

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

DIVISION OF WATER RIGHTS

ORDER WR 2017-0004- EXEC

In the Matter of Violation of Annual Reporting Requirements by

Al Klaus

ORDER APPROVING SETTLEMENT AGREEMENT

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 an Administrative Civil Liability (ACL) Complaint to Al Klaus. In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Al Klaus 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.

2.0 BACKGROUND

Mr. Klaus is the owner of record for License 445 (A001896), which has a priority date of July 6, 1920 and allows for the diversion of up to 25 acre-feet per year from Live Oak Spring for irrigation and domestic uses.

On February 19, 2016 the Division of Water Rights issued a notice to Mr. Klaus reminding him of the requirement to submit the 2015 Annual Use Reports by June 30, 2016, as required pursuant to the California Code of Regulations and notifying Mr. Klaus that the 2015 Annual Use Report must be filed online.

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

Mr. Klaus failed to submit the 2015 Annual Use Report for License 445 (A001896) online by the deadline, June 30, 2016.

On August 25, 2016 the Division mailed out a deficiency letter requesting that the 2015 Annual Use Report for License 445 (A001896) be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist.

On November 28, 2016 the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACLC") against Mr. Klaus. The ACLC alleges that Mr. Klaus failed to submit the 2015 Annual Use Report for License 445 (A001896) by the June 30, 2016 deadline in violation of section 929 of the Regulations.

On January 10, 2017 Ms. Adina Klaus timely requested a hearing on the ACLC. At the time of this Settlement Agreement, the State Water Board is scheduled to hear the ACLC on March 10, 2017.

Mr. Klaus and the Division Prosecution Team have engaged in settlement discussions and mutually agreed to settle the matters identified in the ACLC in lieu of hearing.

3.0 SETTLEMENT AGREEMENT

Mr. Klaus and the Division Prosecution Team executed the Settlement Agreement attached hereto. The general terms of the settlement are that Mr. Klaus: (1) withdraws the request for hearing on the ACLC, waives the right to reconsideration of this Order, and agrees to the terms and conditions described in the Settlement Agreement and incorporated herein, and (2) is subject to administrative civil liability in the amount of \$250 payable within 30 days of issuance of this Order, to be deposited into the Water Rights Fund pursuant to Water Code section 1054, et seq.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and Al Klaus is approved and is incorporated by reference into this Order.

This Order constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under California Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD



Thomas Howard
Executive Director

~~MAR 6 2 2017~~

Dated:

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Mr. Al Klaus and the Prosecution Team of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division Prosecution Team") and is executed on this 13th day of February, 2017.

RECITALS

1. Mr. Klaus is the owner of record for two appropriative water rights:
 - a. License 445 (A001896) has a priority date of ~~September~~ ^{July} 6, 1920 and allows for the diversion of up to 25 acre-feet per year from Live Oak Spring for irrigation and domestic uses, and
 - b. License 2174 (A003571) has a priority date of August 9, 1923 and allows for the diversion of up to 17 acre-feet per year from an unnamed spring tributary to the Santa Clara River for irrigation and domestic uses.
2. Senate Bill X7-8 authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under permits and licenses (Annual Use Report), and developed an online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). Electronic reporting has been required since 2009. The regulation specifying annual permittee and licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, sections 925 and 929 of the California Code of Regulations (Regulations).
3. On February 19, 2016 the Division of Water Rights (Division) issued a notice to Mr. Klaus, reminding the diverter: (a) of the requirement to submit the 2015 Annual Use Report by June 30, 2016 as required pursuant to the Regulation, and (b) notifying Mr. Klaus that the 2015 Annual Use Report must be filed online. The notice provided instructions on how to access the RMS system and submit the 2015 Annual Use Report online and also notified Mr. Klaus to contact the Division by phone or email with any questions regarding the reporting process.
4. Mr. Klaus failed to submit the 2015 Annual Use Reports for License 445 (A001896), and License 2174 (A003571) online by the deadline, June 30, 2016.
5. On August 25, 2016, the Division mailed out a deficiency letter to Mr. Klaus requesting that the 2015 Annual Use Reports for License 445 (A001896), and License 2174 (A003571) be submitted within 30 days and warned of the potential for enforcement with monetary penalties should the violation persist.

