

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

DIVISION OF WATER RIGHTS

ORDER WR 2018-0118-EXEC

In the Matter of Material Misstatement in Statements of Water Diversion and Use by

LOUIS AND DARCY CHACON

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 an Administrative Civil Liability Complaint (ACLC) to Louis and Darcy Chacon (the Chacons). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and the Chacons have agreed to settle this matter in lieu of proceeding to a hearing. The Division Prosecution Team and the Chacons are collectively referred to as the Settling Parties. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

The Chacons hold Statement of Water Diversion and Use (Statement) No. S000042 with a claim of riparian right from Price Creek, tributary to Trinity River. The place of use is identified as Trinity County APN 012-070-05-00, and APN 012-070-06-00. The diverted water is used for irrigation of 15 acres of mixed crops including trees, stock watering, and domestic use.

The Chacons filed Supplemental Statements for S000042 for the diversion years 2009 through 2013 on or before June 20, 2014, and reported instantaneous rates of direct diversion up to 1×10^{20} cubic feet per second (cfs) and monthly amounts of storage and/or beneficial use of 1×10^{20} acre-feet (af).

On May 28, 2015, the State Water Board's Division of Water Rights (Division) sent the Chacons a Notice of Violation (NOV) via certified mail. The NOV put the Chacons on notice that they were in violation of Water Code section 5107, could be subject to substantial penalties, and advised them to revise the Supplemental Statements for 2009 through 2013 within 30 days of receipt of the notice.

On June 3, 2015, the Chacons received the NOV. On June 29, 2015, the Chacons submitted revised Supplemental Statements for 2009 through 2013. The revised Supplemental Statements reported a maximum rate of direct diversion of 29.52 cfs and an annual diversion amount of 21,383.04 af, which is orders of magnitude greater than any reasonable demand estimate for the place of use.

On June 25, 2016, the Chacons submitted Supplemental Statements for the diversion years 2014 and 2015 and reported an annual diversion amount of 21,383.04 af.

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 February 16, 2018, the Assistant Deputy Director for the Division issued an ACLC against the Chacons, alleging that they knowingly made material misstatements in Supplemental Statements for diversion years 2009-2016 by misreporting rates of diversion and quantities diverted and beneficially used in violation of Water Code section 5107.

The ACLC recommends an Administrative Civil Liability in the amount of \$205,800 based on the relevant circumstances alleged therein, including the failure of the Chacons to properly report the 2009 through 2016 use, the harm of knowingly materially misstating the 2009 through 2016 diversion amounts to the Division's effectiveness in regulating water diversions, 40 hours of staff time resulting in \$5,800 of staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

On March 5, 2018, the Chacons timely requested a hearing on the ACLC. The State Water Board Hearing Team has yet to schedule a hearing.

The Settling Parties have engaged in settlement negotiations and agree to settle the matters identified in the ACLC through this Settlement Agreement in lieu of hearing.

3.0 SETTLEMENT AGREEMENT

The Settling Parties signed the Settlement Agreement attached hereto. The general terms of the settlement are that the Chacons: (1) withdraw their requests for hearing on the ACLC, waive their right to request reconsideration of this Order, and agree to perform certain compliance actions described in the Settlement Agreement and incorporated herein, and (2) the Chacons are liable to pay a total amount of \$10,000, less the documented cost of installing an appropriate measuring device at their point of diversion and the documented amount spent on amending the incorrect Statements of Water Diversion and Use. In no instance shall the liability amount be less than \$2,500. Administrative civil liability is payable within 180 days of issuance of this Order to be deposited into the Water Rights Fund pursuant to Water Code section 1054, et seq.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Chacons 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).)

NOV 28 2018

Dated _____



Eileen Sobeck
Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement is made this ^{24th} ~~July~~ ^{September}, 2018, by and between Louis and Darcy Chacon (the Chacons) and the Prosecution Team of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division"). The Chacons, and the Prosecution Team are collectively referred to here as the Settling Parties.

RECITALS

1. The Chacons hold Statement of Water Diversion and Use (Statement) No. S000042 with a claim of riparian right from Price Creek, tributary to Trinity River. The Place of Use is identified as Trinity County APN 012-070-05-00, and APN 012-070-06-00. The diverted water is used for irrigation of 15 acres of mixed crops including trees, stock watering, and domestic use.
2. The Chacons filed Supplemental Statements for S000042 for the diversion years 2009 through 2013 on or before June 20, 2014, and reported instantaneous rates of direct diversion up to 1×10^{20} cubic feet per second (cfs) and monthly amounts of storage and/or beneficial use of 1×10^{20} acre-feet (af).
3. On May 28, 2015, the Division sent the Chacons a Notice of Violation (NOV) via certified mail. The NOV put the Chacons on notice that they were in violation of Water Code section 5107, could be subject to substantial penalties, and advised them to revise the Supplemental Statements for 2009 through 2013 within 30 days of receipt of the notice.
4. On June 3, 2015, the Chacons received the NOV. On June 29, 2015, the Chacons submitted revised Supplemental Statements for 2009 through 2013. The revised Supplemental Statements reported a maximum rate of direct diversion of 29.52 cfs; and an annual diversion amount of 21,383.04 af, which is orders of magnitude greater than any reasonable demand estimate for the Place of Use.
5. On June 25, 2016, the Chacons submitted Supplemental Statements for the diversion years 2014 and 2015 and reported an annual diversion amount of 21,383.04 af.
6. On February 16, 2018, the Assistant Deputy Director for the Division issued an Administrative Civil Liability Complaint ("ACLC") against the Chacons, alleging that they knowingly made material misstatements in Supplemental Statements for diversion years 2009-2016 by misreporting rates of diversion and quantities diverted and beneficially used in violation of Water Code section 5107.
7. The ACLC recommends an Administrative Civil Liability in the amount of \$205,800, based on the relevant circumstances alleged therein, including the failure of the Chacons to properly report the 2009 through 2016 use, the harm of knowingly

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materially misstating the 2009 through 2016 amounts to the Division's effectiveness in regulating water diversions, 40 hours of staff time resulting in \$5,800 of staff costs associated with pursuing compliance, and the overall need to preserve the integrity of the regulatory program.

