

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

DIVISION OF WATER RIGHTS

ORDER 2023-0048-DWR

ORDER APPROVING SETTLEMENT AGREEMENT

In the Matter of Failure to File Supplemental Statement of Water Diversion and Use
for the 2021 through 2022 Reporting Year

Bess Dairy Inc

Diversions Reported Under Statement(s) S016961

THE DEPUTY DIRECTOR¹ FINDS AS FOLLOWS:

1.0 INTRODUCTION

This matter comes before the Deputy Director of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division") following settlement negotiations regarding the alleged violation of California Code of Regulations, Title 23, Chapter 2.7, Article 2, section 920 ("Water Diversion and Use Report Regulations"), as described in an Administrative Civil Liability Complaint ("Complaint") dated September 5, 2023. In accordance with the attached Acceptance of Settlement Offer and Waiver of Right to Hearing and Reconsideration ("Acceptance and Waiver"), the Division's Prosecution Team ("Prosecution Team") and Bess Dairy Inc ("Respondent") have agreed to settle this matter in lieu of proceeding to a hearing. The Respondent has also waived their right to request reconsideration of an order by the State Water Board resolving the violations alleged in the Complaint.

The Prosecution Team and the Respondent are collectively referred to as the Parties. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

¹ State Water Board Resolution 2012-0061 delegates authority to the Executive Director to "issue a decision or order by settlement of the Parties under Government Code section 11415.60." The Executive Director further delegated the authority to issue a decision or order by settlement of the parties under the Government Code when no hearing has been requested to the Deputy Director of the Division of Water Rights by memorandum dated April 3, 2023.

2.0 BACKGROUND

1. Water Code section 5101 states, in part, “Each person who...diverts water shall file with the board a statement of their diversion and use...For diversions after September 30, 2021, the statement...shall be filed before February 1.”²
2. Water Code section 5104 states, in part, “Supplemental statements shall be filed annually...For diversions after September 30, 2021, the supplemental statement...shall be filed before February 1.”
3. Title 23, Chapter 2.7 of the California Code of Regulations (“Water Diversion and Use Report Regulations”) identifies requirements for mandatory filing of reports to the State Water Resources Control Board (“State Water Board”). Specifically, Article 2, section 920 of the Water Diversion and Use Report Regulations states that Supplemental Statements of Water Diversion and Use (“Supplemental Statement”) shall be filed electronically with the State Water Board annually, detailing the amount of water diverted and used within the twelve-month reporting period.
4. Title 23, Chapter 2.7, Article 2, section 908 of the California Code of Regulations states, “Failure to meet the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.”
5. Respondent failed to file their supplemental statement(s) for the subject claim(s) before February 1, 2023.
6. On September 5, 2023, the Division issued the Respondent an Administrative Civil Liability Complaint (ACLC). The ACLC alleged the Respondent failed to file supplemental statement(s) for water diversion and use for the 2021-2022 water year (October 1, 2021 through September 30, 2022).
7. At the time of settlement, Respondent had not requested a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).

3.0 SETTLEMENT AGREEMENT

8. Concurrent with issuing the ACLC to the Respondent, the Division also extended a settlement offer for a reduced fine of \$600 provided the past due report(s) were submitted.
9. Respondent accepted and signed the Division’s settlement offer on September 21, 2023.

² Recent statutory changes amended Annual Water Diversion and Use Report deadlines. Effective September 24, 2021, Senate Bill (AB) 155 amended, among other things, the deadline to submit initial and supplemental statements of diversion and use as required under Water Code sections 5101 and 5104.

10. Respondent has submitted the one past due report.
11. Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
12. In this case, the Respondent did engage in corrective action and ultimately submitted the outstanding report on September 6, 2023. The Prosecution Team and the Respondent agreed to settle the ACLC's allegations for an amount of \$600. In consideration of all relevant circumstances, the State Water Board, through the Deputy Director, has determined this an appropriate proposed penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The attached Complaint and Acceptance and Waiver are fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including those specifically identified in the Complaint pursuant to Water Code section 1055.3.
3. Respondent shall remit, within 30 days of the date of this Order, a check or money order payment of the full settlement amount of \$600 to:

State Water Resources Control Board
Division of Water Rights
Attn: Enforcement Section – Failure to File 2021-2022
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of the Respondent's obligations under this Order constitutes full and final satisfaction of liability for the alleged violation(s) specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The State Water Board is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if the Respondent fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: November 1, 2023