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## State Water Resources Control Board

### POST-HEARING ORDER

The State Water Resources Control Board  
Administrative Hearings Office  
has held a Public Hearing to determine whether to adopt  
a proposed cease-and-desist and administrative civil liability order to

#### **Kevin Gonzalves**

for alleged unauthorized diversions of water within the San Joaquin River Watershed  
in Merced County

The Administrative Hearings Office (“AHO”) held the teleconference hearings as scheduled on July 17, 30 and 31, and September 9 and 16, 2020 and a site visit on August 7, 2020. Anyone interested in seeing and listening to the recordings of these hearings may access them on the AHO’s YouTube channel at:  
<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos>.

The AHO also has posted these files on the AHO-FTP site in the Hearing Documents folder for this hearing. The AHO’s notice of availability of the AHO-FTP sites, which provides information on accessing these sites, may be viewed at:  
[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2020\\_05\\_05\\_notice\\_ftp.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020_05_05_notice_ftp.pdf).

#### **Order Following September 16 Hearing**

The hearing officer directs the parties to prepare and file closing briefs that separately address each of the following issues:

#### **Issues Regarding Draft Cease-and-Desist Order**

- 1) Is Respondent violating, or threatening to violate, the prohibition in Water Code section 1052, subdivision (a) (which is referred to in Water Code section 1831, subdivision (d)(1)) against the unauthorized diversion or use of water subject to Division 2 of the Water Code (Water Code sections 1000-5976)?
  - a. What types of water (natural flow, imported, other) are present in Canal Creek?
  - b. Which, if any, of these types of water are subject to Division 2 of the Water Code?

- c. Does Respondent have any water rights that authorize the diversion and use of water from Canal Creek? If so, what types of water rights does Respondent have for these diversions and use and what are the bases of these rights?
  - d. Does the pond on Respondent's property adjacent to Canal Creek have the legal status of a natural lake under the rules and court decisions discussed in State Water Board Decision 1618, at p. 15 (1988)?
- 2) If any such violations or threatened violations are occurring, then should the State Water Board issue a cease-and-desist order to Respondent under Water Code section 1831?
- 3) If the State Water Board decides to issue a cease-and-desist order to Respondent under Water Code section 1831, then what actions should the order direct Respondent to take and what actions should the order prohibit Respondent from taking?

#### Issues Regarding Administrative Civil Liability Complaint

- 4) Did Respondent divert or use water subject to Division 2 of the Water Code other than as authorized by Division 2? (The discussion in each party's closing brief of this issue may cross-reference the discussions of Issue 1 and the related sub-issues in the party's closing brief.)
- 5) If Respondent diverted or used water subject to Division 2 other than as authorized by Division 2, should the State Water Board's order include the imposition of administrative civil liability?
- 6) If the State Water Board's order includes the imposition of administrative civil liability, then what is the appropriate amount for such administrative civil liability? Water Code section 1055.3 provides that, in determining the amount of civil liability, the Board shall take into consideration all relevant circumstances, including, but not limited to: (a) the extent of harm caused by the alleged violation; (b) the nature and persistence of the alleged violation; (c) the length of time over which the alleged violation occurred; and (d) the corrective actions, if any, taken by the violator. The parties' closing briefs should separately discuss each of these factors. As part of the discussions of these factors, the parties' closing briefs should discuss how Respondent's payments to Merced Irrigation District for water allegedly diverted during 2014 through 2017 affect, or do not affect, these factors.

Each closing brief shall be a maximum of 15 pages, single-spaced or 30 pages double-spaced, in a font size not smaller than 12 points. For citations to hearing testimony, please include citations to the date, hour, minute and second of the beginning and end of the part of the hearing recording that is being cited. Please cite to the hearing recordings posted on the AHO-FTP site, not to the recordings posted on the AHO's YouTube site.

Each party must upload its closing brief to the AHO-FTP2 site before **October 30, 2020, at 4:00 pm.**

Each party also shall mail two paper copies of its closing brief to the AHO on or before this date to:

State Water Resources Control Board  
Administrative Hearings Office  
P. O. Box 100  
Sacramento, CA 95812-0100

Alternatively, a party may send two paper copies of its closing brief to the AHO by overnight delivery, or have the briefs hand-delivered to:

Joe Serna Jr. CalEPA Building  
State Water Resources Control Board  
Administrative Hearings Office  
c/o Water Rights Records Unit  
1001 I Street, 2<sup>nd</sup> Floor, Room 114  
Sacramento, CA 95814

For mailing, overnight delivery or hand-delivery, the party must give the paper copies to the U. S. Postal Service or courier on or before the deadline specified above. The Postal Service's or courier's delivery to the AHO may occur after this deadline.

After both parties have uploaded, or filed their closing briefs, the AHO will post the parties' closing briefs on the AHO-FTP site.

September 23, 2020

/s/ ALAN B. LILLY  
Alan B. Lilly  
Presiding Hearing Officer

Enclosure:  
-Service List

## SERVICE LIST

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