

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

ORDER WR 2020-0111

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In the Matter of the Administrative Civil Liability Complaint  
against

**Pimentel Family RLT**

**Statements of Water Diversion and Use S023607, S023608, and S023610**

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SOURCES: Johnson Creek, tributary to Scott River, and Matthews Spring and unnamed spring, tributary to Johnson Creek

COUNTY: Siskiyou

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**ADMINISTRATIVE CIVIL LIABILITY ORDER**

BY THE BOARD:

**1.0 INTRODUCTION**

This matter came to the State Water Resources Control Board (State Water Board or Board) as a proposed order prepared by the Presiding Hearing Officer of the Board's Administrative Hearings Office (AHO), pursuant to Water Code section 1114, subdivision (c)(1). Pursuant to Water Code section 1114, subdivision (c)(2)(A), the Board adopts the AHO's proposed order in its entirety.

**2.0 LEGAL AND PROCEDURAL BACKGROUND**

**2.1 Administrative Civil Liability Complaint**

On October 18, 2019, Julé Rizzardo, an Assistant Deputy Director of the Board's Division of Water Rights (Division), issued an Administrative Civil Liability Complaint (ACL Complaint) to Pimentel Family RLT (Respondent), which has filed three statements of water diversion and use and supplemental statements for claimed water rights under the Scott River Decree. (Exh. PT-4.) Ms. Rizzardo issued this ACL

Complaint under the authority the Board's Executive Director delegated to the Deputy Director for Water Rights. The Deputy Director subsequently redelegated this authority to the Assistant Deputy Director.

The ACL Complaint contained the following allegations: (a) Respondent, or Respondent's predecessor in interest, previously filed initial Statements of Water Diversion and Use S023607, S023608, and S023610; (b) Respondent failed to file the supplemental statements of water diversion and use for its 2018 diversions and use by the July 1, 2019 deadline; (c) on August 30, 2019, the Division sent Respondent a notice of deficiency, which notified Respondent that the Division had not received Respondent's supplemental statements of water diversion and use for 2018; (d) the notice of deficiency informed Respondent that the failure to timely file a supplemental statement of water diversion and use is a violation of a Board regulation, title 23, California Code of Regulations, section 920, for which, under title 23, section 908, civil liability of \$500 may be assessed for each day after the July 1, 2019 deadline that the supplemental statement is not submitted; and (e) as of October 18, 2019, Respondent still had not filed the three required supplemental statements.

The ACL Complaint stated that the total maximum potential liability for Respondent's failure to file the supplemental statements was \$162,000, based on an alleged violation for 108 days and the maximum penalty of \$500 per day per violation under Water Code section 1846 ( $108 \times \$500 \times 3 = \$162,000$ ). The ACL Complaint stated that, having taken into consideration all relevant circumstances, the Division's Prosecution Team recommended the imposition of \$6,000 in administrative civil liability.

The ACL Complaint stated Respondent could request a hearing on this matter, and that any request for hearing must be postmarked within 20 days after the date Respondent was served with the ACL Complaint.

The ACL Complaint contained an "EXPEDITED SETTLEMENT OFFER." The ACL Complaint stated that, to accept this offer, Respondent had to: (1) submit the required supplemental statements within 20 days after Respondent's receipt of the ACL Complaint; (2) sign and return the "Acceptance and Waiver" that was enclosed with the

ACL Complaint within 20 days of Respondent's receipt of the ACL Complaint, under which Respondent would accept administrative civil liability of \$1,500 and waive its right to contest the ACL Complaint; and (3) remit the "Expedited Settlement Amount" of \$1,500 within 30 days of the Board's issuance of a stipulated administrative civil liability order. Text at the end of the settlement offer stated if Respondent did not accept the offer within 20 days, then the offer would be "voidable" and the Respondent "may" be subject to the ACL Complaint's full proposed liability amount of \$6,000.<sup>1</sup>

## **2.2 Respondent's Submittal of Supplemental Statements of Water Diversion and Use**

On October 28, 2019, Respondent electronically submitted supplemental statements for 2018 for Statements S023607, S023608, and S023610 to the Division's electronic Water Rights Information Management System.

