

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

DIVISION OF WATER RIGHTS

ORDER WR 2020-0103-EXEC

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

County of Sacramento, Director of Economic Development

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 the County of Sacramento (Respondent). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights' Prosecution Team (Division Prosecution Team) and the Respondent 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 Respondent holds water right license 11844 (Application A025985).

The Respondent must, pursuant to regulations enacted by the State Water Board, submit a report online through the Board's website documenting the Respondent's water diversion and use (Annual Report) under License by April 1 of each following calendar year. (Cal. Code Regs., tit. 23, §§ 847 & 929). The Respondent was required to file the Annual Report for the 2018 water year by April 1, 2019.

On June 12, 2019, the Division mailed the Respondent a final Notice of Deficiency, putting the Respondent on notice of imminent enforcement if the Annual Report was not submitted.

¹State 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 July 1, 2019, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority issued an ACL Complaint to the Respondent for failing to file the required Annual Water Use Report.

The ACL Complaint recommended an Administrative Civil Liability in the amount of \$2,000 per violation. The ACL Complaint included a cover letter explaining the violation and an offer to settle the violation for \$500 per violation if the Respondent submitted the Annual Report(s), 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 Respondent to submit the Annual Report 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 Respondent filed the Annual Water Use Report on July 9, 2019.

The Respondent timely requested a hearing before the State Water Board to contest the allegations within the ACL Complaint.

On April 9, 2020 the State Water Board, Administrative Hearings Office issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACL Complaint to be held on June 19, 2020.

The Respondent and the Division Prosecution Team have engaged in settlement negotiations and agreed to settle all matters identified in the ACL Complaint issued to the Respondent on July 1, 2019, via settlement agreement in lieu of a hearing.

3.0 SETTLEMENT AGREEMENT

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

- (1) Waives the right to a hearing on the ACL Complaint, waives 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) Is subject to administrative civil liability in the amount of \$2,000 payable within 20 days 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) Work with the Prosecution Team to submit a joint request to the Administrative Hearings Officer to cancel the Sacramento County ACL hearing due to this settlement after the Parties execute the Settlement Agreement.

After execution of the Settlement Agreement, the parties jointly requested cancellation of the Sacramento County ACL hearing and the Division received a payment of \$2,000 for the administrative civil liability from the County of Sacramento on July 1, 2020.

ORDER

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

STATE WATER RESOURCES CONTROL BOARD

August 10, 2020
Date



Eileen Sobeck
Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the County of Sacramento, Director of Economic Development (the “Respondent”) 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 June 16, 2020.

RECITALS

1. Respondent is the Primary Owner of record for Water Right License 11844 (Application A025985), as of July 31, 2013.
2. The State Water Board has adopted regulations requiring the reporting of water diversion and use under permits and licenses. For water right license holders these reports are Annual Water Diversion and Use Reports (Annual Reports). Electronic reporting using the Report Management System (RMS) in the Electronic Water Rights Information System – eWRIMS – database has been required since 2009. The regulation specifying annual water right licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.
3. On February 15, 2019, the Division of Water Rights (Division) issued a notice to the Respondent reminding it of the requirement to submit the 2018 Annual Report by April 1, 2019, as required pursuant to the Regulation. The notice provided instructions on how to access the RMS system to submit the Annual Report and also notified the Respondent to contact the Division by phone or email with any questions regarding the reporting process.
4. The Respondent failed to submit the 2018 Annual Report for License 11844 (A025985) by the April 1, 2019, deadline.
5. On June 12, 2019, the Division mailed out a deficiency letter to the Respondent requesting its deficient Annual Report be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist.
6. On July 1, 2019, the Division issued an Administrative Civil Liability Complaint (ACLC) against the Respondent. The ACLC alleges that the Respondent failed to submit the 2018 Annual Report for License 11844 (A025985) by the April 1, 2019, deadline in violation of section 929 of the California Code of Regulations.
7. On July 23, 2019, the Respondent requested a hearing before the State Water Board, Administrative Hearing Office on the ACLC. At the time of this Settlement Agreement, the Prosecution Team and Respondent are to appear for the Sacramento County ACL Hearing on June 19, 2020.

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 \$2,000 for this violation, and included a settlement offer with reduced liability of \$500. The Respondent rejected this settlement offer.
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:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **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.
3. **Administrative Civil Liability.** Respondent shall be subject to administrative civil liability in the amount of \$2,000. This amount is the proposed penalty in the July 1, 2019, ACLC.
4. **Administrative Civil Liability Payment.** Respondent 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.
5. **Actions to be Taken by Respondent.** To settle the alleged ACL violations, Respondent agrees:
 - 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 within 20 days of the Executive Director's Order approving this Settlement 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) After the Parties execute this Settlement Agreement, the Respondent will work with the Prosecution Team to submit a joint request to the Administrative Hearings Officer to cancel the Sacramento County ACL hearing due to settlement.
6. **Satisfaction of Administrative Civil Liability Complaint.** Respondent's 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 State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLC.
7. **Enforcement of this Settlement Agreement.** The ACL required in paragraph 5, if not paid, will be recoverable as provided in Water Code section 1055.4.
8. **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 Respondent from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
9. **Waiver of Reconsideration.** Respondent waives its rights 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.
10. **Successors.** This Agreement is binding on any successors or assigns of the Parties.
11. **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.
12. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
13. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
14. **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.

15. **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.
16. **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.
17. **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 Settlement Agreement.
18. **Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
19. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
20. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
21. **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 Respondent or its 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 Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

SIGNATURES

For: State Water Resources Control Board (Date)

Julé Rizzardo,
Assistant Deputy Director
Division of Water Rights

6/17/2020

For: County of Sacramento (Date)

Troy K. Givans
Director of Economic Development
Office of Economic Development