

## Farwell Jensen, Jane

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**From:** John A. Holdredge <JHoldredge@gearyl.com>  
**Sent:** Wednesday, July 08, 2015 1:58 PM  
**To:** Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy D.@Waterboards; Olson, Samantha@Waterboards; Farwell Jensen, Jane; AndrewFlocchini@gmail.com; Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen (pwhealen@wbecorp.com)  
**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

All: We are disheartened by this development.

We reiterate our request that the Executive Director issue an order based on the parties' July 7 emails; given the consensus, it seems an appropriate, efficient and reasonable way to proceed, since there is a consensus. However, if the Executive Director is unwilling to do so, then Mr. Flocchini requests that the existing agreement be approved in its present form, and an order approving same be issued. Thank you.

*John A. Holdredge, Esq.  
Geary, Shea, O'Donnell, Grattan & Mitchell P.C.  
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*707/545-1660  
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**From:** Tauriainen, Andrew@Waterboards [mailto:Andrew.Tauriainen@waterboards.ca.gov]  
**Sent:** Wednesday, July 08, 2015 1:26 PM  
**To:** Buckman, Michael@Waterboards; John A. Holdredge; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy D.@Waterboards; Olson, Samantha@Waterboards; Farwell Jensen, Jane; AndrewFlocchini@gmail.com; Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen (pwhealen@wbecorp.com)  
**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

The Prosecution Team is generally unwilling to reopen any negotiated settlement agreement to incorporate a late-filed request by a signatory. The Prosecution Team is specifically unwilling to reopen this Settlement Agreement because Flocchini had ample prior opportunity to submit evidence of inability to pay and to request a payment schedule, yet did neither. The Prosecution Team is not aware of any evidence indicating an inability to pay other than the unsupported assertion in Flocchini's June 11 request, and is therefore in no better position to evaluate that assertion and request.

If the Executive Director is unwilling to issue an order approving the Settlement Agreement based on parties' July 7 email requests, then the Prosecution Team requests that the Executive Director issue an order approving the Settlement Agreement as is.

If the Executive Director is unwilling to issue an order approving the Settlement Agreement as is, then the Prosecution Team requests that the Executive Director reject the Settlement Agreement and place the matter on calendar for hearing under the existing Notice procedures and without further pre-hearing submittals.

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**From:** Buckman, Michael@Waterboards  
**Sent:** Wednesday, July 08, 2015 9:45 AM  
**To:** Tauriainen, Andrew@Waterboards; John A. Holdredge; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane; [AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))  
**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

Gentlemen,

Apparently the message from Advisory Team was not understood. Due to its knowledge of the enforcement case, the Prosecution Team is in the best position to decide whether a payment schedule is appropriate, and if so, the terms of any such proposal. Accordingly, it is up to the Parties to make this determination, and reflect any such determination in the settlement agreement by the July 15, 2015 deadline.

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Hearings Unit Chief, Division of Water Rights  
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Fax: 916.341.5400

Email: [Michael.Buckman@waterboards.ca.gov](mailto:Michael.Buckman@waterboards.ca.gov)



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**From:** Tauriainen, Andrew@Waterboards  
**Sent:** Tuesday, July 07, 2015 5:59 PM  
**To:** John A. Holdredge; Buckman, Michael@Waterboards; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane;

[AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))

**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

The Prosecution Team concurs. If the Executive Director incorporates the payment schedule into the order, the Parties to the Settlement Agreement will not consider that to be a material modification of the Settlement Agreement provided that the Order also states that the payment schedule is not precedential and recognizes that Flocchini continues to waive the right to petition.

With this, there are no outstanding issues with respect to the Settlement Agreement or Flocchini's proposed payment schedule. Thank you for your attention to this matter.

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**From:** John A. Holdredge [[JHoldredge@gearyl.com](mailto:JHoldredge@gearyl.com)]

**Sent:** Tuesday, July 07, 2015 2:26 PM

**To:** Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; O'Hagan, John@Waterboards

**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane;

[AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))

**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

Dear Mr. Buckman et. al.: We have conferred with the Prosecution Team regarding the Hearing Team's June 30, 2015 email message set forth below.

Mr. Flocchini agrees that any decision by the Executive Director to incorporate Flocchini's proposed payment schedule into the Order shall not be considered a material modification of the Settlement Agreement; he further agrees that the Order expressly can and should state that the decision to incorporate the payment plan shall not be precedential, and that Flocchini continues to waive the right to petition the Order.

I believe the prosecution team will so stipulate, and ask Mr. Tauriainen to confirm. We thank you for your courtesy and assistance.

*John A. Holdredge, Esq.  
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are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and destroy the original message. "My only regret in life is that I did not drink more Champagne." - John Maynard Keynes. "Every time a champagne cork pops, an angel gets its wings". John Holdredge Thank you.

