

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 98-02

In the Matter of
Administrative Civil Liability Complaint No. 262.10-02
HARVEY W. RIDENHOUR and DONNA J. RIDENHOUR

SOURCE: Unnamed Stream Tributary to Bear Creek

COUNTY: Mariposa

ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY

BY THE BOARD:

1.0 INTRODUCTION

The Executive Director of the State Water Resources Control Board (Board) issued Administrative Civil Liability (ACL) Complaint No. 262.10-02 on June 15, 1997, pursuant to Water Code section 1055(a) against Harvey W. Ridenhour and Donna J. Ridenhour for the illegal storage of water in a reservoir on an unnamed stream tributary to Bear Creek in Mariposa County. The Ridenhours initially requested a hearing in this matter. By letter dated October 21, 1997, the Ridenhours stipulated to the facts of the ACL complaint and stated that they were not requesting a hearing but asked that they be allowed to address the Board at a workshop or Board meeting. The Ridenhours appeared at the January 7, 1998, workshop and Mr. Ridenhour asked the Board to reduce or eliminate the civil liability. In consideration of the facts in this matter, the Board finds as follows:

2.0 BACKGROUND

The Ridenhours hold Permit 19095 (Application 27701) which authorizes the appropriation by storage of 6 acre-feet of water per annum for recreational uses in the reservoir which is the subject of the ACL. The reservoir was in existence at the time the Ridenhours purchased the

property and the Ridenhours did not expand the capacity of the reservoir. During an inspection for license in 1990, the reservoir was surveyed and found to have a capacity of 20 acre-feet or 14 acre-feet in excess of the permitted amount.

Between November 1992 and December 1995, four letters were sent to the Ridenhours advising them of the need to either lower the spillway to the permitted storage of 6 acre-feet or file an application for the excess capacity of 14 acre-feet. No application was filed.

By letter of August 31, 1996, the Ridenhours were again advised of their unauthorized diversion and were told that enforcement action would be initiated unless an application was filed or proof was submitted that the spillway had been lowered. There was no response from the Ridenhours.

In May 1997, the reservoir was inspected for compliance with the 6 acre-feet storage limitation of Permit 19065. The reservoir was found to be storing 15.8 acre-feet, about 9.8 acre-feet in excess of the authorized storage volume. Consequently, in June 1997, an ACL complaint was issued.

In August 1997, the Ridenhours filed an application for the excess capacity of the reservoir.

3.0 AMOUNT OF ADMINISTRATIVE CIVIL LIABILITY

Section 1055.3 of the Water Code provides:

"In determining the amount of civil liability, the Board shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and the corrective action, if any, taken by the violator."

In this case, the violation continued over a long period, and the Ridenhours took no action to correct the violation despite repeated warnings. Only after an ACL complaint was issued did the Ridenhours file an application. The staff costs associated with issuance of the ACL complaint, including voluntary compliance efforts, a field inspection to verify the diversion, and review by

the Office of Chief Counsel, are approximately \$1,000. These costs could have been avoided if the Ridenhours had filed an application when the violation was first called to their attention.

While filing of an application is a step towards compliance, it does not justify the long period of violation before an application was filed. Nor does it bring the Ridenhours into compliance unless and until a permit is issued or the spillway is lowered.

In his appearance before the Board on January 7, 1998, Mr. Ridenhour explained that, based on the erroneous advice of the real estate agent from whom they purchased the property, the Ridenhours did not file an application. In view of the history of the reservoir, the fact that no consumptive use was made of the excess water diverted to storage, and the fact that there is no evidence of economic gain or environmental harm that occurred as a result of the illegal diversion of water, the Board finds that the administrative civil liability in this instance should be reduced to \$100.

The limited penalty imposed in this instance should not be understood as reflecting Board policy regarding the amount of penalties to be imposed in other cases. Higher penalties based on the Board's costs of obtaining compliance or any damages that may occur, as well as penalties to serve as a deterrent to future illegal diversions of water, can be justified under the Water Code and will be imposed in appropriate circumstances.

4.0 CONCLUSION

Based on the above findings, the Board concludes that administrative civil liability in the amount of \$100 is appropriate.

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ORDER

IT IS HEREBY ORDERED that Harvey W. Ridenhour and Donna J. Ridenhour shall pay administrative civil liability in the amount of \$100.

CERTIFICATION

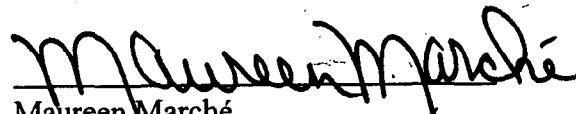
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 22, 1998.

AYE: John Caffrey
Marc Del Piero
Mary Jane Forster
John W. Brown

NO: None

ABSENT: James M. Stubchaer

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board