

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
OFFICE OF THE DELTA WATERMASTER

ORDER WR 2019-0033-DWM

In the Matter of Violation of Annual Reporting Requirements by
LAMB GIANELLI FAMILY LIMITED PARTNERSHIP

SETTLEMENT DECISION

BY THE DELTA WATERMASTER¹

1.0 INTRODUCTION

This matter comes before the State Water Resources Control Board (State Water Board), acting by and through the Delta Watermaster (Watermaster), following the issuance of an Administrative Civil Liability Complaint to Lamb Gianelli Family Limited Partnership (Lamb Gianelli). In accordance with the Settlement Agreement (attached hereto as Exhibit A), the Watermaster and Lamb Gianelli have agreed to settle this matter in lieu of proceeding to a hearing on the merits. The issuance of a settlement decision pursuant to a settlement agreement is authorized under Government Code section 11415.60.

¹ Pursuant to California Water Code section 85230, the State Water board is authorized to delegate authority to the Delta Watermaster. State Water Resources Control Board Resolution No. 2018-0037 (Resolution) delegates certain authority to the Delta Watermaster. Section 1.5 of the Resolution authorizes the Delta Watermaster to, at the pre-adjudicative stage, conduct informal fact-finding or informal investigatory hearings regarding, among other things, alleged violations of water right permits or licenses. Section 1.9.10 of the Resolution authorizes the Delta Watermaster to prepare and sign orders canceling or revoking a license after notice of proposed revocation pursuant to Water Code section 1675 has been sent to the licensee and no request for hearing has been received. Section 1.11 of the Resolution authorizes the Delta Watermaster to convene settlement conferences up until the time a formal adjudication has commenced by the noticing of a hearing. Section 1.12 of the Resolution authorizes the Delta Watermaster to formulate and issue decisions by settlement under Government Code section 11415.60 in matters raised by investigations or complaints, or where notices of proposed cease and desist orders or administrative civil liability have been issued but a hearing has not been noticed.

2.0 BACKGROUND

Lamb Gianelli holds a portion of water right License 2639, allowing for the diversion of water from Beaver Slough and South Fork Mokelumne River for irrigation purposes on a Place of Use that includes Lamb Gianelli's property as more fully described in the Settlement Agreement. As a license holder, Lamb Gianelli is required to comply with terms and conditions of License 2639, including the requirement to report water diversion and use annually.

As recited in the Settlement Agreement, Lamb Gianelli has repeatedly failed to submit timely reports of water diversion and use, as required under License 2639. In 2017 the Watermaster issued an Administrative Civil Liability Complaint to Lamb Gianelli alleging failure to file the required report of water diversion and use under License 2639 for calendar year 2016. Lamb Gianelli also failed to make a timely filing under License 2639 for water diversion and use during calendar year 2017.

Lamb Gianelli and the Watermaster have engaged in settlement negotiations and have agreed to settle the matters recited in the Settlement Agreement in lieu of resolution of allegations following a hearing.

3.0 SETTLEMENT AGREEMENT

The Settlement Agreement contains the following terms:²

- (1) Lamb Gianelli shall remit to the State Water Board the sum of \$20,000 for civil liability imposed for repeated failures to timely submit annual water diversion and use reports.
- (2) Lamb Gianelli waives the right to a hearing with respect to the violations alleged in the Settlement Agreement.

² Recitation of terms in this Settlement Decision is provided only as a convenient summary. The terms of the Settlement Agreement control in the event of ambiguity between this summary and the definitive Settlement Agreement.

- (3) Lamb Gianelli waives the right to a hearing regarding the Notice of Proposed Order Partially Revoking Water Right, attached to the Settlement Agreement as Attachment A.
- (4) Lamb Gianelli waives the right to seek reconsideration of this Settlement Decision.
- (5) Lamb Gianelli waives the right to seek reconsideration of the Watermaster's Order Partially Revoking Water Right.

SETTLEMENT DECISION

IT IS HEREBY ORDERED THAT the Settlement Agreement is approved and is incorporated by reference into this Settlement Decision.

This Settlement Decision 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 Decision will be subject to further enforcement under Water Code section 1845.

Approval of the Settlement Agreement shall not limit the authority of the Executive Director, the Watermaster, or the Deputy Director for the Division of Water rights, as delegated, to initiate any enforcement actions for the unauthorized diversion of water, for any future violations of the water code, or violation of the terms of the Settlement Agreement.

STATE WATER RESOURCES CONTROL BOARD



Michael Patrick George
Delta Watermaster

Dated: June 25, 2019

SETTLEMENT AGREEMENT

This Settlement Agreement is made this 12th day of June 2019, by and between Lamb-Gianelli Family LP (Lamb Gianelli) and the State Water Resources Control Board (State Water Board) acting by and through the Delta Watermaster (Watermaster).

