



State Water Resources Control Board

MAR 08 2013

CERTIFIED MAIL NO. 7004-2510-0003-9146-6929
Return Receipt Requested

Flocchini Estate, LLC
Mr. Andrew Flocchini
7078 Lakeville Highway
Petaluma, CA 94954

Dear Flocchini Estate, LLC, and Mr. Andrew Flocchini:

ENFORCEMENT ACTION ENF00179 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED
DIVERSION OF WATER WITHIN SONOMA COUNTY

Enclosed are an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). This letter serves as notice to Flocchini Estate, LLC, and Andrew Flocchini (collectively Flocchini) of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with these enforcement actions. Therefore, **this matter requires your immediate attention.**

By letter dated September 20, 2011, the Division notified you that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, you were required to either: (1) Provide evidence satisfactory to the State Water Board that demonstrates the reservoir on the property located at 7078 Lakeville Highway, Petaluma, California, does not store water, or can be operated without storing water subject to the State Water Board's permitting authority; (2) remove the reservoir or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. You were given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule. The letter also described the potential administrative civil liability from the State Water Board associated with the continued unauthorized storage of water in the reservoir and failure to comply with reporting requirements.

To date, the State Water Board's records indicate that you filed an initial Statement of Water Diversion and Use (Statement), which was accepted on November 13, 2012, but you have not provided a basis of right to store water. Please note, a Statement identifies a diversion of water, but does not by itself establish a right to store water. In order to store water in the reservoir, you must obtain an appropriate permit, license, or registration, or you must establish a pre-1914 right based on evidence of historical use. Your Statement filing indicates a pending appropriate application as the type of claim for your diversion, but we have not received an application as of the date of this letter. Until you obtain an appropriate permit, license, or registration, or provide supporting evidence of a pre-1914 right, any storage of surface water is an unauthorized diversion and subject to State Water Board enforcement action.

Based on these findings, I signed the enclosed ACL Complaint against you, proposing a liability of **\$42,000**. As described in the Complaint and below, you have 20 days from your receipt of the Complaint to either pay the \$42,000 or submit a **written** request for a hearing. At any hearing, the State Water Board may reexamine and adjust the proposed ACL amount higher or lower, not to exceed the maximum allowed by statute.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

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Also enclosed is a draft CDO that requires you to cease and desist from diversion and use of water at the reservoir, or take certain corrective actions within a specified time schedule. The corrective action required is filing for an appropriative water right that would authorize the diversion and use of water at the reservoir. In addition, the draft CDO specifies that should the State Water Board not issue a water right permit, you must render the reservoir incapable of storing water subject to the permitting authority of the State Water Board.

As described in the draft CDO and below, you have 20 days from your receipt of the draft CDO to submit a **written** request for a hearing, should you desire a hearing. The written request must be signed by you or on your behalf, and hand delivered or mailed to the State Water Board. If you do not submit a timely written request for a hearing, the State Water Board may adopt the CDO with the statement of facts and information set forth in the enclosed draft CDO without a hearing. (California Water Code, § 1834.)

If you request a hearing concerning the ACL Complaint and/or the draft CDO, then a hearing before the State Water Board, or before a hearing officer of the State Water Board, will be scheduled and you will be notified of the hearing date. Prior to the hearing you will be required to submit any written testimony and other evidence you would like the State Water Board to consider.

A request for an ACL hearing and/or a CDO hearing **must be made in writing and must state whether you are requesting a hearing on the ACL Complaint, on the draft CDO, or both.**

You may mail the request(s) to the following address:

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

You may hand deliver the hearing request(s) to the following address:

State Water Resources Control Board
Division of Water Rights
Records Unit
1001 I Street, 2nd Floor
Sacramento, CA 95814

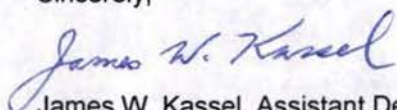
In summary, you have 20 days from the receipt of this letter to:

- (1) Pay the ACL liability amount, or submit a **written** request for a hearing on the ACL Complaint; and
- (2) Begin complying with the provisions of the draft CDO, or submit a **written** request for a hearing on the draft CDO.

Failure to respond to this letter and the issuance of the enclosed ACL Complaint and draft CDO in the time period provided will result in the State Water Board issuing a final ACL Order and CDO. The State Water Board may consider additional enforcement of those Orders without further notice.

If you have any questions concerning this matter or if there are facts or circumstances that you would like to discuss, then please contact Mr. John O'Hagan, Manager of the Enforcement Section, at (916) 341-5368 or John.O'Hagan@waterboards.ca.gov; or Mr. Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement at (916) 341-5445 or Andrew.Tauriainen@waterboards.ca.gov.

Sincerely,



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

Enclosures:

- Administrative Civil Liability Complaint
- Draft Cease and Desist Order

cc and ec: Please see next page.

MAR 08 2013

cc: Mr. Ken Waterman
Agent for Service of Process for Flocchini Estate, LLC
589 First Street West
Sonoma, CA 95476
(with enclosures)

ec: Mr. Andy Sawyer, Assistant Chief Counsel
State Water Resources Control Board
Office of Chief Counsel
(with enclosures)

Mr. Andrew Tauriainen, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
(with enclosures)