

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2020-0105-EXEC

In the Matter of Administrative Civil Liability for Failure to File Annual Water Division
and Use Report(s)
upon

James C. Gowan

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of an Administrative Civil Liability (ACL) Complaint to James C. Gowan; care of Don Gowan (Respondents). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights' Prosecution Team (Division Prosecution Team) and the Respondents have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

The Respondents hold water right Statements of Diversion and Use S021346, S021347, S021348, S021350, and S021351.

The Respondents must, pursuant to regulation enacted by the State Water Board, file an annual Supplemental Statement of Water Diversion and Use (Supplemental Statement) report for each initial Statement filed pursuant to Water Code section 5101, by July 1 of each calendar year. (Cal. Code Regs., tit. 23, § 920; Water Code § 5101.). The Respondents were required to file their Supplemental Statements for the 2018 reporting year by July 1, 2019.

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On August 30, 2019, the Division mailed the Respondents a final Notice of Deficiency, putting the Respondents on notice of imminent enforcement if the Supplemental Statements were not submitted.

On October 18, 2019, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority, issued an ACL Complaint to the Respondents for failing to file the required Supplemental Statements.

The ACL Complaint recommended an Administrative Civil Liability in the amount of \$2,000 per violation; totaling \$10,000 for five alleged violations. The ACL Complaint included a cover letter explaining the violations and offered to settle the violations for \$500 per violation if the Respondents submitted the Supplemental Statements, signed and submitted a waiver of the right to a hearing on the matter, and submitted the settlement payment amount all within 20 days of receiving the ACL Complaint.

The recommended penalty of \$2,000 for each violation is based on the relevant circumstances alleged in the ACL Complaint, including the failure of the Respondents to submit the Supplemental Statements despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

The Respondents filed their Supplemental Statements on November 8, 2019.

Rather than accepting the settlement offer in the ACL Complaint, the Respondents timely requested a hearing before the State Water Board, Administrative Hearings Office (AHO) to contest the allegations within the ACL Complaint.

On April 15, 2020, the AHO issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACL Complaint to be held on July 8, 2020. Prior to the hearing date, AHO cancelled the hearing and on July 10, 2020, deemed the Respondents' request for a hearing withdrawn due to Respondents' failure to timely file a Notice of Intent to appear. On July 30, 2020, Respondents informed the Prosecution Team of their extenuating circumstances and hardship due to recent natural disasters and COVID-19 pandemic. Between 2017 and 2018, Mendocino County, where the Respondents operate the family business, suffered from massive wildfires (the Mendocino Complex Fire and the Redwood Valley Complex Fire) that severely impacted the local economy. In 2019, the Respondents were impacted by local PG&E shutoffs and suffered significant losses in harvested fruit. These events have resulted in a 50% decline in sales during this period. Additionally, Mr. Gowan was involved in a car accident in early 2019 that impacted his ability to work. These natural disasters, Mr. Gowan's health, and COVID-19 affected the Respondents' financial situation. In light of Respondents' hardship, and in evaluating litigation risks associated with proceeding to a contested hearing, the Prosecution Team exercised its discretion to settle the matter for less than the recommended penalty.

The Respondents and the Division Prosecution Team engaged in settlement negotiations and agreed to settle all matters identified in the ACL Complaint issued on October 18, 2019, via settlement agreement in lieu of a hearing.

3.0 SETTLEMENT AGREEMENT

Respondents and the Division Prosecution Team executed the settlement agreement, dated August 17, 2020, and attached hereto (Settlement Agreement). The general terms of the settlement are that Respondents:

- (1) Waive the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement and incorporated herein;
- (2) Are subject to administrative civil liability in the amount of \$2,000, payable in accordance with the payment plan described in the Settlement Agreement, after the execution date of this Order, to be deposited into the Water Rights Fund pursuant to Water Code section 1050, et seq.; and
- (3) Within 30 days after the execution of this Order, Respondents will update the ownership of the applicable Statements of Diversion and Use.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Respondents is approved.

STATE WATER RESOURCES CONTROL BOARD



Eileen Sobeck
Executive Director

September 1, 2020
Date

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Don Gowan and Sharon Gowan (the “Respondents”) on behalf of James C. Gowan (deceased) and the State Water Resources Control Board (State Water Board), Division of Water Rights’ Prosecution Team (the “Prosecution Team”), referred to hereinafter jointly as the Parties. This Agreement is executed this day August 17, 2020.

RECITALS

1. Respondents are acting as authorized agents associated with Statements of Diversion and Use S021346, S021347, S021348, S021350, and S021351 as indicated by the State Water Board’s Electronic Water Rights Information System – eWRIMS – database.
2. The State Water Board adopted regulations requiring the annual reporting of Supplemental Statements of Water Diversion and Use (Supplemental Statements) for diverters that filed an Initial Statement of Water Diversion and Use pursuant to Water Code section 5101. Electronic reporting using the Report Management System (RMS) in the eWRIMS database has been required since 2009. The regulation specifying the annual reporting requirement for Supplemental Statements is codified at Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations.
3. On February 15, 2019, the Division of Water Rights (Division) issued a notice to the Respondents reminding them of the requirement to submit the 2018 Supplemental Statements by July 1, 2019, as required pursuant to the regulation. The notice provided instructions on how to access the RMS system to submit the Supplemental Statements and notified the Respondents to contact the Division by phone or email with any questions regarding the reporting process.
4. The Respondents failed to submit the Supplemental Statements for the 2018 reporting year for Statements S021346, S021347, S021348, S021350, and S021351 by the July 1, 2019, deadline.
5. On August 30, 2019, the Division mailed out a deficiency letter to the Respondents requesting the deficient Supplemental Statements be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violations persist.
6. On October 18, 2019, the Division issued an Administrative Civil Liability Complaint (ACLC) against James C. Gowan; care of Don Gowan, the authorized agent for the Statements as indicated in eWRIMS. The ACLC alleges that the Respondents failed to submit the Supplemental Statements for the 2018 reporting year for Statements S021346, S021347, S021348, S021350, and S021351 by the July 1, 2019, deadline, in violation of section 920 of the California Code of Regulations.

