

**03/08/23 BD MEETING – ITEM # 8**  
**CHANGE SHEET # 1 (CIRCULATED 03/02/23)**

**Administrative Hearings Office’s recommended edits to proposed order on  
Administrative Civil Liability Complaint against Stephen Griset**

On page 6, after line 5, add the following new paragraph:

One of the emergency drought regulations the State Water Board adopted on August 17, 2021 provides that each water users or water right holder that is issued a curtailment order shall submit, within seven days and under penalty of perjury, a certification that describes one or more of seven listed types of actions the water user or water right holder has taken in response to the curtailment order. (Cal. Code Regs., tit. 23, § 875.6, subd. (a).) One of the listed types of actions is that the diversions have continued only to the extent that they are necessary to provide for minimum health and safety needs as identified in section 875.2 of the regulations. Section 875.2 lists six types of “minimum health and safety needs,” one of which is “water for human consumption, cooking, or sanitation purposes.” (Id., § 875.2, subd. (a).)

On page 13, after the second full paragraph, add the following new paragraph:

Mr. Griset did not testify that any of the water that he sold was used for any health or safety needs.

On page 16, line 1, edit the heading to add the following text:

**2.12.3 Post-Hearing Briefs and AHO Proposed Order**

On page 16, at the end of section 2.12.3 (after the third paragraph), add the following new paragraph:

The AHO transmitted its proposed order to the Clerk of the Board on January 17, 2023.

On page 17, edit the third paragraph as follows:

There ~~isare~~, however, antwo important limitations on this conclusion.

On page 17, edit the first sentence in the fourth paragraph as follows:

~~First, w~~When the natural flow of the stream is not sufficient to reach a riparian parcel, the parcel owner’s riparian rights do not authorize the diversion of water from the stream at an upstream point for conveyance to the parcel.

On page 18, delete the first full paragraph as follows:

~~Second, an owner of a well on a parcel that pumps water through that well that then is conveyed to other parcels for beneficial uses may not exercise the overlying rights of the other parcels simply through such pumping and conveyance. Rather, to exercise the overlying rights of the owners of the parcels where the water is used, the pumper and the parcel owners must enter into agreements that authorize the pumper to pump water under such rights for conveyance to those parcels for those uses. Absent such agreements, the pumper is exercising groundwater appropriative rights. (See *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 25-26, 31; *Eden Township Water Dist. v. City of Hayward* (1933) 218 Cal. 634, 640.)~~

On page 20, edit the sentence on lines 1-3 as follows:

The figure shows in solid blue the location of the Shasta Valley Groundwater Basin before the 2019 amendments.

On page 24, delete the first full paragraph as follows (and delete footnote 20):

~~We also reach our conclusion on this issue for the independent reason that Respondent did not enter into any agreements with the owners of the parcels where the pumped water was used that authorized him to pump water under their rights for conveyance to their parcels under their overlying rights. (See section 3.1.) Respondent does not dispute the fact that there were no such agreements. (See 2022-11-14 Respondent's Supp. Brief, p. 7:24.)<sup>20</sup>~~

On page 25, edit the first full paragraph as follows:

We therefore conclude that Respondent's pumping of his wells and his sales of the pumped water to people for conveyance to parcels in the Shasta Vista Subdivision for uses on those parcels were not authorized by overlying rights ~~for two independent reasons. First, t~~The weight of the evidence indicates that the owners of some, and probably most, of these parcels could not have developed productive wells on their parcels that would have produced water from the same water-bearing strata that provide water to Respondent's wells, and that these parcels therefore did not have overlying rights authorizing such pumping, conveyance and uses. ~~Second, the owners of these parcels did not enter into agreements with Respondent under which Respondent could have exercised their overlying rights (if they had any) to provide water to them.~~

On page 32, add the following new sub-section immediately before the heading titled "Conclusions Regarding Amount of Administrative Civil Liability":

#### Other Factors

Water Code section 1055.3 and section 1848, subdivision (d), list the four factors discussed in the preceding sub-sections and give the State Water Board the authority to consider other relevant factors in determining the appropriate amount

of administrative civil liability. A factor that may be relevant in some proceedings is when the respondent was providing water for minimum health and safety needs. In such cases, providing water for these basic needs may further the established policy of the state that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” (See Water Code, § 106.3, subd. (a).) However, Respondent in this proceeding did not offer any evidence that any of the water he sold to others for conveyance to their parcels for uses there was used for any of these basic human needs. (See section 2.12.1.)