

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0014-EXEC

In the Matter of In the Matter of Violations or Threatened Violations of Emergency Regulations and Orders WR 2021-0083-DWR and WR 2021-0084-DWR, and Violations of Information Order WR 2022-0171-DWR upon

BRUCE AND LISA WALKER (SG003359, SG003324, SG003066)

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE DEPUTY DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Deputy Director of the State Water Resources Control Board (“State Water Board” or “Board”) following the issuance of an Administrative Civil Liability (“ACL”) complaint to Jason Walker (“Respondent”). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights (“Division”) Prosecution Team (“Prosecution Team”) and the Respondent 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

On May 10, 2021, the Governor issued Executive Order N-10-21 declaring a state of emergency based on drought conditions in the Scott River and Shasta River watersheds.

On August 17, 2021, the State Water Board adopted emergency regulations, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Authority in the Klamath River Watershed. The Emergency Regulations provide curtailment authority throughout the Klamath River watershed and establish minimum instream flow requirements and information order authority in the Scott River and Shasta River watersheds. The minimum instream flow requirements were established to protect fall-run Chinook salmon and threatened Southern Oregon/Northern California Coast coho salmon. The Emergency Regulations went

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.

into effect on August 30, 2021, when they were approved by the Office of Administrative Law and filed with the Secretary of State. The State Water Board adopted the Emergency Regulations and described the need for the Emergency Regulations and their intent. Resolution No. 2021-0029 adopted the Emergency Regulations and describes the need for the Emergency Regulations and their intent.

On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. The updated regulations contain a provision that extends previously issued curtailment orders under the amended regulation. (Cal. Code Regs., tit. 23, § 875, subd. (d)(3).)

The Respondent is the Primary Owner of record for Water Right IDs SG003359, SG003324, and SG003066. These Water Right IDs divert and use surface water or groundwater from the Scott River watershed. They are subject to the Emergency Regulation.

On September 10, 2021, the State Water Board issued an Order Imposing Water Right Curtailment, Increased Coordination, and Reporting Requirements for Adjudicated Groundwater Rights in the Scott River Watershed (Order WR 2021-0083-DWR). The Respondent received Order WR 2021-0083-DWR on September 13, 2021. The order requires the Respondent to cease diversions and comply with minimum flow requirements in the Scott River for diversions under statement SG003066. According to the order, these rights are adjudicated groundwater diversions identified in Schedule C of the Scott Adjudication [Decree entered on January 30, 1980, in Siskiyou County Superior Court Case No. 30662, In the Matter of Determination of the Rights of the Various Claimants to the Waters of Scott River Stream System, Except Rights to Water of Shackelford Creek, French Creek, and all Streams Tributary to Scott River Downstream from the U.S. Geological Survey Gaging Station, in Siskiyou County, California].

On September 10, 2021, the State Water Board also issued an Order Imposing Water Right Curtailment and Reporting Requirements in the Scott River Watershed for Water Right(s) Associated with the Parcel(s) Listed in Attachment A and Not Otherwise Curtailed (Order WR 2021-0084-DWR). This additional Order was sent because the State Water Board did not have current contact information for all surface and groundwater diversions in the Scott River Watershed. The Respondent Received Order WR 2021-0084-DWR on September 13, 2021. The order requires the Respondent to cease diversion and submit basic information about their diversion and use.

The State Water Board issued various addenda partially suspending curtailment of water rights in the Scott River watershed. In 2022, curtailments went into effect on July 2, 2022, for all surface water rights. On July 6, 2022, curtailments were partially suspended, allowing each first priority water right to divert up to 15% of their right. On July 8, 2022, each first priority right was allowed to divert up to 30% of their right. Finally, on July 14, 2022, all rights (surface and groundwater) were fully curtailed.

The Respondent submitted a Curtailment Certification Form on January 13, 2022. The Respondent certified that all diversion under Water Right ID SG003066 had ceased.

Enforcement staff from the Division of Water Rights (“Division”) issued a Notice of Violation to the Respondent on September 26, 2022, based on information received indicating the Respondent was in violation of the Curtailment Order.

On November 22, 2022, the Assistant Deputy Director for the Division, under delegated authority, issued an information order to Respondents, Order WR 2022-0171-DWR (“Information Order”). The Information Order required a response by December 6, 2022. There was no response by that date.

Water Code section 1846 authorizes the State Water Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a regulation or order adopted by the Board. Under these statutes, the Board may impose administrative civil liability in an amount not to exceed five hundred dollars (\$500) per day for each day in which the violation occurs.

On January 20, 2023, the Assistant Deputy Director for the Division, under delegated authority, issued an Administrative Civil Liability (“ACL”) complaint to the Respondent for failing to respond to the Information Order. The ACL complaint recommended a civil liability of \$3,000.

The Respondent submitted a request for a hearing on the ACL complaint on February 19, 2023.

In lieu of a hearing on the matter, the Parties agree to settle the violation(s) alleged in the ACL complaint, issued January 20, 2023, through this Agreement.

This Agreement will be submitted to the AHO for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Division’s Deputy Director issues an order approving settlement.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Division Prosecution Team executed the settlement agreement (“Settlement Agreement”), attached to this order as Exhibit 1. The general terms of the settlement are that Respondent:

1. Waives the right to a hearing on the ACL complaint, waives the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement and incorporated into this order;
2. Must submit proof of their initial application to enroll in a Local Cooperative Solution (“LCS”) within 7 days of issuance of this Order; and

3. Is subject to administrative civil liability in the amount of Three-Thousand Dollars (\$3,000). The ACL will be reduced to the amount of Five-Hundred Dollars (\$500) if the Respondent meets the specified requirements of this order. If the Respondent fails to meet any of these requirements, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Respondent is approved. The Respondent must perform all the following actions:

1. No more than 7 days following this Order's issuance, submit proof of their initial application to enroll in an LCS.
2. Pay an ACL of Three-Thousand Dollars (\$3,000). ACL will be reduced to Five-Hundred (\$500) if the Respondent meets the requirements of section 1 of this order. If the Respondent fails to meet any of section 1's requirements, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL. If the ACL required section 1 of this order is unpaid after 30 days of the date of the Deputy Director's finding, the Deputy Director will seek a judgment against the Respondent in accordance with Water Code section 1055.4. Payment must be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund," and properly executed and delivered to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit — Scott River Curtailment
1001 I Street, 14th Floor
Sacramento, CA 95814

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: April 11, 2023