

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

ORDER WR 2013 - 0023 - EXEC

In the Matter of Failure to File a Statement of Water Diversion and Use by
DAVID BURTON
(DBA SPEEDY CREEK RANCH)

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 Complaint (ACL Complaint) to David Burton (Diverter) on April 11, 2012. In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Diverter 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 Division Prosecution Team alleges in the ACL Complaint that that Diverter failed to file a Statement of Water Diversion and Use (Statement) for the diversion of water since January 1, 2009 at a point of diversion referred to in pending water right application A029784 as reservoir number 2 (Reservoir 2) on property owned by the Diverter (Property). The ACL Complaint asserted that the State Water Board had no record of any filed Statements for the Property. The State Water Board proposed a total liability of \$1,000 for the alleged failure to file a Statement.

¹ State Water Board Resolution No. 2002 - 0104 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 May 3, 2012, Diverter timely requested hearings on the ACL Complaint and Proposed CDO. Diverter and the Division Prosecution Team engaged in settlement discussions and mutually agreed to settle the matters identified in the ACL Complaint in lieu of a hearing.

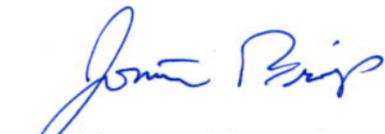
3.0 SETTLEMENT AGREEMENT

Diverter and the Division Prosecution Team executed the Settlement Agreement attached hereto. The general terms of the Settlement are that Diverter: (1) is subject to administrative civil liability in the amount of \$1,000, payable in two payments of \$500 each with the first payment due within 30 days of adoption of this Order and the final payment due by December 15, 2013. Payments will be deposited into the Water Rights Fund, pursuant to California Water Code section 1054, et seq.; (2) has or will file within 30 days of adoption of this Order a Statement that accurately reflects amount of water diverted at Reservoir 2; and (3) withdraws his request for a hearing on the ACL Complaint upon adoption of this Order.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and the Diverter is approved and is incorporated by reference into this Order.

STATE WATER RESOURCES CONTROL BOARD


Thomas Howard
Executive Director

Dated: 6/17/2013

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the Prosecution Team of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) (Division Prosecution Team), and David Burton (dba Speedy Creek Ranch) (Diverter), as of June 13, 2013. State Water Board and Diverter shall sometimes be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. Diverter has a water rights application and an existing diversion that is subject to the filing requirements of Water Code section 5101. Diverter is the applicant and signatory on pending water rights application A029784 for Sonoma County Assessor's Parcel (APN) 120-090-036 (Property) and has a water diversion on the property. A property records review indicates that Diverter and Kathleen A. Selb-Burton are the current owners of the Property.
- B. On April 7, 2010, the Division mailed a letter to all pending water right applicants with existing diversions notifying them of the new statutory reporting requirements. The April 7, 2010 letter is entitled "New Statutes for Statements of Water Diversion and Use that Affect Water Rights Applicants with Existing Water Diversions." The letter informed recipients that the Division's records indicated they were a water rights applicant that was currently diverting water, and were therefore required to file a Statement of Water Diversion and Use (Statement) with the State Water Board. Furthermore, the letter informed recipients that "Failure to file a Statement for each diversion that occurred after January 1, 2009 may be subject to monetary penalties of up to \$1000. After the State Water Board notifies a party of his/her failure to file, the diverter is allowed 30 days to file. If that party does not file, additional penalties of up to \$500 per day may be assessed." Diverter was one of the recipients of this letter.
- C. On April 11, 2012, the State Water Board issued to Diverter an Administrative Civil Liability Complaint (ACL Complaint) for failure to file a Statement. Specifically, in the ACL Complaint, the State Water Board alleged that Diverter failed to file a Statement for the diversion of water since January 1, 2009 at a point of diversion referred to in pending water rights application A029784 as reservoir number 2 (Reservoir 2) located on the Property. The ACL Complaint proposed a total liability of \$1,000 for the failure to file a Statement of Water Diversion and Use pursuant to sections 5107 and 1055.
- D. On May 3, 2012, Diverter timely requested a hearing before the State Water Board on the ACL Complaint.
- E. The Parties have engaged in settlement negotiations and agree to settle the matter without a hearing and by presenting this Settlement Agreement to the State Water Board or its delegee, the Executive Director of the State Water Board, for adoption as an order by settlement, pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations as proposed

in this Settlement Agreement is fair, reasonable, fulfills its environment objectives, and is in the best interest of the public.