8. On March 5, 2018, respectively, the Chacons timely requested a hearing on the ACLC. The State Water Board Hearing Team has yet to schedule a hearing.
9. The Settling Parties have engaged in settlement negotiations and agree to settle the matters identified in the ACLC through this Settlement Agreement in lieu of hearing.
10. The Settling Parties will submit this Settlement Agreement and a proposed order approving this Settlement Agreement 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 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 ACLC as follows:

11. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
12. **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 all of 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.
13. **Payment Amount.** The Chacons shall pay a total of \$10,000 as directed herein to resolve all violations alleged in the ACLC. This amount may be reduced by the amount spent on installation of an appropriate measuring device and the amount spent on amending the incorrect annual use reports upon presentation to the Division with satisfactory evidence (i.e. paid invoices or receipts), but in no event shall the amount be less than \$2,500.
14. **Consideration of Relevant Circumstances.** The Prosecution Team determined for purposes of Water Code section 1055.3 that the Payment Amount in Paragraph 13 is an appropriate resolution to the violations alleged in the ACLC based on consideration of the relevant circumstances, including the failure of the Chacons to properly report the 2009 through 2016 use, the harm of knowingly materially

misstating the 2009 through 2016 uses to the Division's effectiveness in regulating water diversions, the Division's need to preserve the integrity of the regulatory program, the staff costs incurred in investigating the alleged violations and in preparing the ACLC, the commitments set forth in Paragraph 17 below, and the settlement purpose of this Agreement.

15. **Administrative Civil Liability Payment Due Date.** The Payment Amount set forth in Paragraph 13 is due within 180 days of the issuance of the order approving this Settlement Agreement. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water code sections 1054, et seq.

16. **Satisfaction of Administrative Civil Liability Complaint.** The Chacon's full payment of the Payment Amount will be a complete and final satisfaction of the administrative civil liability described in the ACLC, 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 ACLC.

17. **Compliance Actions.** The Settling Parties agree that the Chacon's will take the following actions to come into compliance with the reporting requirements and ensure future reports are as accurate as possible:

- a. Within 60 days of the Executive Director's order approving this Settlement Agreement the Chacon's will hire a Qualified Individual to conduct water diversion measurements and advise on reporting accurate amounts in their Supplemental Statements of Diversion and Use.
- b. Within 90 days of the Executive Director's order approving this Settlement Agreement the Chacon's (or a Qualified Individual) will revise the Supplemental Statements of Diversion and Use for 2009 through 2016 with reasonable estimations of the amount of water diverted to the satisfaction of the Division staff.

c. Within 180 days of the Executive Director's order approving this Settlement Agreement the Chacon's (or a Qualified Individual) will install an appropriate measuring device on the property.

18. **Compliance Inspection.** The Chacon's agree to allow State Water Board staff to conduct an inspection of the subject property and the diversion works on that property after the measuring device has been installed to ensure that the measuring device has been installed correctly, is functioning properly, and will give accurate readings of the amount diverted. If the diversion amounts on the property are equal to or above the threshold amount for applicability of the Water Board's measurement regulations (California Code of Regulations Title 23, Division 3, Chapter 2.8, sections 931 through 938) the State Water Board inspection staff will certify that the implementation of the measuring device is compliant with those regulations.

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19. **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 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.
20. **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.
21. **Hearing Requests.** The Chacon's requests for hearing on the ACLC 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.
22. **Waiver of Reconsideration.** The Chacon's 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.
23. **Successors.** This Settlement Agreement is binding on any successors or assigns of the Chacon's, and the State Water Board.
24. **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.

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25. **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.
26. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
27. **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.
28. **Mutual Agreement.** The 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.
29. **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.
30. **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.
31. **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.
32. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.
33. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
34. **Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
35. **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 Chacon, 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

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Chacon's directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Settlement Agreement.

36. No Waiver of Other Requirements. Nothing in this Settlement Agreement or any implementing Order shall excuse the Chacon's from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board or pursuant to its delegated authority.

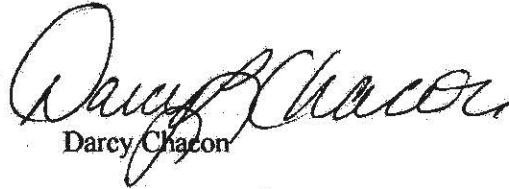
Dated: 9/24/2018



Julé Rizzardo
Assistant Deputy Director

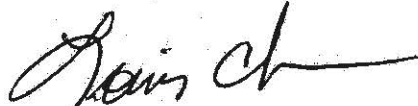
State Water Resources Control Board, Division of Water Rights
Prosecution Team

Dated: 9/24/2018



Darcy Chacon

Dated: 9/24/2018



Louis Chacon