7. On November 6, 2019, the Respondents requested a hearing before the State Water Board, Administrative Hearings Office on the ACLC. At the time of this Settlement Agreement the Administrative Hearings Office has withdrawn the Respondents' request for a hearing on the ACLC.
8. In lieu of a hearing on the matter, the Parties agree to settle the alleged violations identified in the ACLC through this Agreement.
9. The ACLC recommends a penalty in the amount of \$10,000 for five violations of the requisite reporting requirement. On July 30, 2020, Respondents informed the Prosecution Team of their extenuating circumstances and hardship due to recent natural disasters, health issues, and the COVID-19 pandemic. Between 2017 and 2018, Mendocino County, where the Respondents operate the family business, suffered from massive wildfires (the Mendocino Complex Fire and the Redwood Valley Complex Fire) that severely impacted the local economy. In 2019, the Respondents were impacted by local PG&E shutoffs and suffered significant losses in harvested fruit. These events have resulted in a 50% decline in sales during this period. Additionally, Mr. Gowan was involved in a car accident in early 2019 that impacted his ability to work. These natural disasters, Mr. Gowan's health, and COVID-19 have affected the Respondents' financial situation. In light of Respondents' hardship, and in evaluating litigation risks associated with proceeding to a contested hearing, the Prosecution Team exercised its discretion to settle the matter for less than the recommended penalty.
10. This Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties do hereby agree to settle the ACLC as follows:

11. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
12. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Agreement, this Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.

13. Administrative Civil Liability. Respondents shall be subject to administrative civil liability in the amount of \$2,000. The recommended penalty of \$10,000 in the ACLC was reduced due to Respondents' extenuating circumstances and financial hardship as discussed above in Paragraph 9.

14. Administrative Civil Liability Payment. Respondents will pay \$2,000 to the State Water Board in satisfaction of the ACLC. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water Code sections 1050, et seq.

15. Actions to be Taken by Respondent. To settle the alleged ACLC violations, Respondents agree:

- a) To pay \$2,000 as payment in full of the Administrative Civil Liability related to the alleged violations described in the ACLC. Payment shall be made in accordance with the payment plan described in subdivision (b) after the Executive Director issues an Order approving this Agreement. Payment shall be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board". Properly execute and deliver payment to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit – Failure to File
1001 I Street, 14th Floor
Sacramento, CA 95814

- b) Respondent will make two payments of \$1,000 in accordance with subdivision (a) on or before the dates indicated below:

First Payment due: June 30, 2021
Second Payment due: June 30, 2022

Respondents have seven-days [7] after the payment dates listed above to correct any failure to perform under this term.

- c) Within 30-days after approval of the Agreement, the Respondents will update the ownership of Statements Water of Diversion and Use S021346, S021347, S021348, S021350, and S021351 to reflect current ownership by submitting a Change of Ownership form found online:

https://www.waterboards.ca.gov/water_issues/programs/ewrims/ownership/change_of_ownership.pdf.

16. Satisfaction of Administrative Civil Liability Complaint. Respondents' full payment under paragraph 4 and completion of the terms and conditions under paragraph 5 will constitute a complete and final satisfaction of the administrative civil liability described in the ACLC, and the Division of Water Rights will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLC.

17. **Enforcement of this Settlement Agreement.** The Administrative Civil Liability payment required in paragraph 4, if not paid, will be recoverable as provided in Water Code section 1055.4.
18. **Board Authority.** This Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in this Agreement shall excuse Respondents from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
19. **Waiver of Reconsideration.** Respondents waive their right to request reconsideration of the State Water Board Executive Directors' Order approving this Agreement, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in that Order.
20. **Successors.** This Agreement is binding on any successors or assigns of the Parties.
21. **Independent Judgment.** Each Party represents and declares that in executing this Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
22. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
23. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
24. **Entire Agreement.** This Agreement reflects and represents the entire agreement between and among the Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each Party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Agreement.
25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

- 26. Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
- 27. Section Headings.** The parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Agreement.
- 28. Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Agreement.
- 29. Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
- 30. Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
- 31. State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Respondents or their employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondents or their employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

SIGNATURES

Julé Rizzardo  Digitally signed by Jule Rizzardo
 Date: 2020.08.19 08:20:09 -07'00'

For: State Water Resources Control Board (Date)

Julé Rizzardo,
 Assistant Deputy Director
 Division of Water Rights

Sharon A. Gowan *Aug 17, 2020*

For: Respondents (Date)

Sharon Gowan