## **2.3 Respondent's Request for Hearing**

On November 4, 2019, Respondent sent a letter to the AHO requesting a hearing on the ACL Complaint. The AHO received this letter on November 8. Respondent did not accept the Division's Expedited Settlement Offer.

## **2.4 Administrative Hearings Office Proceedings**

Water Code section 1112, subdivision (a)(1), provides that, subject to some exceptions not applicable here, an AHO hearing officer shall preside over a hearing on a complaint issued under Water Code section 1055.

On April 15, 2020, the AHO issued its notice of public hearing in this matter and set the hearing for July 8, 2020. The notice of public hearing required parties to file notices of intent to appear by June 3, 2020. The Prosecution Team filed a notice of intent to appear before the June 3, 2020 deadline, but Respondent did not.

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<sup>1</sup> Because the Division's ACL Complaint referred to and discussed this expedited settlement offer, and because the Division included a copy of the settlement offer with the ACL Complaint, the Division has waived any argument that the settlement offer is inadmissible in this proceeding under Evidence Code sections 1152 and 1154.

On June 28, 2020, Ms. Pimentel sent an email to the Division of Water Rights inquiring about the logistics of the hearing, considering the COVID-19 emergency. Division staff forwarded this email to the AHO. Following subsequent correspondence, the AHO advised the parties that the hearing would proceed on July 8.

During the hearing, Patrick Lewis of the Board's Office of Enforcement appeared as the lead attorney for the Division's Prosecution Team with attorney Kenneth Petruzzelli assisting. Roberto Cervantes, Supervising Water Resource Control Engineer and head of the Division's Enforcement Section, testified for the Prosecution Team.

Carolyn Pimentel, who identified herself as the Trustee of the Pimentel Family RLT, appeared and testified for Respondent.

## **2.5 Authority to Assess Civil Liability**

California Code of Regulations, title 23, section 920, requires that, after the State Water Board receives an initial statement of water diversion, the diverter shall file supplemental statements of water diversion for each year's diversions and use by July 1 of the following year. (See Wat. Code, § 5104.)

Water Code section 1846 authorizes the Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a regulation adopted by the Board. Under these statutes, the Board may impose such administrative civil liability in an amount not to exceed \$500 per day for each day during which the violation occurs.

## **3.0 DISCUSSION**

### **3.1 Administrative Civil Liability**

It is undisputed that Respondent did not file its supplemental statements for 2018 until October 28, 2019. That was after the July 1, 2019 deadline in California Code of Regulations, title 20, section 920, subdivision (a). The sole question here is what amount of civil liability, if any, should be imposed on Respondent for its late filings.

### **3.2 Statutory Factors**

Water Code section 1055.3 and section 1848, subdivision (d), state that, in determining the appropriate amount of civil liability, the Board shall take into account “all relevant circumstances, including, but not limited to”: (a) “the extent of harm caused by the violation,” (b) “the nature and persistence of the violation,” (c) “the length of time over which the violation occurs,” and (d) “the corrective action, if any, taken by the violator.”

### **3.3 Prosecution Team’s Testimony and Arguments**

During the hearing, Mr. Cervantes discussed Water Code sections 1055.3 and 1848, subdivision (d), factors.

Regarding the “extent of harm” factor, Mr. Cervantes testified that information included in annual water-right reports is critical for administering water rights and managing water supply, and that “the State Water Board and the public need to understand when, where, how, and why water is used to ensure water is being put to beneficial use.” (Exh. PT-9, p. 6; see *also* Recording of July 8, 2020 (Recording) 19:14-19:44.) He testified that, without this information, the Board is limited in its ability to: (1) issue accurate permits or grant petitions, (2) determine availability of water and the likelihood a diversion may cause harm, (3) conduct timely and accurate billing for water use, (4) conduct efficient, fair and accurate drought management, (5) develop instream flow requirements and protect public trust resources, (6) build and calibrate water resource planning models, and (7) respond to and evaluate complaints of alleged illegal diversions. He testified that, on an aggregate basis, “these types of water right violations undermine the validity and transparency of the water rights system.” (Recording 19:45-20:45.)