- F. During the course of the settlement negotiations, Diverter filed Statements on May 3, 2012 and May 4, 2012 for the diversion that is the subject of the ACL Complaint. While these Statements will need to be amended to account for the full amount of water being diverted, as discussed in more detail below in section 5, the filing of those Statements demonstrates a good faith effort to come into compliance with reporting requirements.
- G. This Settlement Agreement will become effective when the State Water Board or its Delegee issues an order approving the settlement.

AGREEMENT

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Diverter and the Division's Prosecution Team do hereby agree to settle the ACL Complaint and Proposed CDO as follows:

1. **Recitals Incorporated:** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential:** Unless and until the State Water Board or its delegee issues an Order approving this Settlement Agreement, this Settlement 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 Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Administrative Civil Liability:** Diverter shall be subject to and agrees to pay administrative civil liability in the amount of \$1,000. Diverter shall make an initial payment of \$500 within 30 days following the State Water Board's approval of this Settlement Agreement. A second and final payment of \$500 shall be made no later than December 15, 2013. Payments shall be made by mailing a check for the above amounts made payable to the State Water Board Water Rights Fund to State Water Resources Control Board, Division of Water Rights, Attn: John O'Hagan, P.O. Box 2000, Sacramento, CA 95812-2000. The State Water Board will deposit the above liability amount in the Water Rights Fund pursuant to Water Code section 1054, et seq.
4. **Satisfaction of Administrative Civil Liability:** Diverter's full payment in Paragraph 3 herein will be a complete and final satisfaction of the administrative civil liability described in the ACL Complaint.
5. **Statement of Water Diversion and Use:** Unless Diverter has already done so; within 20 days of receipt of the Order approving this Settlement Agreement, Diverter shall file an amended Statement that reports the entire quantity of water diverted to storage at Reservoir 2, and the water diverted through the 6 inch pipe to storage in Reservoir 1 and to direct use from that reservoir. Diverter shall continue to file supplemental statements as required.

6. **Support**: The Parties agree to support, advocate for, and promote the Order approving this Settlement Agreement before the Executive Director.
7. **Waiver of Right to Hearing**: Upon approval of this Settlement Agreement by the State Water Board or its delegee, Diverter's request for hearing on the ACL Complaint is withdrawn.
8. **Waiver of Right to Reconsideration**: Diverter waives its right to require reconsideration of the State Water Board's 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.
9. **Successors**: This Settlement Agreement shall be binding on successors and assigns of Diverter and the State Water Board.
10. **Independent Judgment**: Each party represents and declares that in executing this Settlement 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 Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
11. **Additional Documents**: Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
12. **Entire Agreement**: This Settlement Agreement contains the entire agreement between the Parties and supersedes and replaces 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 Settlement Agreement.
13. **Mutual Agreement**: The Parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared it. Any uncertainty and ambiguity in the language of this Settlement Agreement shall not be interpreted against any one Party.
14. **Authority to Execute Settlement Agreement**: Each Party executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity(ies) on whose behalf he or she executes the Settlement Agreement.
15. **Reasonableness of Settlement**: The Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
16. **Modification of Settlement Agreement**: This Settlement Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Settlement Agreement. All modifications must be made in writing and approved by the Parties.

17. **Exemption from CEQA:** Issuance of this Settlement Agreement is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2) of Title 14 of the California Code of Regulations.
18. **Section Headings:** The Parties intend that the section headings in this Settlement Agreement be used solely for convenience for reference and that they shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of the Settlement Agreement.
19. **Counterparts:** This Settlement Agreement may be executed and delivered in any number of counterparts and by facsimile signature, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
20. **Effective Date:** This Settlement Agreement shall become effective immediately upon adoption by the State Water Board or its delegee of an Order Approving the Settlement Agreement.
21. **Choice of Law:** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
22. **Authorization:** Each Party warrants that the individual executing this Settlement Agreement on behalf of such Party is duly authorized to do so.

IT IS SO AGREED AND STIPULATED:

James W. Kassel
James W. Kassel
Assistant Deputy Director
Division of Water Rights, Prosecution Team

6/13/13
Date

David Burton

Date

17. **Exemption from CEQA:** Issuance of this Settlement Agreement is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2) of Title 14 of the California Code of Regulations.
18. **Section Headings:** The Parties intend that the section headings in this Settlement Agreement be used solely for convenience for reference and that they shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of the Settlement Agreement.
19. **Counterparts:** This Settlement Agreement may be executed and delivered in any number of counterparts and by facsimile signature, each of which when executed

agreement on behalf of such Party is duly authorized

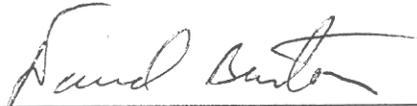
IT IS SO AGREED AND STIPULATED:

Date

6/11/13

Date

James W. Kassel
Assistant Deputy Director
Division of Water Rights, Prosecution Team



David Burton