6. On November 28, 2016, the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACLC") against Mr. Klaus. The ACLC alleges that Mr. Klaus failed to submit the 2015 Annual Use Report for License 445 (A001896) by the June 30, 2016 deadline in violation of section 929 of the Regulations. Mr. Klaus did not receive an ACLC for failure to file an Annual Use Report for License 2174 (A003571) on this occasion due to the smaller diversion amount of the water right.
7. The ACLC recommends an Administrative Civil Liability in the amount of \$10,000 for this violation, and includes a settlement offer with reduced liability of \$250, provided the required Annual Use Report is submitted within 20 days of receipt and there is a waiver of right to hearing and reconsideration.
8. On January 3, 2017, Mr. Klaus received the ACLC, and on January 7, 2017 Ms. Adina Klaus filed the Annual Use Report for License 2174 (A003571).
9. On January 10, 2017 Ms. Adina Klaus timely requested a hearing on the ACLC. At the time of this Settlement Agreement, the State Water Board is scheduled to hear the ACLC on March 10, 2017.
10. On January 24, 2017, Ms. Adina Klaus spoke with Division staff to discuss the potential of settling the matter without a hearing.
11. In lieu of a hearing on the matter, Mr. Klaus and the Division Prosecution Team agree to settle the matter identified in the ACLC through this Settlement Agreement.
12. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Mr. Klaus and the Division Prosecution Team do hereby agree to settle the ACLC as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.

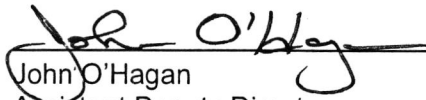
3. **Administrative Civil Liability.** Mr. Klaus shall be subject to administrative civil liability in the amount of \$250. This amount was initially offered as an expedited payment option within the ACLC, provided Mr. Klaus filed the required Annual Use Report for License 2174 (A003571) within 20 days of receipt of the ACLC. Mr. Klaus did in fact file the Annual Use Report on January 7, 2017.
4. **Administrative Civil Liability Payment.** Within 30 days following the State Water Board Executive Director's approval of this Settlement Agreement, Mr. Klaus shall pay \$250 to the State Water Board. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water Code sections 1054, et seq.
5. **Actions to be taken by Diverter.** To further settle issues related to Mr. Klaus's Annual Use Reports, Mr. Klaus agrees to the following:
 - a. Within 30 days of the Executive Director's Order approving this Settlement Agreement, Mr. Klaus shall review, revise, and/or submit any new versions of the 2009, 2010, 2012, 2013, 2014 and 2015 Annual Use Reports for License 445 (A001896), and License 2174 (A003571) as necessary to ensure that all past diversions are accurately accounted for. This requirement does not apply to any reports that do not require revision.
 - b. Mr. Klaus shall comply with measuring and reporting regulations adopted by the State Water Board on January 19, 2016, Resolution No. 2016-0005 by accurately measuring and reporting diversion and use information for the year of 2016 by the appropriate due date for each water right.
6. **Satisfaction of Administrative Civil Liability Complaint.** Mr. Klaus' full payment under paragraph 4 and completion of the terms and conditions under paragraph 5 will constitute a complete and final satisfaction of the administrative civil liability described in the ACLC, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLC.
7. **Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and this Order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
8. **Board Authority.** This Settlement Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in this Settlement Agreement shall excuse Mr.

Klaus from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.

9. **Hearing.** Upon approval of this Settlement Agreement by the State Water Board's Executive Director, Mr. Klaus's request for hearing on the ACLC is withdrawn.
10. **Time is of the Essence.** The State Water Board is scheduled to hear this matter on March 10, 2017. Therefore, time is of the essence and the parties shall submit this Settlement Agreement and proposed implementing order to the Executive Director as soon as possible.
11. **Waiver of Reconsideration.** Mr. Klaus waives his rights to request reconsideration of the State Water Board Executive Directors' order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
12. **Successors.** This Settlement Agreement is binding on any successors or assigns of Mr. Klaus and the State Water Board.
13. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
14. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
15. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
16. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
17. **Mutual Agreement.** The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
18. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

19. **Reasonableness of Settlement.** The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
20. **Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
21. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
22. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
23. **Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
24. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Mr. Klaus, or his employees, agents, representatives, or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Mr. Klaus or his employees, agents, representatives, or contractors in carrying out activities pursuant to this Settlement Agreement.

Dated: February ^{24th} ~~13~~ 2017



John O'Hagan
Assistant Deputy Director
Division of Water Rights
Prosecution Team

Dated: February 13, 2017



Al Klaus