

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

DIVISION OF WATER RIGHTS

ORDER WR 2019-0048- EXEC

In the Matter of Administrative Civil Liability for Failure to File Annual Water Use Reports upon

Richard L. Jennings and M.J.M. Partnership

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 Administrative Civil Liability Complaints (ACL Complaints) to Richard L. Jennings, and M.J.M. Partnership (Respondents). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and the Respondents 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

Richard L. Jennings holds numerous water rights, including but not limited to: Statements S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, S023092, and S023270, and Licenses 53, 284, and 3101. M.J.M. Partnership holds Statement S018642.

The Respondents must, pursuant to regulations enacted by the State Water Board, submit reports online through the Board's website documenting the Respondents' water diversion and use (Annual Water Use Reports) under Statements S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, S023092, S023270, and S018642 by July 1 of each following calendar year, and under Licenses 53, 284, and 3101 by April 1 of each following calendar year. (Cal. Code Regs., tit. 23, §§ 847, 920 & 929). The Respondents were required to file the Annual Water Use Reports for the 2017 water year by April 1, 2018 and July 1, 2018, respectively.

On July 27, 2018, the Division mailed to the Respondents a Notice of Deficiency. The Notice of Deficiency warned of the potential for enforcement if the Annual Water Use Reports were not submitted.

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 September 17, 2018, the Division mailed to the Respondents a final Notice of Deficiency, putting the Respondents on notice of imminent enforcement if the Annual Water Use Reports were not submitted.

On October 19, 2018, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority issued 21 separate ACL Complaints to the Respondents for failing to file the required Annual Water Use Reports.

The ACL Complaints recommend administrative civil liability in the amount of \$1,500 per violation (\$31,500 in the aggregate). The ACL Complaints included a cover letter explaining the violation and an offer to settle for \$500 per violation if the Respondents submitted the Annual Water Use Reports, signed and submitted a waiver of the right to a hearing on the matter, and submitted the settlement payment amount all within 20 days of receiving the ACL Complaints.

The recommended penalty of \$1,500 per violation is based on the relevant circumstances alleged in the ACL Complaints, including the failure of the Respondents to submit the Annual Water Use Reports despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

On February 5, 2019, the State Water Board Hearings Unit issued Notices of Public Hearing, scheduling hearings on the allegations in all ACL Complaints issued and properly served to the Respondents to be held on March 29, 2019.

The Respondents and the Division Prosecution Team have engaged in settlement negotiations and agreed to settle all matters identified in all the ACL Complaints issued to the Respondents on October 19, 2018, through a Settlement Agreement in lieu of a hearing.

3.0 SETTLEMENT AGREEMENT

The Respondents and the Division Prosecution Team executed the Settlement Agreement, dated April 23, 2019, and attached hereto. The general terms of the Settlement Agreement are that the Respondents: (1) withdraw the requests for a hearing on the ACLs, waive their rights to reconsideration of this Order, and agree to certain actions described in the Settlement Agreement and incorporated herein, and (2) the Respondents are liable to pay a total amount of \$30,000; \$10,000 payable within 14 days of issuance of this Order, the remaining \$20,000 payable within 3 months of issuance of this Order to be deposited into the Water Rights Fund pursuant to Water Code section 1052 et seq.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and Richard Jennings and M.J.M. Partnership 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 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

JUL 23 2019
Date

ORIGINAL SIGNED BY
Eileen Sobeck
Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement is made this 23rd day of April 2019, by and between Richard L. Jennings, MJM Partnership (“the Diverters”), and the Prosecution Team of the State Water Resources Control Board’s (“State Water Board”) Division of Water Rights (“Division”). The Diverters and the Prosecution Team are collectively referred to here as the Settling Parties.

