

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0008-EXEC

In the Matter of In the Matter of Violations or Threatened Violations of Emergency Regulations and Orders WR 2021-0083-DWR and WR 2021-0084-DWR, and Violations of Information Order WR 2022-0171-DWR upon

LANCE BATISTICH (S025829, S025819, S025820, S025830, S028076)

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 Lance Batistich (“Respondent”). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights (“Division”) Prosecution Team (“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

On May 10, 2021, the Governor issued Executive Order N-10-21 declaring a state of emergency based on drought conditions in the Scott River and Shasta River watersheds.

On August 17, 2021, the State Water Board adopted emergency regulations, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Authority in the Klamath River Watershed. The Emergency Regulations provide curtailment authority throughout the Klamath River watershed and establish minimum instream flow requirements and information order authority in the Scott River and Shasta River watersheds. The minimum instream flow requirements were established to protect fall-run Chinook salmon and threatened Southern Oregon/Northern California Coast coho salmon. The Emergency Regulations went

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.

into effect on August 30, 2021, when they were approved by the Office of Administrative Law and filed with the Secretary of State. The State Water Board adopted the Emergency Regulations and described the need for the Emergency Regulations and their intent. Resolution No. 2021-0029 adopted the Emergency Regulations and describes the need for the Emergency Regulations and their intent.

On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. The updated regulations contain a provision that extends previously issued curtailment orders under the amended regulation. (Cal. Code Regs., tit. 23, § 875, subd. (d)(3).)

The Emergency Regulations prohibit inefficient surface water diversion for livestock watering to protect the fall-run for Chinook and Coho salmon. Inefficient surface water diversions are defined as diverting “more than ten times the amount of water needed to support the number of livestock and reasonable water quantities set forth in Article 5, section 697...,” as measured at the point of diversion. (Cal. Code Regs., tit. 23, § 875.7, subd. (a).) For the 2021-2022 season, this prohibition operated from September 1, 2021, until January 31, 2022.

When curtailments are in place, diversions for the purpose of stockwatering are limited to those which do not result in seepage losses and will not exceed reasonable stockwatering amounts as set forth in Article 5, section 697. (Cal. Code Regs., tit. 23, §§875.3, subd. (a), (b).)

Title 23, Chapter 2.8, Sections 931–938 of the California Code of Regulations dictate requirements for measurement devices upon certain diversions. Section 932, subdivision (a) states that specified classes of diverters “shall install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage.” These regulations were adopted by the Office of Administrative Law on March 21, 2016.

The Respondent is the Primary Owner of record for Water Right IDs S025829, S025819, S025820, S025830, and S028076. Statements S025819, S025820, and S025830 divert water from Oro Fino Creek for irrigation and stockwatering for 300 head of cattle. S028076 diverts water from Kidder Creek for irrigation and stockwatering for 250 head of cattle. S025829 is an adjudicated groundwater diversion from Oro Fino Creek for irrigation and stockwatering. None of the Respondent’s claims of right include a right to divert and use stored water.

On September 9, 2021, "Order Imposing Water Right Curtailment and Reporting Requirements for Reported Water Rights" was sent to every diverter in the Scott watershed that has a water right in the electronic Water Right Information System and watermastered surface water rights. This order was sent to the Respondent, by certified mail, and received September 14, 2021. The order requires the Respondent to cease diversions and comply with minimum flow requirements in the Scott River for diversions under statement S028076.

On September 10, 2021, the State Water Board issued an Order Imposing Water Right Curtailment, Increased Coordination, and Reporting Requirements for Adjudicated Groundwater Rights in the Scott River Watershed (Order WR 2021-0083-DWR). The Respondent received Order WR 2021-0083-DWR on September 14, 2021. The order requires the Respondent to cease diversions and comply with minimum flow requirements in the Scott River for diversions under statements S025830, S025829, S025820, and S025819. According to the order, these rights are adjudicated groundwater diversions identified in Schedule C of the Scott Adjudication [Decree entered on January 30, 1980, in Siskiyou County Superior Court Case No. 30662, In the Matter of Determination of the Rights of the Various Claimants to the Waters of Scott River Stream System, Except Rights to Water of Shackleford Creek, French Creek, and all Streams Tributary to Scott River Downstream from the U.S. Geological Survey Gaging Station, in Siskiyou County, California].

The State Water Board issued various addenda partially suspending curtailment of water rights in the Scott River watershed. In 2022, curtailments went into effect on July 2, 2022, for all surface water rights. On July 6, 2022, curtailments were partially suspended, allowing each first priority water right to divert up to 15% of their right. On July 8, 2022, each first priority right was allowed to divert up to 30% of their right. Finally, on July 14, 2022, all rights (surface and groundwater) were fully curtailed.

The Respondent submitted a Curtailment Certification Form on October 4, 2021. The Respondent claimed exemptions to curtailment for minimum livestock diversion, but these exemptions do not apply to irrigation.

Water Code² section 1831 authorizes the State Water Board to issue a cease and desist order (“CDO”) in response to a violation or threatened violation of any decision or order of the Board issued under Part 2, Division 2 of the Water Code, any regulation adopted under Water Code section 1058.5, or of other requirements and prohibitions not presently relevant. Water Code section 1845 further authorizes the Board to impose administrative civil liability, pursuant to Water Code section 1055. If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the administrative civil liability may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. If the violation occurs any other time, the administrative civil liability may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Water Code section 1846 authorizes the State Water Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or

² All references to the “Water Code” are to the California Water Code.

entity that violates a regulation or order adopted by the Board. Under these statutes, the Board may impose administrative civil liability in an amount not to exceed five hundred dollars (\$500) per day for each day in which the violation occurs.