RECITALS

1. Lamb Gianelli holds a portion of water right License 2639, with a priority date of July 10, 1926. License 2639 allows for the diversion of up to 8152 acre-feet per year from Beaver Slough and South Fork Mokelumne River for irrigation purposes on APN:001-050-28 and possibly portions of APN:001-050-24 and APN:001-050-25, which three parcels (aggregating approximately 603 acres) are currently owned by Lamb Gianelli. The place of use for License 2639 also includes APN:001-050-070 (approximately 659 acres), which is currently owned by Silverdale Farms, Inc. Collectively these lands are referred to as the "Place of Use."
2. The Place of Use is situated within the Legal Delta and within the boundaries of the North Delta Water Agency.
3. As a License holder, Lamb Gianelli is required to comply with terms and conditions of the License, including the requirement to report water diversion and use annually on forms provided for this purpose from time to time by the State Water Board.
4. In February 2011, the State Water Board, Division of Water Rights (Division) provided A. E. Gianelli in his presumed capacity as trustee of the A. Edward Gianelli 2001 Trust, General Partner of Lamb Gianelli, notification of the requirement to electronically file a Report of Licensee for water use during calendar 2010 no later than July 1, 2011.
5. On February 28, 2011, the State Water Board was notified that ownership of the property that includes a portion of the place of use for License 2639 may have changed to Lamb Gianelli. After investigation into the ownership of the property (including review of the San Joaquin County Assessor's property tax records), the Division updated the electronic Water Rights Information Management System (eWRIMS) accordingly and sent a letter to Lamb Gianelli providing notification of the update.
6. By July 1, 2011, the State Water Board had not received the Report of Licensee for calendar year 2010 from either A.E. Gianelli or from Lamb Gianelli.
7. On September 30, 2011, the Division mailed a "Notice of Delinquency to File Report of Licensee" for water use during calendar year 2010 to A. E. Gianelli at P.O. Box 1488, Stockton, California 95201. No further enforcement action was taken for the alleged failure to file a report of water use during calendar 2010 under License 2639.
8. On March 5, 2012, the Division sent Lamb Gianelli a letter, providing notice of the requirement to submit the Report of Licensee for water use during calendar year 2011 by no later than June 30, 2012.
9. By June 30, 2012, the State Water Board had not received the required Report of Licensee for water use during calendar year 2011 under License 2639.
10. On August 15, 2012, the Watermaster mailed Lamb Gianelli a Notice of Delinquency to File Report of Licensee, which provided notice that failure to submit the Report of Licensee for water use during calendar year 2011 was a violation of the terms and conditions of License 2639.

Lamb Gianelli Settlement Agreement

- 11.** On October 16, 2012, the Watermaster issued a draft Cease and Desist Order (2011 Draft CDO) for failure to submit the Report of Licensee for water use during calendar year 2011 under License 2639. The 2011 Draft CDO was mailed via certified mail and was received by Lamb Gianelli on October 17, 2012.
- 12.** By November 16, 2012, no report for water use during calendar year 2011 had been filed, and no hearing on the allegations in the 2011 Draft CDO had been requested. Subsequently, the Watermaster issued a final CDO (WR 2012-0001-DWM). WR 2012-0001-DWM requires that Lamb Gianelli immediately come into compliance with the terms and conditions of License 2639 by submitting the Report of Licensee for water use during calendar year 2011 under License 2639. Lamb Gianelli received WR 2012-0001-DWM on November 19, 2012.
- 13.** By December 17, 2012, 30 days after WR 2012-0001-DWM was issued, Lamb Gianelli had failed to comply with that order. In response to Lamb Gianelli's failure to comply, the Watermaster issued an Administrative Civil Liability (ACL) Complaint. The ACL Complaint alleges noncompliance with WR-2012-0001-DWM by failing to file the Report of Licensee for water use during calendar year 2011 under License 2639. Lamb Gianelli received the ACL Complaint on December 17, 2012.
- 14.** By February 5, 2013, Lamb Gianelli had neither submitted the Report of Licensee for water use during calendar year 2011 under License 2639 nor requested a hearing on the allegations in the ACL Complaint. Subsequently, the Watermaster issued a Final ACL Order (WR-2013-002) imposing a \$10,000 administrative civil liability. Lamb Gianelli received WR-2013-002 on February 12, 2013.
- 15.** Lamb Gianelli has not paid the \$10,000 administrative civil liability imposed by WR-2013-002.
- 16.** On January 30, 2013, the Division mailed a reminder to Lamb Gianelli of the requirement to file the Report of Licensee for water use during calendar year 2012 under License 2639 by June 30, 2013 and provided instructions on how to access eWRIMS for the purpose of filing the required report.
- 17.** By June 30, 2013, the State Water Board had not received the Report of Licensee for water use during calendar year 2012 under License 2639 as required.
- 18.** On July 26, 2013, the Watermaster mailed Lamb Gianelli a Notice of Delinquency for Failure to File Report of Licensee for water use during calendar year 2012 under License 2639.
- 19.** On August 29, 2013, the Watermaster, having not received the Report of Licensee for water use during calendar year 2012 under License 2639, issued a draft Cease and Desist Order (2012 Draft CDO) and sent it to Lamb Gianelli via certified mail. Lamb Gianelli received the 2012 Draft CDO on August 30, 2013.
- 20.** By October 17, 2013, Lamb Gianelli had neither submitted the Report of Licensee for water use during calendar year 2012 under License 2639 nor requested a hearing on the allegations in the 2012 Draft CDO. Subsequently, the Watermaster issued a final CDO (WR 2013-0003-DWM) requiring Lamb Gianelli to immediately come into compliance with the terms and conditions of License 2639 by filing the Report of the Licensee for water use during calendar year 2012 under License 2639. Lamb Gianelli received WR 2013-0003-DWM on October 18, 2013.
- 21.** On November 20, 2013, the Watermaster issued an ACL Complaint to Lamb Gianelli for failure to comply with WR 2013-0003-DWM by filing the Report of Licensee for water use during calendar year 2012 under License 2639. The ACL Complaint proposed a \$10,000 liability, but

