

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000 - 11

In the Matter of
Administrative Civil Liability Complaint No. 262.5-14
WILLIAM SLOAN AND JENNIFER SLOAN

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

COUNTY: Sonoma

ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY

1.0 INTRODUCTION

The Executive Director of the State Water Resources Control Board (SWRCB) issued Administrative Civil Liability (ACL) Complaint No. 262.5-14 on May 14, 1999, pursuant to Water Code section 1055(a), against Mr. William Sloan and Mrs. Jennifer Sloan in the amount of \$500. The complaint was issued for the illegal diversion of water to storage at a reservoir located on their property (Sonoma County Assessor's Parcel Number (APN) 132-230-18). By letter dated June 14, 1999, Mrs. Sloan expressed her intention to appeal the proposed civil liability specified in the ACL complaint. The SWRCB conducted a hearing on the matter in accordance with Water Code section 1055 on May 9, 2000. Staff of the SWRCB's Division of Water Rights (Division) presented testimony and other evidence supporting adoption of the proposed order. Mr. and Mrs. Sloan did not attend the hearing. Mrs. Sloan faxed to the SWRCB a letter dated May 9, 2000, stating that she would be unable to attend the hearing. Mrs. Sloan's letter stated that she has adequately stated in previous correspondence dated July 9, 1999, which is Staff Exhibit 10, why she believes the civil liability should be waived. Mrs. Sloan's letter dated May 9, 2000, was read into the record and accepted as evidence (Sloan Exhibit 1). Based on the testimony and evidence, the SWRCB's findings are set forth below.

2.0 BACKGROUND

The unauthorized diversion or use of water subject to appropriation under the provisions of the Water Code is a trespass for which civil liability may be imposed in an amount not to exceed \$500 for each day in which the trespass occurs. (Water Code section 1052.) Water Code section 1825 provides:

“It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of existing permits and licenses to appropriate water and to prevent the unlawful diversion of water.” (emphasis added).

2.1 Watershed Investigation Program

In 1998, the Division initiated a pilot watershed investigation program to determine the extent to which illegal reservoirs are a problem in three high resource-value watersheds. The watersheds selected for the investigation were: (1) Maacama Creek in Sonoma County, (2) Navarro River in Mendocino County, and (3) Pescadero Creek in San Mateo County. The program focused on investigation of reservoirs shown on United States Geological Survey maps or on available aerial photographs and for which the Division has no record of an existing water right. The Division sent letters to the owner(s) of each identified reservoir and asked the owner to identify the basis of the water right for the reservoir, explain why the reservoir is not subject to the SWRCB's permitting authority, file a new water right application, or render the reservoir incapable of storing water.

Within the Maacama Creek watershed, Division staff initially identified 73 sites, of which 64 had reservoirs with no known water rights. Some reservoir owners filed water right applications for 19 of these facilities without requesting a field investigation. Owners of 39 of the reservoirs requested site inspections to determine if a water right permit was required; six reservoirs were not inspected but enforcement action was initiated as noted below. Following the inspections, Division staff determined that water right permits were not required for 16 of the inspected facilities; new applications were filed for 18 of the inspected facilities without further action; two reservoirs were subsequently removed; and 3 ACL complaints were issued against the remaining three inspected facilities. A fourth ACL complaint was issued against an owner of six facilities

that were not inspected. The ACL complaints against the 6 uninspected facilities and one inspected facility were closed because the owners paid the proposed administrative civil liability of \$500 and filed new water right applications. One of the two remaining ACL complaints against inspected facilities was imposed on the Sloans for their failure to voluntarily submit a water right application with due diligence. Following receipt of the ACL Complaint, the Sloans submitted an Application for Small Domestic Registration, but did not pay the \$500 administrative civil liability specified in the ACL complaint.

2.2 Correspondence and Field Inspection of Mr. and Mrs. Sloan's Reservoir

By letter dated April 9, 1998, the Division notified the Sloans that a reservoir located on their property was not authorized by any water right known to the Division (Staff Exhibit 1). The Division's April 9, 1998, letter requested that the Sloans identify an existing water right for the reservoir or file a water right application. The Division files indicate that there was no written response to the April 9, 1998 letter. Division staff conducted a field inspection on May 5, 1998, and found an offstream pit-type reservoir with an estimated capacity of 5 acre-feet. At the time of inspection, water was being diverted into the reservoir via pipeline from a stream on a neighbor's property. Staff Exhibit 2 is an inspection report detailing the findings and recommendations for this inspection.