Regarding the “nature and persistence of the violation” factor, Mr. Cervantes testified about the Division’s outreach efforts to the regulated community regarding water users’ obligations to file annual water-right reports, including sending a letter on February 15, 2019 (exh. PT-2), which stated that reporting is mandatory even if no water is diverted, and about the Division’s sending a notice of deficiency letter on August 30, 2019 (PT-5). (Exh. PT-9, pp. 6-7; Recording 15:46-18:04.) Mr. Cervantes

testified that the Division issued the ACL Complaint to Respondent after conducting “extensive” and “significant” outreach efforts. (Exh. PT-9, pp. 3, 6; Recording 17:26-18:09 & 20:48-21:29.)

Regarding the “length of time over which the violation occurs” factor, Mr. Cervantes testified that, as of the date of the ACL Complaint, Respondent’s violation had persisted for 109 days, and that, considering the Division’s attempts to contact Respondent during this period, this length of time was significant. (Exh. PT-9, p. 7; Recording 21:58-22:06.) Mr. Cervantes testified that the data in supplemental statements are less valuable for the Board’s water-availability forecasting when the data are not provided on time, and that delays in filing statements contribute to inaccuracy and uncertainty in the Board’s water resource modeling. (Recording 21:38-21:57.)

Regarding the “corrective action” factor, Mr. Cervantes testified that Respondent filed its annual supplemental statements on October 28, 2019, which was 118 days<sup>2</sup> after the deadline and only after significant efforts by the Division to compel Respondent to comply with the filing requirement. (Exh. PT-9, p. 7; Recording 22:10-22:26.) He testified that the late filing did not merit a reduction in the proposed penalty. (Recording 22:27-22:42.)

Mr. Cervantes testified that the Prosecution Team’s proposed civil penalty of \$6,000 “represents four days of violations,” and that the Division believes this is the “minimum amount suitable to deter future noncompliance while accounting for the resources spent by the State Water Board staff compelling the Diverter to file the requisite Annual Statements.” (Exh. PT-9, p. 8.)

The Division’s expedited settlement offer that was enclosed with the ACL Complaint provided for a proposed civil liability amount of \$1,500. This offer was conditioned on Respondent’s filing supplemental statements for Statements S023607, S023608, and S023610 for 2018 within 20 days and waiving Respondent’s right to a hearing.

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<sup>2</sup> There actually are 119 days between July 1, 2019 and October 28, 2019, not counting the first day, but counting the last day.

Mr. Cervantes testified that the \$1,500 amount of the Division's settlement offer was "low enough to encourage voluntary corrective action, but still high enough to encourage voluntary compliance in the future." (Exh. PT-9, p. 7.) The settlement offer stated that failure to accept the offer within 20 days would render the offer "voidable" and "may" subject Respondent to the full proposed liability amount of \$6,000 specified in the complaint. (Exh. PT-6, exh. A, p. 1.)

### **3.4 Respondent's Testimony and Arguments**

During the hearing, Ms. Pimentel testified that she, her late husband, and her late husband's parents began operating their small family ranch sometime before 1970. (Recording 48:20-48:46.) Respondent diverts water that flows seasonally for storage for domestic use for two households, stockwater for corrals, and flood irrigation for a four-acre pasture. (S023608 Supplemental Statement for 2018, filed Oct. 28, 2019 (S023608 Supp. Stmt. 2018), p. 2<sup>3</sup>; exh. PT-4, pp. 2-3, 6-7, 12-13; Recording 1:12:38-1:12:57.)

