

State Water Resources Control Board

JUN 17 2013

CERTIFIED MAIL NO. 7004-2510-0003-9146-0378
Return Receipt Requested

Heber Field Company
c/o Ormat Nevada, Inc.
947 Dogwood Road
Heber, CA 92249

To Whom It May Concern:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2011 ANNUAL WATER USE REPORT FOR PERMIT 18014 BY JUNE 30, 2012, AND CONDITIONAL SETTLEMENT OFFER, NEW RIVER IN IMPERIAL COUNTY

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

VIOLATION DESCRIPTION:

Division records show that Permittee 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 Permittee requiring Permittee to submit the 2011 Annual Use Report within 20 days or request a hearing. Permittee failed to submit the 2011 Annual Use Report for the subject right within 20 days and did not request a hearing. On January 9, 2013, the Division issued a Final CDO and mailed Permittee a copy by Certified Mail. Permittee submitted the 2011 Annual Use Report on January 15, 2013.

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 Permittee on January 9, 2013. Accordingly, as of the date Permittee submitted the Annual Use Report, the maximum civil liability for which Permittee may be liable for failing to submit the 2011 Annual Use Report is \$6,000.

Based on Permittee's failure to comply with the legal requirements set forth above, I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$5,000 be imposed for Permittee's failure to file the 2011 Annual Use Report. If Permittee 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.

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 Permittee 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 Permittee 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 \$500.

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

In summary, Permittee has two options in responding:

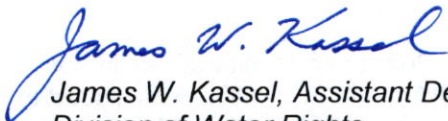
1. Accept the Conditional Offer by:
 - a. (1) Signing the Acceptance and Waiver; and
 - b. (2) Submitting the signed Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receiving the enclosed ACL Complaint. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee 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, Permittee to the State Water Board within 20 days of receiving the enclosed ACL Complaint.

If Permittee does not remit the Acceptance and Waiver, the Expedited Payment Amount, or request a hearing within 20 days of the date Permittee received this ACL Complaint, then the State Water Board will issue an ACL Order seeking recovery of the \$5,000 in liability proposed in the 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

Heber Field Company

SOURCE: New River

COUNTY: Imperial

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Heber Field Company (referred to herein as Permittee) is alleged to have violated Order WR 2013-0001-DWR, a Cease and Desist Order (CDO), issued on January 9, 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 mailed out a first notice (First Notice) to Permittee reminding Permittee of the requirement to submit the Annual Use Report by June 30, 2012, as required pursuant to the California Code of Regulations and notifying Permittee 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 Permittee to contact the Division by phone or e-mail with any questions regarding the new reporting process.

6. Permittee failed to submit the 2011 Annual Use Report online by the deadline, June 30, 2012.
7. In determining that Permittee 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 October 25, 2012 at 11:18 a.m. via certified mail (Certified Mail No. 7004-2510-0003-9146-5854).
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 January 9, 2013 (CDO), adopting the Draft CDO as final (Order WR 2013-0001-DWR or Final CDO).
10. The Final CDO was sent certified mail (Certified Mail No. 7004-2510-0003-9146-5809) and delivered on January 14, 2013 at 11:14 a.m.
11. Permittee violated the Final CDO by failing to immediately submit the 2011 Annual Use Report. Permittee subsequently submitted the 2011 Annual Use Report on January 15, 2013, 6 days after the Final CDO was issued on January 9, 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 January 15, 2013, Permittee has been in violation of the Final CDO for 6 days. Based on the days of violation described in the previous paragraph, the maximum liability for the violations alleged is \$6,000 (6 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), Permittee 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. Permittee has since complied by submitting the 2011 Annual Use Report.
16. Having taken into consideration all relevant circumstances, including but not limited to the late submission of the 2011 Annual Use Report, the harm caused by the delay in submitting the Annual Use Report, 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 \$5,000 in administrative civil liability (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

17. To promote resolution of the alleged annual use filing violations and administrative efficiency, the Division makes the following Conditional Settlement Offer (Conditional Offer). Permittee 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."

18. This Conditional Offer requires Permittee to pay an expedited payment amount (Expedited Payment Amount) of \$500 and waive the right to a hearing and reconsideration of the alleged violations. This expedited payment amount is based on staff costs incurred to date in preparing the Final CDO and this ACL.
19. To accept the Conditional Offer, Permittee must sign and return the Acceptance and Waiver along with the Expedited Payment Amount within 20 days of receipt of this Complaint.
20. If there are extenuating circumstances that Permittee would like to discuss, such as an inability to pay the Expedited Payment Amount, then Permittee 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

21. Permittee 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).
22. If Permittee requests a hearing, Permittee 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.
23. If Permittee 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.
24. If Permittee does not wish to request a hearing within 20 days of receipt of this Complaint, Permittee shall waive the right to a hearing and reconsideration of this matter, and remit a cashier's check or money order for the Expedited Payment Amount set forth in paragraph 18 above, to:

State Water Resources Control Board
Division of Water Rights
Attn: Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

25. If Permittee does not remit the Acceptance and Waiver, the Expedited Payment Amount, nor 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**

**Heber Field Company
Source: New River
County: IMPERIAL**

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), Heber Field Company (Permittee) 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 Permittee (ACL Complaint) to which this Acceptance and Waiver is attached as Exhibit "A" could be disputed.

Permittee 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 \$500** (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.

Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the ACL Complaint and the civil liability amount for such violations.

Permittee understands that the failure to 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 Permittee's non-performance, then the State Water Board will issue a final Administrative Civil Liability Order and seek recovery of the full liability amount proposed in the ACL Complaint.

Permittee 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 Permittee, 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**

Permittee 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 Permittee in the making and giving of this Acceptance and Waiver.

Heber Field Company _____
(Permittee) *Make corrections as appropriate.

By: _____
(Signed Name) Date _____

(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: _____
James W. Kassel, Assistant Deputy Director Date _____
Division of Water Rights