
State Water Resources Control Board

MEMORANDUM

TO: Julé Rizzardo, Assistant Deputy Director
Division of Water Rights
State Water Resources Control Board
Jule.Rizzardo@waterboards.ca.gov

FROM: Alan B. Lilly
Presiding Hearing Officer
Administrative Hearings Office
AdminHrgOffice@waterboards.ca.gov

SUBJECT: Brent Owen Administrative Civil Liability Complaint
Water Right License 10004 (Application A016078)

DATE: August 6, 2020

On July 1, 2019, you issued an Administrative Civil Liability (“ACL”) Complaint to the Respondent, Brent Owen. The ACL Complaint alleged that Respondent violated California Code of Regulations, title 23, section 929, by failing to file his report for 2018 diversions and use under the above water-right license by the April 1, 2019 deadline.

Mr. Owen sent a letter to the Administrative Hearings Office (“AHO”) dated July 23, 2019, which requested a hearing.

On April 9, 2020, the AHO issued a Notice of Public Hearing for this matter and mailed a copy of this notice to Mr. Owen at the address listed in his July 23, 2019 letter to the AHO by certified mail, return receipt requested. The AHO later received the certified mail return receipt card, signed by KD Hawkins (the person who, representing Mr. Owen, communicated by e-mail with Lang Khang on July 18, 2019) on April 16, 2020.

The AHO never received any Notice of Intent to Appear (“NOI”) from Mr. Owen or Mr. Hawkins, and the AHO has not received any communications from Mr. Owen or Mr. Hawkins since Mr. Owen’s July 23, 2019 letter. All documents in the administrative record that the Administrative Hearings Office (“AHO”) has prepared for this matter are posted on the AHO-FTP site, in the electronic folder for this matter. The AHO’s May 5, 2020 notice, available at

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020_05_05_notice_ftp.pdf, explains how to access this FTP site.

Based on these facts, the AHO deems Mr. Owen's request for hearing to be withdrawn. On July 10, 2020, I sent a memorandum to you, which transmitted this ACL Complaint to the Division of Water Rights for further proceedings.

On July 25, 2020, you sent me a letter, which requested some clarifications regarding my July 10 memorandum. Your letter asks the AHO three questions. The questions in your letter and the AHO's responses are listed here:

Question 1: Does the Respondent's failure to file the requisite Notice of Intent to Appear before the applicable deadline, assuming the failure is not reasonably excusable, negate the Respondent's initial and timely November 6, 2019 request for a hearing? [footnote omitted]

Answer: I am assuming that this question was intended to refer to Respondent's July 23, 2019 request for hearing. Based on this assumption, the answer is "yes." The AHO's April 9, 2020 Notice of Public Hearing stated that, if the AHO did not receive an NOI from Respondent before the deadline specified in the notice, then the AHO may deem Respondent's request for hearing to be withdrawn. The deadline for filing NOIs in this matter was May 21, 2020. The AHO never received any NOI from Respondent. Accordingly, the AHO deems Respondent's July 23, 2019 request for hearing to be withdrawn.

Question 2: If the answer to the above question is "yes," is it appropriate for the Deputy Director or Assistant Deputy Director of the Division to issue an order imposing liability pursuant to Water Code section 1055, subdivision (b)?

Answer: Because the AHO deems Respondent's request for hearing to be withdrawn, the Deputy Director or Assistant Deputy Director may proceed in the manner that he or she would have proceeded if Respondent never had requested a hearing. I will defer to you to determine whether it is appropriate for the Division to issue an order imposing liability pursuant to Water Code section 1055, subdivision (b) under these circumstances.

Question 3: If the answer to the above question is "no," would the AHO transmit a proposed order to the Board of consideration and how would the AHO proceed?

Answer: The answer to the above question is "yes," so this Question 3 is not applicable here.

Please let me know if you have any follow-up questions.

SERVICE LIST

Brent Owen
P. O. Box 992483
Redding, CA 96099-2483
brentowen@sbcglobal.net
(via first class mail and e-mail)

Kenneth Petruzzelli
State Water Resources Control Board
Office of Enforcement
Kenneth.petruzzelli@waterboards.ca.gov
(via e-mail)