

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 99-04

In the Matter of Administrative Civil Liability
Complaint No. 262.5-08

MANUEL MORAIS

SOURCES: Quarry Creek and an Unnamed Stream

COUNTY: Humboldt

**ORDER IMPOSING REDUCED ADMINISTRATIVE CIVIL LIABILITY
PURSUANT TO
SETTLEMENT AGREEMENT**

1.0 INTRODUCTION

By this order, the Executive Director of the State Water Resources Control Board (SWRCB) imposes administrative civil liability on Mr. Manuel Morais pursuant to a settlement agreement.

Under the settlement agreement, Mr. Morais agreed to diligently pursue a permit pursuant to the application to appropriate water filed on January 25, 1999, and to pay civil liability in a lesser amount than proposed in Administrative Civil Liability (ACL) Complaint No. 262.5-08. The issuance of an order or decision pursuant to a settlement agreement is authorized by Government Code section 11415.60.

2.0 BACKGROUND

Pursuant to Water Code section 1052, subdivision (b), the Executive Director issued ACL Complaint No. 262.5-08 against Mr. Manuel Morais December 30, 1998. The ACL alleged that Mr. Morais owned a reservoir located on the channel of an unnamed stream in the Palmer Creek watershed. The ACL alleged that the storage of water in the reservoir constituted an unauthorized diversion of water in violation of Water Code section 1052, subdivision (a). The ACL also alleged that water directly diverted from Quarry Creek had been used illegally outside its watershed, and that Mr. Morais's diversions had injured the fishery of Quarry Creek. The ACL further alleged that Mr. Morais failed to take appropriate actions to correct his unauthorized diversion of water despite being informed by certified letter dated September 25, 1998, from the Division of Water Rights (Division) that enforcement action might be taken without further notice.

The liability proposed by the Executive Director in ACL Complaint No. 262.5-08 was \$5,000. However, Item 8 of the ACL warned that failure to file an application for the unauthorized storage within 20 days could result in the imposition of additional civil liability.

Item 9 of the ACL provided that a hearing could be requested before the SWRCB. Item 10 of the ACL provided that after a hearing the amount of the civil liability could be adjusted either up or down.

3.0 SETTLEMENT AGREEMENT

Mr. Morais and the Division agreed to settle this matter on the following terms:

- (1) The Division agreed to **recommend** that the amount of the civil liability proposed in ACL Complaint No. 262.5-08 be reduced to \$500, upon condition that Mr. Morais comply with all terms of the settlement agreement.
- (2) Mr. Morais agreed to submit the reduced liability of \$500 to the Division **within** 20 days of his receipt of the settlement offer.
- (3) Mr. Morais agreed that a permit to appropriate water is required to authorize the seasonal storage in his reservoir of water diverted from Quarry Creek and from the unnamed stream tributary to Palmer Creek.
- (4) Mr. Morais agreed to limit his direct diversion of water from Quarry Creek under any basis of right to the rate of diversion and the quantity needed for beneficial use on his property within the Quarry Creek watershed. He also agreed that he would not divert water from Quarry Creek to serve property within the Palmer Creek watershed except as authorized under any permit he may obtain from the SWRCB.
- (5) Mr. Morais agreed to exercise diligence in attaining a permit pursuant to his application filed on January 25, 1999. Diligence includes the submittal, upon request by the Division, of all necessary fees, maps and documentation required by the California Environmental Quality Act (CEQA).
- (6) Mr. Morais agreed to cooperate with the Division and the Department of Fish and Game to modify his Quarry Creek diversion dam to provide reasonable passage and bypass flows necessary to protect the fishery resources of Quarry Creek.

In accordance with the settlement agreement, Mr. Morais submitted the reduced civil liability within 20 days of his receipt of the proposed agreement.

O R D E R

IT IS HEREBY ORDERED THAT:

1. The settlement agreement between the Division of Water Rights and Mr. Manuel Morais is approved.
2. Administrative civil liability in the amount of \$5,000 is imposed on Mr. Morais, provided that all but \$500 of the liability is suspended upon condition that Mr. Morais comply with all of the terms of the settlement agreement outlined above.
3. Upon a finding by the Division Chief that Mr. Morais has not complied with any term of the settlement agreement, the \$4,500 in suspended liability shall become due and payable, provided that Mr. Morais may request a hearing on any disputed issue of fact material to the question whether Mr. Morais has complied with a settlement term in which case the \$4,500 in suspended liability shall not become due unless and until the SWRCB, after a hearing, issues an order upholding the Division Chiefs determination.
4. The imposition of previously suspended liability as provided for in paragraph three, above, shall not limit the authority of the Executive Director to issue a new complaint for administrative civil liability for any unauthorized diversions that occur after the issuance

of this Order.
ORIGINAL SIGNED BY:

MAY 0 4 1999

Date: _____

Walt Pettit, Executive Director

State Water Resources Control Board

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