By certified letter dated July 6, 1998 (Staff Exhibit 3), the Division informed the Sloans that their reservoir was found to be subject to the SWRCB's permitting authority because it was collecting water to off-stream storage from an unnamed stream located on their neighbor's property. They were advised that unless they either ceased the diversions to off-stream storage, submitted evidence showing the diversion to off-stream storage was not subject to SWRCB's permitting authority, or submitted a water right application, enforcement action could be taken without further notice. On September 1, 1998, the SWRCB received a letter dated August 25, 1998, from Jennifer Sloan requesting a water right application (Staff Exhibit 4). Mrs. Sloan's letter agrees to submit a water right application. As requested, a new application was mailed to the Sloans on about September 15, 1998. On January 25, 1999, Division staff spoke with Jennifer Sloan by telephone and she confirmed that she had received the application. Division staff's contact report on the telephone conversation states that Mrs. Sloan stated the Division could expect the

application in 30 days (Staff Exhibit 6). Pursuant to Water Code section 1055(a), the State Water Resources Control Board's (SWRCB) Executive Director issued Administrative Civil Liability (ACL) Complaint No. 262.5-14 on May 14, 1999, in the amount of \$500, against the Sloans (Staff Exhibit 7). This complaint was issued for the illegal storage of water in a reservoir collecting water from an unnamed stream within the Maacama Creek watershed in Sonoma County. No water right application was filed for the Sloan's reservoir and the Division received no information regarding the curtailment of diversion from the neighbor's property prior to issuance of the ACL complaint.

By letter dated June 14, 1999, Mrs. Sloan submitted an application for Registration of a Small Domestic Use Appropriation and requested a hearing on the proposed civil liability of \$500 as specified in Complaint 262.5-14. Mrs. Sloan's June 14, 1999, letter states that her family is one of many in the area with a small agricultural pond, that they received a permit from Sonoma County for construction of the pond, and that neither their engineer, general contractor, nor the county informed them that a permit was required from the state (Staff Exhibit 8). Mrs. Sloan questions why her family was "singled out" for enforcement action and states that the diversion of water to the pond from her neighbor's property had been turned off.

3.0 SWRCB CONCLUSIONS REGARDING CIVIL LIABILITY

The reservoir located within the SE ¼ of the NE ¼ of Section 29, T10N, R7W, MDB&M on Sonoma County APN 132-230-18 is storing water subject to the permitting authority of the SWRCB. This diversion of water to storage without an appropriative water right permit is an unauthorized diversion of water and a trespass against the State subject to administrative civil liability under Water Code section 1052 et seq. Water Code section 1055.3 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."

Following notification of the violation, Mr. and Mrs. Sloan did not take any action to correct the violation, despite warning of potential enforcement action, after the Division's field inspection. It was not until after issuance of the ACL complaint that Mr. and Mrs. Sloan filed an application for Registration of Small Domestic Use Appropriation for the reservoir. This application was accepted by the Division as Registration No. 507R, Small Domestic Use Application D031005R. This registration authorizes the Sloan's diversion of water from the unnamed stream for 4,320 gallons per day by direct diversion and 2.5 acre-feet by storage.

The unnamed stream used at Mr. and Mrs. Sloan's reservoir contributes seasonal flows to the Maacama Creek watershed tributary to the Russian River. That river supports steelhead trout, which are listed as threatened under the Federal Endangered Species Act. Division staff has not investigated the environmental damage, if any, caused by the Sloan's unauthorized diversion. For all Registrations of Small Domestic Use Appropriations, the Department of Fish and Game is charged with reviewing the application for potential environmental impacts.

The costs associated with issuance of the ACL complaint, including writing letters and conducting the field inspection are in excess of the \$500 liability proposed in the ACL complaint. The SWRCB has incurred additional costs in preparing a hearing notice and scheduling a hearing in response to Mrs. Sloan's request. Enforcement costs would have been much less if Mr. and Mrs. Sloan had filed an application for Registration of a Small Domestic Use when first contacted by the Division. Adoption of an order imposing civil liability in the amount of \$500 as proposed in ACL Complaint No 262.5-14 is well-supported by the record.¹

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¹ The record before the SWRCB would support administrative civil liability in excess of \$500. In the absence of evidence of harm to the environment or other water users, this order imposes liability in the amount of \$500. However, failure to comply with this order may result in imposition of additional civil liability.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings, that:

1. William Sloan and Jennifer Sloan are liable for administrative civil liability in the amount of \$500 and Mr. and Mrs. Sloan shall remit payment of the \$500 liability within 10 days of the date of this order;
2. Failure to remit the \$500 within the period specified above will be cause for additional civil liability.

CERTIFICATION

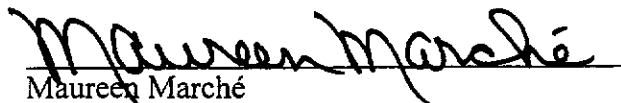
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 20, 2000.

AYE: Arthur G. Baggett, Jr.
Mary Jane Forster
John W. Brown
Peter S. Silva

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board