

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

DIVISION OF WATER RIGHTS

ORDER WR 2017 - _____ - EXEC

In the Matter of Unauthorized Diversion by

~~James J. Wittler~~ Delbert Lehr and Jeff Lehr
License 217 (Application A001024) and License 3421 (Application A011786)

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 a Draft Cease and Desist Order to Delbert Lehr and Jeff Lehr. In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Delbert Lehr and Jeff Lehr (together, the Lehrs) 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

Delbert Lehr holds water right License 217 (Application A001024) and License 3421 (Application A011786) to appropriate water from sources that are ultimately tributary to the Sacramento River.

On May 27, 2014 and May 1, 2015 Unavailability Notices were sent to the Lehrs regarding both License 217 and License 3421 advising the Lehrs that there was an unavailability of water to supply diversions under their water right permits and licenses due to severe drought conditions.

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.

On June 17, 2015 Division staff conducted a site inspection of the Lehr property to determine compliance with the Unavailability Notices. During this inspection, Delbert Lehr indicated that diversions had been occurring during the 2015 unavailability season under a riparian claim of right. At that time, Delbert Lehr indicated that his son, Jeff Lehr, was selling water from the East Branch of the North Fork of the Feather River under a riparian claim of right.

On March 16, 2016 the Assistant Deputy Director for Water Rights issued a Draft Cease and Desist Order (CDO) against Delbert Lehr and Jeff Lehr alleging that the Lehrs were engaged in an unauthorized diversion from the East Branch of the North Fork of the Feather River within the Sacramento River watershed in Plumas County.

On April 5, 2016, Delbert and Jeff Lehr submitted a request for a public hearing on the Draft CDO. On July 8, 2017 the State Water Board issued a Notice of Public Hearing. A hearing on the Draft CDO was set for September 27, 2017. The hearing schedule was revised to allow for settlement negotiations, and at the time of this agreement the hearing is set for January 12, 2018.

Delbert and Jeff Lehr and the Division Prosecution Team engaged in settlement discussions and mutually agreed to settle the matters identified in the Draft CDO in lieu of hearing.

3.0 SETTLEMENT AGREEMENT

Delbert and Jeff Lehr and the Division Prosecution Team executed the Settlement Agreement attached hereto. The general terms of the settlement are that (1) the Lehrs will file Statements of Diversion and Use addressing all existing claims of rights (2) the Lehrs will voluntarily relinquish License 11786, (3) the Lehrs will limit their use of License 3421 to domestic use, (4) the Lehrs will not sell water to third parties without informing the Division's Enforcement Program Manager or to third parties without a Statement on file (5) the Lehrs will comply with the requirements of SB-88 and (6) the Division Prosecution Team will not seek monetary penalties regarding the Draft CDO.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and Delbert and Jeff Lehr 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

Eileen Sobeck
Executive Director

Dated: