

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

**ORDER WR 2011-0015-EXEC**

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In the Matter of the Diversion and Use of Water by  
**LARRY W. AND JILL D. THATCHER**  
**ORDER APPROVING SETTLEMENT AGREEMENT**

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**BY THE EXECUTIVE DIRECTOR<sup>1</sup>**

**1.0 INTRODUCTION**

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board) following issuance of an Administrative Civil Liability Complaint (ACL Complaint) and a Draft Notice of a Cease and Desist Order (CDO) against Brian Lowell (Lowell), the prior owner of the subject unauthorized water storage facility. Those matters were resolved by a settlement agreement approved by Order WR 2009-0023-EXEC. The property was subsequently transferred to Larry W. Thatcher and Jill D. Thatcher (the Thatchers). The State Water Board, Division of Water Rights (Division) prosecution team (Prosecution Team), and the Thatchers have agreed to settle this matter in lieu of proceeding to hearing in accordance with the attached Settlement Agreement. Government Code section 11415.60 authorizes the issuance of this order pursuant to a settlement. The settlement is approved.

**2.0 BACKGROUND**

The Thatchers are the owners of property designated as Tehama County Assessor's Parcel Number 021-070-15-1, have owned the property since October 2010, and have succeeded in interest to the pending application (A031774) that was originally filed by

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<sup>1</sup> SWRCB Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

Lowell. Lowell previously owned the Tehama County property since at least June 2000. Aerial photographs of the area indicate that a reservoir is located on this property and has been in existence since at least 1997. On April 7, 2006, Division staff conducted an inspection of the Lowell property. Division staff observed a reservoir constructed on an unnamed stream tributary to South Fork Cottonwood Creek, and that a natural channel exists both upstream and downstream of the reservoir. The reservoir was storing water at the time of the inspection, and staff estimated the capacity to be approximately 64 acre-feet.

Water Code section 1052 provides that the unauthorized diversion or use of water is considered a trespass. The State Water Board may impose administrative civil liability in an amount not to exceed \$500 for each day that a trespass occurs. [Wat. Code §1052, subd. (b)]. The State Water Board may also issue a Cease and Desist Order in response to an unauthorized diversion of water. (Wat. Code §1831.) Water being collected to storage in the Thatcher's reservoir is subject to the State Water Board's permitting authority. The Division has no record of a water right authorizing storage of water in the reservoir from the unnamed stream, and neither Lowell nor the Thatchers have provided evidence supporting an existing basis of right. Lowell collected water to storage without a basis of right since at least 2000. On March 20, 2007, Lowell submitted a water right application for a permit to appropriate water to storage in the reservoir with a storage capacity of about 64 acre-feet. Lowell's application was rejected and returned on April 2, 2007, together with an explanation of the missing or incomplete information required. Subsequently, on June 5, 2009, Lowell filed an amended application.

On October 14, 2010, Lowell sold his Tehama County parcel to the Thatchers, and on December 29, 2010, Application 31774 was assigned to the Thatchers. The Thatchers filed an Agent Assignment form on May 6, 2011, identifying the firm of Wagner & Bonsignore, Consulting Civil Engineers, as their Agent for the pending application. Since acquiring the parcel, the Thatchers have timely made all payments due regarding Application 31774. However, because the settlement agreement between the Division

and Lowell does not by its terms apply to the Thatchers or any other subsequent owner of the property, the Division notified Thatcher that the current diversion and use of water at the reservoir remains unauthorized as a permit has not been issued pursuant to Application 31774.

### **3.0 SETTLEMENT AGREEMENT**

The Thatchers agreed, on June 9, 2011, to voluntarily enter into this agreement as the successors in property interest to Lowell. Among other provisions, the Settlement Agreement provides that the Thatchers shall diligently pursue securing a water right permit, and that by accepting the Settlement Agreement, the Thatchers waive the right to request reconsideration by the State Water Board of the Order Approving the Settlement Agreement. Additionally, until such time as a permit is issued authorizing the diversion of water to storage in the reservoir, the Thatchers shall adhere to one of the following options:

- a. By October 1 of each year, the Thatchers shall remit to the Division a civil penalty of \$1,665 for the water collected to storage without a basis of right during the prior year; or
- b. 1) Install a staff gage in the reservoir satisfactory to the Division and maintain readings on April 1 and October 1 of each year. The readings shall be made available upon the Division's request; 2) Install an outlet pipe, or other facility, acceptable to the Division by April 1, 2012, that is capable of withdrawing all the water collected prior to April 1 within 30 days; 3) By May 1 of each year, release the amount of water collected to storage from October 1 of the previous year to April 1 of each year into the stream channel immediately downstream of the reservoir; and 4) Maintain records of the staff gage reading of October 1 of the previous year and April 1 and May 1 of the current year, and make them available to the Division upon request.

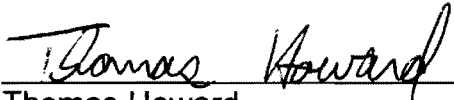
The Settlement Agreement becomes effective immediately upon signature of this order by the Executive Director of the State Water Board.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The attached Settlement Agreement between the Division and the Thatchers is approved pursuant to Government Code section 11416.60 and is incorporated by reference into this order.
2. Approval of the Settlement Agreement between the Division and the Thatchers binds the current parties to this agreement, as well as any future successors in interest to the Tehama County Assessor's Parcel Number 021-070-15-1.
3. Approval of the Settlement Agreement between the Division and the Thatchers shall not limit the authority of the Executive Director or the Division Deputy Director, as delegated, to initiate any enforcement actions for any future violations of the Water Code or violations of the terms of the Settlement Agreement.

Dated: **SEP 27** 2011

  
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Thomas Howard  
Executive Director