2015 Annual Use Reports; and
  - c. Submitting the signed 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 Kathy Mrowka, Enforcement Section Manager at (916) 341-5363 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 a ACL Order seeking recovery of the \$10,000 of liability proposed in the enclosed ACL Complaint.

The Division's online reporting system can be accessed at <http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you have questions or need assistance with the reporting system, please contact the Division at (916) 323-9393 or by email at: [ewrims@waterboards.ca.gov](mailto:ewrims@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Kathy Mrowka".

Kathy Mrowka, Manager  
Compliance and Enforcement Section  
Division of Water Rights

Enclosures:   1) Administrative Civil Liability Complaint  
                  2) Conditional Settlement Offer  
                  3) Confidential User Information Sheet  
                  4) Hearing Information Sheet