

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 99-05

In the Matter of Administrative Civil Liability
Complaint No. 262.509

**HENRY J. LA FRANCHI TRUST AND ALFRED LA FRANCHI
(AKA LA FRANCHI BROTHERS)**

SOURCES: An Unnamed Stream tributary to Maacama Creek thence Russian River

COUNTY: Sonoma

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

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1.0 INTRODUCTION

By this order, the Executive Director of the State Water Resources Control Board (SWRCB) imposes administrative civil liability on the Henry J. La Franchi Trust and Alfred La Franchi (DBX La Franchi Brothers) pursuant to a settlement agreement. Under the settlement agreement, the La Franchi Brothers agreed to file a complete application to appropriate water, and to pay civil liability in a lesser amount than proposed in Administrative Civil Liability (ACL) Complaint No. 262.509. The issuance of an order or decision pursuant to a settlement agreement is authorized by Government Code section 11415.60.

3.0 BACKGROUND

Pursuant to Water Code section 1052, subdivision (b), the Executive Director issued ACL Complaint No. **262.5-09** against the La Franchi Brothers on [date]. The ACL alleged that the La Franchi Brothers owned a reservoir located within the SW 1/4 of the NW 1/4 of projected Section 11, T9N, R8W, MDB&M on Sonoma County Assessor's Parcel Number 120-O 10-009. The ACL alleged that the La Franchi Brothers' diversion to storage at the reservoir without a water right permit or license constituted an unauthorized diversion of water in violation of Water Code section 1052, subdivision (a). The ACL further alleged that the La Franchi Brothers failed to take appropriate actions to correct this unauthorized diversion of water despite being informed by certified letter dated July 6, 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. 262.5-09 was \$5,000. However, Item 8 of the ACL warned that failure to file an application for the unauthorized storage, including all fees and the proposed civil liability 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

The La Franchi Brothers 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. 262.5-09 be reduced to \$500, upon condition that the La Franchi Brothers comply with all terms of the settlement agreement.
- (2) The La Franchi Brothers agreed to submit the reduced liability of \$500 to the Division within 20 days of their receipt of the ACL.
- (3) The La Franchi Brothers also agreed to file with the Division a complete application to appropriate water by permit, including all necessary forms and filing fees, within 20 days of their receipt of the ACL.
- (4) The La Franchi Brothers agreed to exercise diligence in attaining a permit pursuant to the application. Diligence includes the submittal, upon request by the Division, of all necessary fees, maps and documentation required by the California Environmental Quality Act (CEQA).

In accordance with the settlement agreement, the La Franchi Brothers submitted a complete application with all necessary fees, and the reduced civil liability within 20 days of their receipt of the ACL.

ORDER

IT IS HEREBY ORDERED THAT,

1. The settlement agreement between the Division of Water Rights and the La Franchi Brothers is approved.
2. Administrative civil liability in the amount of \$5,000 is imposed on the La Franchi Brothers, provided that all but \$500 of the liability is suspended upon condition that the La Franchi Brothers exercise diligence' in attaining a water right permit pursuant to their application.
3. Upon a finding by the Division Chief that the La Franchi Brothers have not exercised due diligence in attaining a water right permit pursuant to their application. the \$4,500 in suspended liability shall become due and payable, provided that the La Franchi Brothers may request a hearing on any disputed issue of fact material to the issue of due diligence 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.



Date: 4 May 99

Walt Pettit, Executive Director

State Water Resources Control Board