Enforcement staff from the Division of Water Rights (“Division”) issued a Notice of Violation to the Respondent on August 10, 2022, based on information received indicating the Respondent was in violation of the Curtailment Order. On August 23, 2022, Division enforcement staff inspected the Respondent’s point of diversion and some of the place of use.

On September 30, 2022, the Assistant Deputy Director for the Division, under delegated authority, issued a draft CDO to the Respondent and an information order, Order WR 2022-0171-DWR (“Information Order”). The draft CDO alleged that the Respondent had violated or threatened to violate the Curtailment Order by irrigating 47 acres.

The Information Order required a response by October 14, 2022. There was no response by that date.

On December 9, 2022, the Assistant Deputy Director for the Division, under delegated authority, issued an Administrative Civil Liability (“ACL”) complaint to the Respondent for failing to respond to the Information Order. The ACL complaint recommends a civil liability of \$5,000.

The Respondent submitted a request for a hearing on the draft CDO on October 13, 2022, and a request for hearing on the ACL complaint on December 12, 2022. On August 23, 2022, the State Water Board, Administrative Hearings Office (“AHO”) issued a Notice of Public Hearing, scheduling a hearing on the allegations in the draft CDO and ACL to be held on February 14, 2023.

In lieu of a hearing on the matter, the Parties agree to settle the violation(s) alleged in the draft CDO, issued September 30, 2022, and the ACL complaint, issued December 9, 2022, through this Agreement.

This Agreement will be submitted to the AHO 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 settlement.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Division Prosecution Team executed the settlement agreement (“Settlement Agreement”), attached to this order as Exhibit 1. The general terms of the settlement are that Respondent:

1. Waives the right to a hearing on the CDO and 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 into this order;
2. Must cease and desist from violating or threatening to violate Orders WR 2021-0083-DWR and WR 2021-0084-DWR;
 3. Must submit the information described in Order WR 2022-0171-DWR; and
 4. Is subject to administrative civil liability in the amount of \$5,000. The ACL will be suspended if the Respondent meets the specified requirements of this order. If the Respondent fails to meet any of these requirements, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Respondent is approved. The Respondent must perform all the following actions:

1. Immediately cease and desist all diversions from the Oro Fino Creek and from hydraulically connected groundwater and continue to cease all such diversions until curtailments have lifted or otherwise receiving notification by the State Water Board that curtailments have lifted.
2. Maintain, and provide to the Division upon request, records of all diversions of surface water hydraulically connected groundwater.
3. Install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage. The measuring device or method must meet the requirements of Title 23, Chapter 2.8, Sections 931–938 of the California Code of Regulations, for any future diversions once curtailment is lifted. The requirements for each point of diversion are summarized below and fully described in the aforementioned regulations:
 - A. For S025829 and S025830, install and maintain a measuring device or employ a measurement method capable of daily measurement. Report the water diverted monthly to the Water Board staff.
 - B. For S025819, S025820 and S028076, install and maintain a measuring device or employ a measurement method capable of telemetry and hourly measurement. Provide access to the data or provide a website link where Water Board staff can access the data.

4. No less than 14 days following this Order's issuance, submit the information described below, under penalty of perjury, for each water source serving their parcel(s) or used to provide water from July 2, 2022, through the date of this order.

A. For each surface water point of diversion:

- i. Date(s) water was diverted;
- ii. Quantity of water diverted;
- iii. Quantity of water used for (1) irrigation, (2) livestock watering, (3) human health and safety, (4) diverted to storage;
- iv. Diversion maximum flow rate; and
- v. Capacity of reservoir(s) in acre-feet.

B. For all Groundwater Points of Diversion:

- i. Coordinates identifying the location of each groundwater well for which you have not already filed an Initial Statement of Diversion and Use;
- ii. The current maximum flow rate of each groundwater well;
- iii. For each date the wells operated:
 1. Quantity of water diverted;
 2. Quantity of water used for (1) irrigation, (2) livestock watering, (3) human health and safety, (4) diverted to storage; and
 3. Diversion maximum flow rate.
- iv. For irrigated acres from July 2, 2022, through date of this order:
 1. The parcel(s) where irrigation has occurred;
 2. Date(s) of irrigation on each field;
 3. Source(s) of water for irrigation;
 4. Number of irrigated acres per crop type; and,
 5. Amount of water used for irrigation on each field.

The Respondent must respond to any additional information requests from the Division to clarify or complete the initial information request. The information must be submitted on the Scott River Watershed Water Use Information Form, which is attached to this order as Exhibit 2. The form shall be completed and returned by post to the address or email below:

State Water Resources Control Board
Division of Water Rights ATTN: Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
WB-DWR-SiskiyouEnforcement@waterboards.ca.gov

5. Pay an ACL of Five-Thousand Dollars (\$5,000). ACL will be suspended if the Respondent meets the requirements of section 4 of this order. If the Respondent fails to meet any of section 4's requirements, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL. If the ACL required section 4 of this order is unpaid after 30 days of the date of the Deputy Director's finding, the Deputy Director will seek a judgment against the Respondent in accordance with Water Code section 1055.4 Payment must be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund," and properly executed and delivered to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit — Curtailment
1001 I Street, 14th Floor
Sacramento, CA 95814

STATE WATER RESOURCES CONTROL BOARD



Eileen Sobeck
Executive Director

February 27, 2023

Date