

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE
MARCH 8, 2023**

ITEM 8

SUBJECT

CONSIDERATION OF PROPOSED ORDER PREPARED BY THE ADMINISTRATIVE HEARINGS OFFICE (AHO) ON THE ADMINISTRATIVE CIVIL LIABILITY COMPLAINT ISSUED BY THE ASSISTANT DEPUTY DIRECTOR FOR THE DIVISION OF WATER RIGHTS PERMITTING AND ENFORCEMENT BRANCH TO STEPHEN DAVID GRISET FOR FAILURE TO SUBMIT ONLINE DIVERSION CURTAILMENT FORMS FOR WATER RIGHT IDs SG005923 AND SG05924.

DISCUSSION

Background

Respondent Stephen Griset owns two parcels in the Shasta River watershed in Siskiyou County. Figure 1 to the proposed order shows the locations of these parcels. There is one well on each of these parcels. Mr. Griset uses water pumped by these wells to irrigate alfalfa and grain hay and some sorghum Sudan crops on these parcels. The Board's Division of Water Rights (Division) assigned these wells Water Right Identification Numbers (Water Right IDs) SG005923 and SG005924.

Beginning in 2016 and continuing through the end of his irrigation season in October 2021, Mr. Griset sold water from his irrigation system to people who live in the nearby Shasta Vista Subdivision, and they used this water to fill containers and tank trucks and to transport that water to their parcels for uses there. The approximate area of the Shasta Vista Subdivision is depicted in Figure 1 to the proposed order as the "Approximate Place of Use of Trucked Water."

On September 10, 2021, the Division issued the General Order WR 2021-0082-DWR. That order directed approximately 100 water users, listed in Attachment A to the order, to cease diverting water on September 11, 2021. That order also required each listed water user to submit an online Scott-Shasta Curtailment Certification form in accordance with section 875.6 of the emergency regulations the State Water Board had adopted for the Scott and Shasta River watersheds. Stephen Griset and Water Right ID's SG005923 and SG005924 were included in the list of water users in Attachment A to this order.

On September 10, 2021, the Division also issued another order labeled Order WR 2021-0082-DWR, which was specific to Stephen Griset. Term 4 of the specific order directed Mr. Griset to submit an online Scott-Shasta Water Right Curtailment Certification form for each Water Right ID by September 20, 2021. Mr. Griset did not submit the required forms by this deadline.

On January 10, 2022, the Division issued a Notice of Violation (NOV) to Mr. Griset. The NOV stated that the Division would not issue an ACL complaint to Mr. Griset if he submitted the online curtailment certification forms within 14 days. Mr. Griset never has submitted these forms.

On February 18, 2022, the Division issued an ACL Complaint to Mr. Griset. Mr. Griset mailed a request for hearing to the AHO on February 28, 2022, and his attorney sent a hearing request to the AHO on March 9, 2022.

AHO Proceedings

The AHO issued its hearing notice on April 8, 2022. The AHO held hearings in this proceeding on May 19 and June 2, 2022. After receiving the parties' closing and supplemental briefs, the AHO prepared its proposed order and transmitted it to the Clerk of the Board on January 17, 2023.

Proposed Order

The proposed order concludes that Mr. Griset violated the specific order the Division issued to him and California Code of Regulations, title 23, section 875.6 by not filing the required curtailment certification forms. Because of these violations, the proposed order concludes that the State Water Board should impose administrative civil liability on Mr. Griset.

The proposed order rejects Mr. Griset's attorney's argument that Mr. Griset did not have to file the curtailment certification forms because his sales of water and the subsequent conveyances and uses of that water were authorized by groundwater overlying rights. The proposed order notes that the Division's transmittal letter for its specific order to Mr. Griset clearly stated that sales of groundwater to be hauled and used at a location different from the parcel where water is pumped is an appropriative use subject to the curtailment requirements in the Division's order.

During the AHO proceeding, Mr. Griset's attorney argued that the curtailment certification forms did not give him the option of providing the required information while also preserving his argument about overlying rights. The proposed order rejects this argument. It describes the provision in the form that explicitly gave Mr. Griset this option.

The proposed order analyzes the applicable legal rules and the characteristics of relevant parts of the Shasta Valley Groundwater Basin. Based on this analysis, the proposed order concludes that Mr. Griset's sales of water to the Shasta Vista Subdivision parcel owners for their uses were not authorized by overlying rights and instead occurred pursuant to groundwater appropriative rights.

The proposed order discusses the factors in Water Code section 1055.3 and section 1848, subdivision (d), that the State Water Board is to consider when determining the amount of administrative civil liability in proceedings like this one. The proposed order concludes that all of these factors support substantial administrative civil liability here. Specifically: (a) Mr. Griset's failure to file the required curtailment certification forms

harmed the Board's orderly and efficient administration of the State's water resources; (b) the nature and persistence of the violations were very serious because Mr. Griset's attorney repeatedly made incorrect arguments and threatened to pursue requests for attorney fee awards from the Board; (c) the length of time of the violation was 151 days from the date the forms were due until the date of the ACL complaint; and (d) Mr. Griset never has corrected the violations by filing the forms.

Considering these statutory factors, the proposed order, if adopted by the Board, would impose administrative civil liability of \$16,000 on Mr. Griset. Of this amount, \$12,000 would be due and payable within 30 days. Mr. Griset's obligation to pay the remaining \$4,000 would be suspended indefinitely if Mr. Griset makes a timely payment of the \$12,000 and files the required forms by the applicable deadline specified in the order. If Mr. Griset does not take these actions, then the \$4,000 would become due and payable.

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.