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included a conditional settlement offer of \$2,500 if Lamb Gianelli filed the delinquent report and complied with other specified conditions.

- 22.** On November 21, 2013, Lamb Gianelli (through Mr. Rudy Croce, as “Successor Trustee of the A. Edward Gianelli 2001 Trust, General Partner [of Lamb Gianelli]”) accepted the Conditional Settlement Offer on behalf of Lamb Gianelli.
- 23.** On November 27, 2013, Lamb Gianelli paid the settlement payment of \$2,500 and filed the delinquent Reports of Licensee for water used under License 2639 during calendar years 2010, 2011 and 2012.
- 24.** Lamb Gianelli filed reports for water use during 2013, 2014 and 2015 under License 2639.
- 25.** Lamb Gianelli failed to submit a Report of Licensee for water use during calendar year 2016 under License 2639 by the report’s due date of April 1, 2017.
- 26.** On May 18, 2017, the Watermaster sent Lamb Gianelli a notice of violation for failure to submit the Report of Licensee for water use during calendar year 2016 under License 2639 and put Lamb Gianelli on notice that the violation could be enforced through imposition of civil liability of up to five hundred dollars (\$500) per day from June 18, 2017 to the date on which the Report of Licensee for water use during calendar year 2016 under License 2639 is filed.
- 27.** On July 17, 2017, the Watermaster issued an ACL Complaint (the 2016 ACL Complaint) to Lamb Gianelli for failure to file the Report of Licensee for water use during calendar year 2016 under License 2639. The 2016 ACL Complaint proposed a \$15,000 liability, but included a conditional settlement offer of \$7,500 if Lamb Gianelli filed the delinquent report within 20 days. Lamb Gianelli received the 2016 ACL Complaint on August 11, 2017.
- 28.** Lamb Gianelli failed to respond to the 2016 ACL Complaint by submitting the Report of Licensee for water use during calendar year 2016 under License 2639 within 20 days of receiving the 2016 ACL Complaint or accepting the conditional settlement offer or submitting a request for hearing on the allegations in the 2016 ACL Complaint.
- 29.** In February 2018 the Division mailed a letter putting Lamb Gianelli on notice that the deadline to submit the Report of Licensee for water use during calendar year 2017 was April 1, 2018.
- 30.** Lamb Gianelli failed to submit the Report of Licensee for water use during calendar year 2017 by the report’s due date of April 1, 2018.
- 31.** On June 20, 2018, after significant outreach by and discussion with the Watermaster, Lamb Gianelli filed the Reports of Licensee for water use during calendar years 2016 and 2017 and amended Reports of Licensee for water use during calendar years 2014 and 2015.
- 32.** In the course of investigating the foregoing history, the Watermaster has (a) reviewed the materials in the Water Board’s files supporting the issuance of License 2639; (b) examined the map created in support of the 1934 judicial division of the place of use under License 2639; (c) identified and reviewed the patents conveying the lands which include today’s Lamb Gianelli and Silverdale Farms Inc. parcels from public to private ownership; (d) pursuant to approval from Lamb Gianelli and Silverdale Farms, Inc., conducted an on-site inspection of the Lamb Gianelli and Silverdale Farms, Inc. parcels which, together and today, make up the Place of Use under License 2639; (e) initiated additional interviews, document reviews and related

research as deemed pertinent to establishing the facts and circumstances that have led to this action. In the course of this investigation, nothing has come to the attention of the Watermaster that causes the Watermaster to doubt the validity of Lamb Gianelli's claim to riparian rights on APN:001-050-28, APN:001-050-25 and APN:001-050-24. Further, the Watermaster's investigation confirms that APN:001-050-28, APN:001-050-25 and APN: 001-050-024 are within the boundaries of the North Delta Water Agency (NDWA) and, on that basis, are entitled to the benefits of the water supply/quality contract between NDWA and the California Department of Water Resources dated January 28, 1981.