Ms. Pimentel testified that her husband became critically ill beginning in September 2016. During the fall and winter of that year, Ms. Pimentel stayed with her husband during his repeated hospitalizations, which were at least 80 miles from their home. (S023608 Supp. Stmt. 2018, p. 4; Recording 49:20-51:26.) When her husband was at home, Ms. Pimentel testified that she acted as his sole caretaker, that his circumstances were "medically complicated," and that she was caring for him while she was teleworking from home. (Recording 51:26-53:00.) During the many months Ms. Pimentel cared for her husband, she relied on help from her daughter and son-in-

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<sup>3</sup> Respondent's two other statements of water diversion and use involved in this hearing are S023607 and S023610. Respondent's supplemental statement for S023607 states that no water was diverted in 2018 under Statement S023607 due to an irrigation system failure. (S023607 Supplemental Statement for 2018, filed Oct. 28, 2019.) Respondent's supplemental statement for S023610 states that the purposes of use for water diverted under that statement were fire protection, stockwatering and fish and wildlife protection and enhancement, and that Respondent diverted a total of approximately 0.79 acre-foot under Statement S023610 in 2018. (S023610 Supplemental Statement for 2018, filed Oct. 28, 2019.)

law to run the ranch and pay bills. (*Id.* 53:10-53:29.) Ms. Pimentel's daughter put all correspondence that did not look like bills "in a box to be looked at later." (*Id.*)

On November 30, 2017, Ms. Pimentel's husband died. (S023608 Supp. Stmt. 2018, p. 4.) Ms. Pimentel explained that, since her husband's death, she has been behind on completing and filing tax returns and other correspondence, and that, with what little energy she has after her full-time work and ranch duties, she has been "desperately" catching up on her income tax filings. (Recording 55:25-56:11 & 1:16:05-1:16:47.) Ms. Pimentel testified that she did not discover the Water Board's February 15, 2019 letter until October 2019. (*Id.* 56:15-56:28.)

Ms. Pimentel testified that she has "no evidence" of receiving the Water Board's August 30, 2019 letter. (Recording 56:29-56:43.) She testified that she received the certified letter containing the ACL Complaint on October 21<sup>4</sup> and filed Respondent's three supplemental statements on October 28, 2019. (*Id.* 56:48-56:52; *see also* 2018 Supp. Statements for Statement IDs S023607, S023608, S023610.) She explained that her delay in filing was a "purely unintentional oversight" and that she "rectified it as soon as [she] became aware." (Recording 57:07-57:18.) Ms. Pimentel explained that she has filed Respondent's supplemental statements on time in the past, and that she filed the 2019 supplemental statements well before the July 1, 2020 deadline. (*Id.* 57:18-57:34; *see also* PT-10, pp. 10-12.)

In her closing remarks, Ms. Pimentel apologized that so many efforts had to be undertaken to inform her of her tardiness. (Recording 1:13:26-1:13:40.) She explained that she was not "willfully disobeying" or "refusing to comply," but rather the difficult circumstances before the filing deadlines caused her filing delay. (*Id.* 1:13:41-1:14:03.)

Ms. Pimentel testified that she understood that, if she settled, she would forfeit her right to a hearing, and she did not want to forfeit the "privilege" to have a hearing. (Recording 1:14:03-1:14:35.)

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<sup>4</sup> The Division's records indicate that this delivery date actually was October 23. (Exh. PT-7.)



### **3.5 Analysis**

As discussed above, Water Code section 1055.3 and section 1848, subdivision (d), direct the Board, in determining the amount of civil liability, to consider “all relevant circumstances, including, but not limited to,” the following factors: (a) “the extent of harm caused by the violation,” (b) “the nature and persistence of the violation,” (c) “the length of time over which the violation occurs,” and (d) “the corrective action, if any, taken by the violator.”

#### **3.5.1 Extent of Harm Caused by the Violation**

The State Water Board agrees with the Prosecution Team that timely filings of annual water-right reports, including supplemental statements of water diversions and use like the ones involved in this hearing, are necessary for the Division and the Board to timely administer California’s water-rights system. The Board also agrees that violations of the filing requirements, including failures to file annual supplemental statements by the applicable deadlines, undermine the validity and effectiveness of the water rights system.

#### **3.5.2 Nature and Persistence of Violation**

The Prosecution Team conceded that this is the first time Ms. Pimentel had filed Respondent’s supplemental statements late. (Recording 1:09:59-1:10:16.)

