

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