

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE  
JULY 18, 2023**

**ITEM 8**

**SUBJECT**

CONSIDERATION OF PROPOSED ORDER PREPARED BY THE ADMINISTRATIVE HEARINGS OFFICE ON THE PETITIONS FOR RECONSIDERATION OF ORDER WR 2023-0009 FILED BY STEPHEN GRISET AND BIG SPRINGS IRRIGATION DISTRICT.

**DISCUSSION**

Background

This proceeding concerns Stephen Griset's deliveries of water pumped by his wells on two parcels in Siskiyou County to people who trucked the water to parcels in the Shasta Vista Subdivision for uses there.

As authorized by State Water Board emergency drought regulations for the Scott River and Shasta River watersheds, the Division of Water Rights (Division) adopted General Order WR 2021-0082-DWR on September 10, 2021. This order directed approximately 100 water users, listed in Attachment A to the order, to cease diverting water on September 21, 2021. Mr. Griset, his two parcels, and Water Right ID's SG005923 and SG005924, the two Water Right IDs the Division assigned to his wells, were included in the list of water users in that Attachment A.

Term 4 of both this order and the corresponding specific order the Division issued to Mr. Griset directed Mr. Griset to submit under penalty of perjury an online Scott-Shasta Water Right Curtailment Certification form for each Water Right ID by September 20, 2021. After he did not file these forms by this deadline, the Division issued a Notice of Violation to Mr. Griset in January 2022, which gave him another opportunity to file the forms without incurring any administrative civil liability (ACL).

Mr. Griset never filed the curtailment certification forms. Instead, he and his attorney filed a request for hearing with the Administrative Hearings Office (AHO). The AHO held hearings in this proceeding on May 19 and June 2, 2022, and then prepared a proposed order and transmitted it to the Clerk of the Board.

Order WR 2023-0009

On March 7, 2023, the State Water Board adopted the AHO's proposed order as the Board's Order WR 2023-0009. That order imposed total ACL of \$16,000 on Mr. Griset for his failure to file the curtailment certification forms. The order directed Mr. Griset to pay the first installment of \$12,000 within 30 days. The first term of this order provided that Mr. Griset's obligation to pay the second installment of \$4,000 would be suspended

if Mr. Griset: (i) paid the first installment; and (ii) filed the required curtailment certification forms. The second term of this order directed Mr. Griset to file the forms.

### Petitions for Reconsideration

On April 6, 2023, Mr. Griset's attorney, Paul Minasian of Minasian Law, filed a petition for reconsideration of Order WR 2023-0009.

Mr. Griset's petition argues that: (a) the Division did not provide proper notice to Mr. Griset for Order WR 2021-0082-DWR; (b) the Board does not have jurisdiction over the percolating groundwater that is pumped by Mr. Griset's wells; (c) the Board did not properly separate its legislative and judicial functions in this proceeding; and (d) the applicable drought emergency regulation did not authorize Board staff to determine which groundwater uses were being made under appropriative rights and which were being made under overlying rights. Mr. Griset's petition also states that Board staff may cash Mr. Griset's \$12,000 check for the first installment only if the Board agrees to several listed conditions and arguments.

On May 26, 2023, Mr. Griset's attorney submitted a letter to Board's Chief Counsel, which made additional arguments regarding Mr. Griset's petition for reconsideration.

On April 7, 2023, the Big Springs Irrigation District (Big Springs ID), which had not participated in the AHO hearing, filed a petition for reconsideration of this order.

Big Springs ID's petition argues that Order WR 2023-0009: (a) exceeds the bounds of the AHO's noticed hearing; (b) unlawfully adjudicates groundwater rights and basin boundaries; (c) improperly shifts the burden of proof regarding the legal status of the place of use of the pumped groundwater; and (d) incorrectly determines the nature of the groundwater rights at issue in this proceeding.

### Proposed Order

If adopted by the Board, the proposed order would deny both of these petitions for reconsideration.

The proposed order summarizes the relevant facts and the provisions of Order WR 2023-0009. It then discusses each of the arguments in these petitions for reconsideration and explains why the arguments are incorrect and why the Board should deny the petitions. The proposed order concludes that Order WR 2023-0009 made appropriate findings of fact and conclusions of law on the issues regarding overlying groundwater rights that were raised by Mr. Griset's affirmative defense that he was not subject to ACL for his failures to file the required curtailment certification forms because his sales of water to others were authorized by overlying rights.

The proposed order would direct the Division's Enforcement Section to return Mr. Griset's \$12,000 check to him, unless he informs the Enforcement Section within 10 days that the Board may cash this check without agreeing to any conditions. If the Enforcement Section returns this check to Mr. Griset, then the proposed order would

direct the Enforcement Section to take further action under the provisions of Order WR 2023-0009 that apply if Mr. Griset never paid the first ACL installment of \$12,000.

**POLICY ISSUE**

Should the State Water Board adopt the proposed order?

**FISCAL IMPACT**

The activity is budgeted within existing resources and no additional fiscal demands will result from adoption of the Proposed Order.

**REGIONAL BOARD IMPACT**

None.

**STAFF RECOMMENDATION**

The AHO recommends that the State Water Board adopt the proposed order.