#### **3.5.3 Length of Time Over Which the Violation Occurred**

During the hearing, Mr. Cervantes expressed concern about the length of the filing delay from July 1, 2019 to October 28, 2019. Respondent filed its supplemental statements of water diversion and use for 2018 on October 28, 2019, which was 119 days after the July 1, 2019 deadline.

#### **3.5.4 Corrective Action**

Respondent corrected the violation by filing its supplemental statements for 2018 on October 28, 2019, which was just five days after Ms. Pimentel received the ACL Complaint. (Edh. PT-7.)

### **3.5.5 Other Relevant Circumstances**

Ms. Pimentel explained that in 2018 and 2019 she devoted any leftover energy she had, after working full-time and managing the ranch, to preparing her tax returns, which she still ended up filing late. (Recording 55:28-56:11.) She was contrite during the hearing, took full responsibility for the late filings, acknowledged the importance of timely filings, and timely filed Respondent's three supplemental statements of water diversion and use for 2019 diversions and use.

### **3.5.6 Conclusion Regarding Amount of Liability**

Under Water Code section 1846, subdivision (a)(2) and according to the penalties noticed in the ACL Complaint, the maximum civil liability the Board may impose here is \$162,000. The amount is based on a maximum liability of \$500 for each day on which each violation occurs and the ACL Complaint's allegation of 108 days of violations between July 1, 2019, when Respondent's supplemental statements of water diversion and use for 2018 were due, and October 18, 2019, when the Division issued the ACL Complaint.

The ACL Complaint states that, having taken into consideration all relevant circumstances, the Prosecution Team recommends imposition of \$6,000 in administrative civil liability. The Division's settlement offer provided for a reduced civil liability amount of \$1,500.

The Board concludes that \$1,500 is the appropriate civil liability amount here. While the Division's offer required Respondent to waive its right to a hearing to obtain this reduced civil liability amount, Respondent should not be penalized for exercising its right to a hearing. Otherwise, Respondent complied with the first term of the Division's settlement offer, which was to file its supplemental statements of water diversion and use for 2018 within 20 days after Respondent's receipt of the ACL Complaint and settlement offer. Also, during the hearing Ms. Pimentel acknowledged the importance of filing Respondent's future annual supplemental statements on time, and, consistent with this acknowledgement, she filed Respondent's supplemental statements for 2019 on time.

Consistent with Mr. Cervantes's testimony, civil liability of \$1,500 here will be "high enough to encourage voluntary compliance in the future." (See exh. PT-9, p. 7.)

#### **4.0 CONCLUSION**

Respondent is required to pay administrative civil liability in the amount of \$1,500 for its failure to file its supplemental statements of water diversion and use for 2018 by the July 1, 2019 deadline.

#### **ORDER**

##### **IT IS HEREBY ORDERED THAT:**

1. The Board imposes administrative civil liability of \$1,500 on Respondent.
2. Respondent shall remit, within 30 days of the date of this Order, a check or money order payable to the State Water Resources Control Board in the amount of \$1,500, and shall transmit it to:  
State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P. O. Box 2000  
Sacramento, CA 95812-2000
3. Fulfillment by Respondent of its obligations under this Order will constitute full and final satisfaction of Respondent's liability for the violations described in this Order. The State Water Board retains its right to take further enforcement actions for any future violations.

4. If Respondent does not make the payment described in paragraph 2 above by the deadline specified in that paragraph, then this Order authorizes the Assistant Deputy Director for the State Water Board's Division of Water Rights to seek recovery of the administrative civil liability imposed, pursuant to Water Code section 1055.4.

### CERTIFICATION


The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 2020.

AYE: Chair E. Joaquin Esquivel  
Vice Chair Dorene D'Adamo  
Board Member Tam M. Doduc  
Board Member Sean Maguire  
Board Member Laurel Firestone

NAY: None

ABSENT: None

ABSTAIN: None

  
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Jeanine Townsend  
Clerk to the Board