

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2012 - 0008 - EXEC

In the Matter of the Diversion and Use of Water by
Robert A. Luciano Jr. Trust
ORDER APPROVING SETTLEMENT AGREEMENT
AND CEASE AND DESIST ORDER

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a draft Cease and Desist Order (CDO) to the Robert A. Luciano Jr. Trust (Luciano). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights (Division) prosecution team (Prosecution Team) and Luciano have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

On June 27 and 29, 2001, complaints were filed against Robert A. Luciano by Bob Hughes, Neil Dione, and Donald Williams (together, complainants). The complainants allege that Mr. Luciano was over irrigating his property, irrigating land without a water right to do so, and had constructed reservoirs without an appropriate right.

Division staff inspected Mr. Luciano's property on June 27 and 28, 2001. Staff's observations and conclusions as a result of that inspection can be found in the draft CDO.

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On August 21, 2002, Division staff issued a Report of Complaint Investigation. On September 20, 2002, Luciano's representative submitted a response to the report indicating that Luciano intended to install measuring devices and collect 12 months of uninterrupted data. The data would be necessary to verify that groundwater was used to fill the reservoir and address the issue of excess diversions. Further, the response indicated that evidence would be collected to verify continued use under pre-1914 rights for irrigation.

On May 14, 2004, the Division Prosecution Team issued a draft CDO against Luciano alleging (1) Mr. Luciano had not submitted evidence to document a pre-1914 right to irrigate parcels that are not physically riparian to Wash Creek (Parcels 133-120-09 and 133-120-11); and (2) Mr. Luciano had not submitted any documentation of the steps taken to collect data, summary of data collected, or proposed steps needed to verify groundwater sources used to fill the storage reservoirs or regulate and monitor the flow of water through those reservoirs. The draft CDO alleges that, in the absence of evidence of an alternative basis of right to divert and irrigate the property, the diversion, storage and use of water by Luciano constitutes an unauthorized diversion and use of water subject to enforcement action.

On May 26, 2004, Luciano timely requested hearings on the draft CDO. Prior to the State Water Board noticing a hearing for the draft CDO, Luciano and the Division Prosecution Team met and discussed settlement of the draft CDO on several occasions. On December 16, 2011, Luciano and the Division's Prosecution Team notified the State Water Board that they had reached an agreement in principle, requesting that the hearing be indefinitely postponed pending execution and submittal of a final agreement and review of that agreement by the State Water Board's Executive Director.

Luciano and the Division Prosecution Team agree to settle the matters identified in the Draft CDO through this Settlement Agreement in lieu of hearings on said matters.

3.0 SETTLEMENT AGREEMENT

Luciano has submitted written evidence to the Division regarding Luciano's claim of a pre-1914 and a riparian basis of water right to serve the Property. At this time it appears to the Division Prosecution Team that Parcels 133-120-021 and 133-120-022 are contiguous to Wash Creek

and would provide Luciano a riparian claim of right to beneficially use the natural flow of Wash Creek. Evidence suggests that Luciano has a reasonable claim to a pre-1914 basis of right from Wash Creek to serve existing orchard and pasture area on Parcel 133-120-23. Evidence also supports a pre-1914 right for the DePaoli property. At this time, the Division Prosecution Team is satisfied that Luciano is exercising valid rights, including collection of groundwater in the Large Pond.

The parties have agreed to the following terms for settling the Draft CDO:

Luciano will use its best efforts to limit that diversion to the historical irrigation amount and season of use and separately measures and maintains records of the diversion.

If Luciano is requested by DePaoli to deliver water to the DePaoli property outside of this historic irrigation season, Luciano shall inform the State Water Board within 7 days so that the State Water Board may investigate. Luciano will continue to separately measure all diversions to the DePaoli property. The settlement agreement is not binding upon DePaoli as he is not a party to this Agreement.

Luciano has installed two continuous-recording measuring devices to monitor the diversions of water at two locations on the Property. Both devices were designed by Luciano's engineer and operate consistent with manufacturer's specifications. Luciano agrees to continue to maintain this monitoring equipment in good order, or replace it upon damage, and to keep records of diversion which would be made available to the State Water Board upon request. Luciano acknowledges the statutory requirements to submit monthly total diversion data from Wash Creek every three years pursuant to Statement 14833 and will comply with such statutory requirements.

During the irrigation season, Luciano will use good faith efforts to minimize water diverted from Wash Creek as follows: (a) minimize the amount of water spilling out of the Historic Pond off of the Property into the historic channel; (b) limit irrigation to a duty consistent with the statutory definition of reasonable (currently 2.5 acre-feet per acre); and (c) minimize water usage associated with evaporation, aquaculture, stockwatering, and transmission losses.

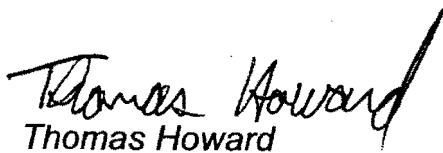
Outside of the irrigation season, Luciano will use good faith efforts to minimize water usage associated with evaporation, aquaculture, stockwatering, and transmission losses. Luciano also agrees to curtail diversions to the DePaoli property, as provided in the agreement.

If water users on the historic channel below the Historic Pond request that Luciano provide additional flows, Luciano shall inform the State Water Board of such a request within seven days of increasing the diversion of water from Wash Creek at the point of diversion. Luciano shall identify the name of the requestor and Luciano shall not make the request on its own behalf for downstream properties.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and Luciano is approved and is incorporated by reference into this Order. The terms and conditions of the Settlement Agreement and this Order are a final CDO. Violations of the Settlement Agreement and this Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.

STATE WATER RESOURCES CONTROL BOARD


Thomas Howard
Executive Director

Dated: **JUN 19 2012**

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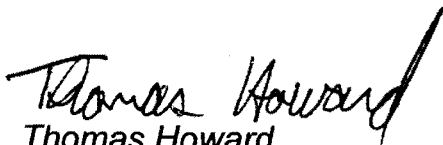
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