

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of)

ADMINISTRATIVE CIVIL LIABILITY)
COMPLAINT NO. 262.10.03)
ISSUED TO HAROLD AND)
ANNA BELLE BROWN)

ORDER: WR 90-17

SOURCE: Wadsworth Canal

COUNTY: Sutter

ORDER DISMISSING COMPLAINT
FOR ADMINISTRATIVE CIVIL LIABILITY

BY THE BOARD:

1.0 INTRODUCTION

Notice of public hearing having been given to consider imposition of administrative civil liability; a public hearing having been held on November 7, 1990; the Board having considered all the evidence in the record; the Board finds and concludes as follows:

2.0 UNAUTHORIZED DIVERSION OF WATER

2.1 The Administrative Civil Liability Complaint

On September 19, 1990, the Executive Director of the State Water Resources Control Board issued Administrative Civil Liability Complaint No. 262.10.03 to Harold and Anna Belle Brown. The complaint alleged that the Browns violated Water Code Section 1052 by committing a trespass through unauthorized diversion and use of water from

Wadsworth Canal in Sutter County.

2.2

Extent of the Brown's Authorization for Diversion

The Browns divert and use water under Licenses 3143 and 4373 (Applications 11276 and 14130, respectively.) On April 24, 1990, the State Board notified water users within the Sacramento and San Joaquin watersheds that the estimated runoff for the current water year is less than 50% of normal and water shortages were expected to occur. In a June 29, 1990 Notice of Unavailability of Water (Notice), the State Board notified the Browns that, due to the critically dry water year, water would cease to be available for diversion under their licenses on July 1, 1990. The Notice apparently was not mailed until July 2, 1990. After receipt of the Notice, the Browns were not authorized to divert under their licenses during this critically dry year.

2.3

The Field Investigation

Board staff conducted a field investigation on July 10, 1990. Staff observed that the Browns had recently diverted water from the Wadsworth Canal, but that the pump had been turned off earlier that day. At the hearing the Browns conceded that an unauthorized

diversion had occurred.

3.0 CIRCUMSTANCES OF THE VIOLATION

3.1 Receipt of the Notice

The Browns divert and use water as part of a small, family farming operation. The Notice arrived while the Browns were on a brief trip away from home. The extent of the trip, from July 3 through July 7, 1990, was verified by hotel receipts and other information which was submitted at the hearing. During their trip, the mail was held at the Yuba City Post Office. Mr. Brown picked up the mail on June 9, 1990, the first business day after returning from the trip, and read the notice that evening.

3.2 Extent of the Violation

Mr. Brown testified that he turned off the pump for the diversion at 6:30 a.m. the following morning, July 10, 1990, prior to the field investigation by Board staff. The amount of surface water diverted during the interval which elapsed between the time when Mr. Brown read the Notice and when he turned off the pump was minimal. Further, an unspecified amount of the water observed on

the two 80 acre parcels of rice was water obtained from ground water sources, or recirculated surface water diverted before Mr. Brown read the Notice.

4.0 APPROPRIATENESS OF LIABILITY

The Browns having conceded that an unauthorized diversion occurred, the only issue is how much liability, if any, should be imposed. In determining the amount of liability to impose, the Board should consider all relevant factors, including the extent of harm caused by the violation, the length of time over which the violation occurs and any corrective action taken by the violator. (Cal. Water Code Section 1055.3.) In this case the violation involved a relatively small amount of water, the violation occurred for only a very brief period, and the Brown's halted the violation before it was discovered by State Board staff. It also appears that any benefit to the Browns from the unauthorized diversion was insubstantial. No evidence was presented of any harm to instream beneficial uses. For a violation of this nature, no more than a small amount of liability would be appropriate. In this particular case, we conclude that no liability should be imposed.

ORDER

IT IS HEREBY ORDERED that no liability shall be imposed pursuant to Administrative Civil Liability Complaint No. 262.10.03, and the complaint shall be dismissed.

CERTIFICATION


The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 27, 1990.

AYE: W. Don Maughan
 Eliseo M. Samaniego
 John Caffrey

NO: None

ABSENT: Darlene E. Ruiz
 Edwin H. Finster

ABSTAIN: None


Maureen Marche
Administrative Assistant
to The Board