RECITALS

1. Richard Jennings holds numerous water rights, including but not limited to: Statements S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, S023092 and S023270, and Licenses 53, 284 and 3101. MJM Partnership holds Statement S018642.
2. California Water Code section 5104, subdivision (a) and the California Code of Regulations, title 23, section 920, subdivision (a) require the Diverters to submit Supplemental Statements of Diversion and Use for each Statement held by the Diverters by July 1 of each following calendar year. The Diverters were required to file Supplemental Statements of Diversion and Use for the 2017 water year by July 1, 2018.
3. The Diverters must, pursuant to regulations enacted by the State Water Board, submit a Report of Licensee by April 1 of each following calendar year for each License held. (Cal. Code Regs., tit. 23, §§ 847; 929, subd. (b)). The Diverters were required to file the Reports of Licensee for the 2017 water year by April 1, 2018.
4. The Diverters failed to file Statements of Diversion and Use and/or Reports of Licensee by the applicable deadlines of July 1, 2018, and April 1, 2018 respectively.
5. On July 27, 2018, the Division mailed the Diverters a Notice of Deficiency, warning of the potential for enforcement if the Supplemental Statements of Diversion and Use and Reports of Licensee were not submitted. The Diverters received a separate Notice of Deficiency for each Supplemental Statement of Diversion and Use and Report of Licensee that was not submitted.
6. On September 17, 2018, the Division mailed the Diverters a final Notice of Deficiency, putting the Diverters on notice of imminent enforcement if the Supplemental Statements of Diversion and Use and Reports of Licensee were not submitted. The Diverters received a separate final Notice of Deficiency for each Supplemental Statement of Diversion and Use and Report of Licensee that was not submitted.
7. On October 19, 2018, the Assistant Deputy Director for the Division of Water Rights acting under delegated authority issued Administrative Civil Liability (“ACL”) Complaints to the Diverters for failing to file the required Supplemental Statements of

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Diversion and Use and Reports of Licensee. The Division issued the Diverters separate ACL Complaints for each Supplemental Statement of Diversion and Use or Report of Licensee that was not submitted. According to the Division's records, Richard Jennings failed to file the 20 referenced Supplemental Statements of Division and Use or Reports of Licensee, and thus the Division issued 20 separate ACL Complaints to Richard Jennings. According to the Division's records, MJM Partnership failed to file 1 Supplemental Statement of Division and Use and thus the Division issued 1 ACL Complaint to MJM Partnership.

8. The ACL Complaints issued to the Diverters allege violations of California Code of Regulations, title 23, section 920, subdivision (a), and/or California Code of Regulations, title 23, section 929, subdivision (b), and recommend Administrative Civil Liability in the amount of \$1,500 per violation (\$31,500 in the aggregate).
9. The recommended penalty of \$1,500 per violation is based on the relevant circumstances alleged in the ACL Complaints, including the failure of the Diverters to submit the Statements of Diversion and Use and Reports of Licensee despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.
10. On November 15, 2018, the State Water Board Hearings Unit received a Hearing Request from the Diverters that contained no information indicating that the Diverters were requesting a hearing challenging the allegations of any particular ACL Complaint. The Hearings Unit determined that the request therefore was intended as a blanket request for all properly served ACL Complaints.
11. On February 5, 2019 the State Water Board Hearings Unit issued Notices of Public Hearing, scheduling hearings on the allegations in all ACL Complaints issued and properly served to the Diverters to be held on March 29, 2019.
12. The State Water Board Hearings Unit determined that the ACL Complaint that contains allegations regarding Richard Jennings' failure to file a Supplemental Statement of Diversion and Use for Statement S023270 was not properly served, and therefore did not include that particular ACL Complaint in the Notice of Public Hearing.
13. The Settling Parties have engaged in settlement negotiations and agree to settle all matters identified in the Notices of Public Hearing as well as the allegations in the ACL Complaint corresponding to S023270 through this Settlement Agreement in lieu of a hearing.
14. The Settling Parties will submit this Settlement Agreement and a draft approving order to the Hearing Team for approval and adoption by the State Water Board's Executive Director pursuant to Government Code section 11415.60 as a decision by settlement, and this Settlement Agreement will become effective when the State

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Water Board's Executive Director issues an order approving the settlement, provided that the Settling Parties concur in any substantive changes to the approving order proposed by the Hearing Team or Executive Director.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Settling Parties do hereby agree to settle the ACL Complaints as follows:

15. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
16. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
17. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement ("Effective Date").
18. **Payment Amount.** The Diverters shall pay a total of **\$30,000** as directed herein to resolve all violations alleged in all ACL Complaints issued on October 19, 2018 to the Diverters.
19. **Consideration of Relevant Circumstances.** The Prosecution Team has determined for purposes of Water Code section 1055.3 that the Payment Amount in Paragraph 18 is an appropriate resolution to the violations alleged in the ACL Complaints based on consideration of the relevant circumstances, including the failure of the Diverters to submit the Statements of Diversion and Use and Reports of Licensee despite repeated notifications, the harm to the Division's effectiveness in regulating water diversions caused by that failure, the staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program, the commitments set forth in Paragraph 22 below, and the settlement purpose of this agreement.
20. **Administrative Civil Liability Payment Due Date.** The Payment Amount set forth in Paragraph 18 is due according to the following schedule:
 - a. \$10,000.00 within fourteen days of the Effective Date of the Settlement Agreement
 - b. \$20,000.00 within three months of the Effective Date of the Settlement Agreement.

The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water code sections 1052 et seq.

- 21. Satisfaction of Administrative Civil Liability Complaints.** The Diverters' full payment of the Payment Amount will be a complete and final satisfaction of the administrative civil liability described in the ACL Complaints, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACL Complaints.
- 22. Compliance Actions.** The Settling Parties agree that the Diverters will take the following actions to come into compliance with the reporting requirements and ensure future reports are as accurate as possible:
- a. The Diverters agree to file, for water year 2017, the Supplemental Statements of Diversion and Use for Statements S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, S023092, S023270, S018642 and Reports of Licensee for Licenses 53, 284, 3101 within 14 days of Effective Date of this Settlement Agreement.
- 23. Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and the implementing Order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
- 24. Request for Executive Director Approval and Postponement of Hearing.** Upon execution of this Settlement Agreement by each of the Settling Parties, the Settling Parties shall submit this Settlement Agreement and a proposed order approving this Settlement Agreement to the Hearing Team, and shall jointly request that: 1) the Hearing Team bring the Settlement Agreement and proposed order to the Executive Director for consideration and approval; 2) the Hearing Team bring any proposed substantive changes to the approving order language to the settling parties for consideration prior to approval by the Executive Director; and 3) the Hearing Team postpone the hearing in this matter indefinitely pending the Executive Director's approval of this Settlement Agreement.
- 25. Hearing Requests.** The Diverters' request for hearing on the ACL Complaints shall be deemed withdrawn upon approval of this Settlement Agreement by the State Water Board's Executive Director, provided that the Settling Parties concur in any substantive changes to the draft approving order proposed by the Hearing Team or Executive Director. If the Settling Parties do not concur in any substantive changes to the approving order proposed by the Hearing Team or Executive Director, this Settlement Agreement shall be deemed void and the parties shall request that the matter be placed back on calendar for hearing.

26. **Waiver of Reconsideration.** The Diverters waive the right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
27. **Successors.** This Settlement Agreement is binding on any successors or assigns of the Diverters, and the State Water Board.
28. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
29. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
30. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
31. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
32. **Mutual Agreement.** The Settling Parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
33. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
34. **Reasonableness of Settlement.** The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
35. **Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.

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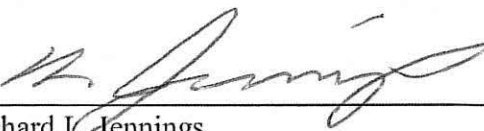
36. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
37. **Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
38. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Diverters, or their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Diverters' directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
39. **No Waiver of Other Requirements.** Nothing in this Settlement Agreement or any implementing Order shall excuse the Diverters from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board or pursuant to its delegated authority.

Dated: April 23, 2019



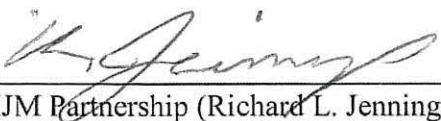
Julie Rizzardo
Assistant Deputy Director
State Water Board, Division of Water Rights
Prosecution Team

Dated: 4-16 2019



Richard L. Jennings

Dated: 4-16 2019



MJM Partnership (Richard L. Jennings Agent)