33. Lamb Gianelli and the Watermaster (the Settling Parties) have engaged in settlement negotiations and agree to settle the matters identified above through this Settlement Agreement in lieu of resolution following a hearing on the matters.
34. This Settlement Agreement will be approved and adopted by the Delta Watermaster pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Delta Watermaster issues the decision approving the settlement.

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Settling Parties do hereby agree to settle the 2016 ACL Complaints and all other alleged violations noted in the above Recitals.

35. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
36. **Settlement Conditionally Confidential.** Unless and until the Watermaster issues a decision approving this Settlement Agreement (Settlement Decision), this Settlement Agreement is a confidential settlement document subject to all 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.
37. **Payment and other Consideration.** Lamb Gianelli shall pay a total of \$20,000 (the Payment Amount) as directed herein. Lamb Gianelli further agrees not to contest the revocation of License 2639 as to the portion of the Place of Use currently owned by Lamb Gianelli (specifically those portions of APN:001-050-2, APN:001-050-28 and APN:001-050-25 covered by the Place of Use in License 2639) (Partial Revocation). The Partial Revocation does not affect License 2639 as to the portion of the Place of Use currently owned by Silverdale Farms, Inc. (specifically APN 001-050-070).
38. **Consideration of Relevant Circumstances.** The Watermaster has determined for purposes of Water Code section 1055.3 that the Payment Amount is an appropriate financial penalty for Lamb Gianelli's violations of the terms of License 2639. The Payment Amount is based on all relevant circumstances, including the history of past violations relating to annual use reporting, the harm of the missing water use information to the State Water Board's effectiveness in regulating water diversions, the staff costs incurred in investigating the alleged violations, Lamb Gianelli's ultimate filing of the required annual reports, Lamb Gianelli's agreement not to contest the Partial Revocation, and the settlement purpose of this Settlement Agreement.
39. **Administrative Civil Liability Payment Due Date.** The Payment Amount is due within 30 days following the Watermaster's Settlement Decision. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water Code sections 1550, et seq.
40. **Satisfaction of ACL Complaints.** Lamb Gianelli's acceptance of this Settlement Agreement coupled with full and timely payment of the Payment Amount and the Partial Revocation will be a complete and final satisfaction of the administrative civil liability complaints and other allegations described in the above Recitals, 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 above Recitals.

41. **Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and the implementing Settlement Decision 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 Settlement Decision approving it will be subject to enforcement under Water Code section 1845.
42. **Waiver of Reconsideration of Settlement Decision.** Lamb Gianelli waives the right to request reconsideration of the Watermaster's Settlement Decision 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 the Settlement Decision approving it.
43. **Waiver of Reconsideration of Revocation Order.** Lamb Gianelli waives the right to request a hearing on the [Notice of Proposed] ORDER PARTIALLY REVOKING WATER RIGHT attached (Attachment A) and incorporated into this Settlement Agreement and waives the right to reconsideration on the subsequent final ORDER PARTIALLY REVOKING WATER RIGHT.
44. **Successors.** This Settlement Agreement is binding on the successors or assigns of Lamb Gianelli, and the Watermaster.
45. **Independent Judgment.** Each Settling 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. In exercising its independent judgement to enter into this Settlement Agreement, Lamb Gianelli has engaged qualified counsel to represent it in the confidential settlement negotiations leading to this Settlement Agreement.
46. **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.
47. **Additional Documents.** Each Settling Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
48. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between the Settling Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each of the Settling Parties 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.
49. **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.
50. **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.

- 51. Reasonableness of Settlement.** The Settling Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- 52. Section Headings.** The Settling 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.
- 53. Effective Date.** This Settlement Agreement shall become effective immediately upon issuance of the Watermaster's Settlement Decision.
- 54. Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- 55. Authorization.** Each Settling Party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
- 56. 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 Lamb Gianelli, or their trustees, 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 Lamb Gianelli's trustees, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
- 57. No Waiver of Other Requirements.** Nothing in this Settlement Agreement or the Settlement Decision approving it shall excuse Lamb Gianelli from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board.

Dated: June 13, 2019

/s/

Michael Patrick George
Delta Watermaster

Dated: June 12, 2019

/s/

Rudy Croce
Successor trustee of A. Edward Gianelli 2001 Trust,
General Partner,
Lamb Gianelli Family, LP