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**From:** Buckman, Michael@Waterboards [<mailto:Michael.Buckman@waterboards.ca.gov>]  
**Sent:** Tuesday, June 30, 2015 3:32 PM  
**To:** John A. Holdredge; Tauriainen, Andrew@Waterboards; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane; [AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))  
**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

Ladies and Gentlemen:

On May 28, 2015, the State Water Resources Control Board (State Water Board) received a joint request from the Division of Water Rights Prosecution Team (Prosecution Team) and the representative for the Flocchini Estate, LLC (Flocchini) to postpone the **Monday, June 1, 2015** hearing regarding the Flocchini Estate enforcement matter (ENF00179), based on a proposed settlement agreement (dated May 28, 2015) entered into by the parties. On May 29, 2015, the State Water Board issued a [Notice of Postponement](#) for the June 1<sup>st</sup> hearing and provided additional notice to the parties that the proposed "settlement agreement does not, however, take effect unless and until approved by the State Water Board's Executive Director pursuant to Government Code section 11415.60."

On June 11, 2015, Flocchini requested a modification to the proposed settlement agreement to allow for a payment schedule. The Prosecution Team responded to the requested modification on June 13, 2015. In light of this correspondence, it appears that there is some disagreement between the parties about the terms of the agreement. Therefore, the State Water Board will allow the parties an opportunity to resolve any outstanding issues by **July 15, 2015**. The State Water Board's Executive Director will hold in abeyance his consideration of the proposed settlement agreement pending any amended agreement submitted by the July 15th deadline.

Finally, the State Water Board's Hearing Team reminds the parties that, in this currently postponed water right enforcement hearing proceeding, the Prosecution Team is prosecuting Flocchini for an alleged violation. Thus, the Prosecution Team and Flocchini, who is the subject of the proposed enforcement action, may at their discretion engage in private settlement discussions. Due to the separation of functions, the State Water Board's Hearing Team cannot participate in settlement discussions. During the pendency of this currently postponed hearing proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the prosecution team. (Gov. Code, §§ 11430.10-11430.80.)

Further notification will be provided when the hearing is either rescheduled or cancelled.

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**From:** John A. Holdredge [<mailto:JHoldredge@gearyl.com>]

**Sent:** Sunday, June 14, 2015 2:25 PM

**To:** Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards; O'Hagan, John@Waterboards

**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane;

[AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))

**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

First, I want to thank Mr. Tauriainen for his approach. Stated simply, the combined costs of compliance and this payment are quite significant, hence the request by Mr. Flocchini. He is simply trying to ensure he can meet all the obligations, and therefore requested this accommodation, and appreciates your consideration thereof.

JAH

**John A. Holdredge, Esq.**

**Geary, Shea, O'Donnell, Grattan & Mitchell P.C.**

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**From:** Tauriainen, Andrew@Waterboards <[Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov)>

**Sent:** Saturday, June 13, 2015 10:43 AM

**To:** Buckman, Michael@Waterboards; O'Hagan, John@Waterboards

**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane;

[AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; John A. Holdredge; Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))

**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

The Prosecution Team is not aware of any evidence, in the record or otherwise, that would indicate an inability to pay the full liability in accordance with Paragraph 4 of the Settlement Agreement. The Settlement Agreement is a negotiated agreement between the Prosecution Team and Mr. Flocchini and his team, and this request represents a material modification. Nevertheless, if the Executive Director determines that a payment schedule is appropriate, the Prosecution Team will not object, provided that all other terms and conditions are retained and Mr. Flocchini continues to waive his right (and that of Flocchini Estate LLC) to request reconsideration of the approving order.

Andrew Tauriainen, Attorney

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**From:** Buckman, Michael@Waterboards  
**Sent:** Friday, June 12, 2015 2:29 PM  
**To:** Tauriainen, Andrew@Waterboards; O'Hagan, John@Waterboards  
**Cc:** Hensley, Cindy [D.@Waterboards](mailto:D.@Waterboards); Olson, Samantha@Waterboards; Farwell Jensen, Jane; [AndrewFlocchini@gmail.com](mailto:AndrewFlocchini@gmail.com); Evoy, Barbara@Waterboards; John A. Holdredge ([JHoldredge@gearylaw.com](mailto:JHoldredge@gearylaw.com)); Mrowka, Kathy@Waterboards; Paula Whealen ([pwhealen@wbecorp.com](mailto:pwhealen@wbecorp.com))  
**Subject:** RE: Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement

Andrew and John,

Would you please provide us with your feedback on the request from Ms. Whealen. The hearing team was not involved in the settlement negotiations. As noted by Ms. Whealen in her letter, this request would change a term of the proposed settlement agreement which is currently pending approval. We will be awaiting your feedback.

Thank you,

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**From:** Paula Whealen [<mailto:pwhealen@wbecorp.com>]  
**Sent:** Thursday, June 11, 2015 5:43 PM  
**To:** Olson, Samantha@Waterboards; Farwell Jensen, Jane  
**Cc:** Andrew Flocchini; Tauriainen, Andrew@Waterboards; Evoy, Barbara@Waterboards; John A. Holdredge  
**Subject:** Flocchini Estate LLC and Andrew J. Flocchini - Settlement Agreement  
**Importance:** High

Please see attached letter in regards to the subject matter.

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