

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

DIVISION OF WATER RIGHTS

ORDER WRO 2004 – 0003 – DWR

In the Matter of Licenses 9722 and 9723 (Applications 3353 and 22427)

Cease and Desist Order 262.31-02

Hot Spring Valley Irrigation District

SOURCE: Rattlesnake Creek tributary to Pit River

COUNTY: Modoc County

The State Water Resources Control Board (SWRCB) is authorized under California Water Code section 1831, subdivision (a), to issue a cease and desist order (CDO) when it determines that any person is violating or threatening to violate any requirement described in subdivision (d). Under section 1831, subdivision (d) of the Water Code, the SWRCB may issue a CDO in response to a violation or threatened violation of any of the following:

- (1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to Division 2 (commencing with section 1000) of the Water Code.¹
- (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.
- (3) Any decision or Order of the board issued under Part 2 (commencing with section 1200) of Division 2 of the Water Code, section 275, or Article 7 (commencing with section 13550) of Chapter 7 of Division 7 of the Water Code, in which decision or Order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or Order.

On December 1, 2003, and in accordance with the provisions of section 1834 of the California Water Code, the SWRCB provided notice of the CDO to Hot Spring Valley Irrigation District (District) for the violation and threatened violation of: (1) terms and conditions of a water right license issued by the SWRCB; and (2) the prohibition against unauthorized diversion and use of water. In a letter dated December 18, 2003, the District notified the Division that it would not request a hearing on the draft CDO. Unless a written request for hearing is received within 20 days of receipt of the notice, the SWRCB may adopt the CDO based on the facts and information set forth in the notice. (Wat. Code, § 1834, subd. (b)) The SWRCB has delegated this authority to the Chief of the Division of Water Rights. (SWRCB Resolution 2003-0106, § 2.8.2)

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. The District is the holder of License 9722 (Application 3353) and License 9723 (Application 22427).

¹ Water Code section 1052, subdivision (a) states that “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”

2. The Division issued License 9722 to Hot Spring Valley Irrigation District on April 8, 1971. License 9722 authorizes the diversion of water to storage in the amount of 48,400 acre-feet per annum, to be collected from December 1 of each year to April 1 of the following year for the purpose of irrigation, stockwatering, and recreational uses. Licensee has the right to hold in storage up to 77,000 acre-feet in Big Sage Reservoir. The maximum withdrawal of water from storage shall not exceed 21,400 acre-feet in any one year under this right. Under the License, such water may be put to beneficial use for recreation and stockwatering at Big Sage Reservoir, and for irrigation of 10,000 acres within a gross area 15,292 acres within the boundary of the District, as shown on a map on file with the SWRCB. The priority of this water right dates from April 12, 1923.
3. The Division issued License 9723 to Hot Spring Valley Irrigation District on April 8, 1971. License 9723 authorizes the diversion of water to storage in the amount of 20,000 acre-feet per annum, to be collected from October 1 of each year to April 30 of the following year for the purpose of irrigation, stockwatering, and recreational uses. The amount diverted under this license and the license issued pursuant to Application 3353 shall not exceed a total of 48,400 acre-feet per annum. Licensee has the right to hold in storage up to 77,000 acre-feet in Big Sage Reservoir. The maximum withdrawal of water from storage under this license shall not exceed 20,000 acre-feet per annum, and the total maximum withdrawal under both this license and the license issued pursuant to Application 3353 shall not exceed a total of 21,400 acre-feet per annum. Under the License, such water may be put to beneficial use for recreation and stockwater at Big Sage Reservoir, and for irrigation of 10,000 acres within a gross area 15,292 acres within the boundary of the District, as shown on a map on file with the SWRCB. The priority of this water right dates from March 17, 1966.
4. Between August 2001 and February 2003, the Division received four water right complaints against the District regarding the diversion and use of water from Rattlesnake Creek and the Pit River. Lawrence and Sandi Ray, Gary and Nancy Monchamp, Tom and Belva Landis (dba Morgan Ranch), and the Big Valley Water Users Association (BVWUA) filed the complaints. The Complainants allege that the District stored water in Big Sage Reservoir and released water from storage in violation of the terms and conditions of Licenses 9722 and 9723; collected water to storage behind dams located on the Pit River without authorization or a valid basis of right; transferred stored water to parties outside the authorized place of use without proper permits; and, violated the rights of downstream prior right holders.
5. Division staff investigated the allegations made in the water right complaints. Division staff conducted field inspections of the District's facilities and other points of diversion from Rattlesnake Creek and Pit River within the Hot Spring Valley Irrigation District in February 2002 and March 2003. Division staff interviewed the Complainants and representatives of the District and collected documents, records, and other information pertinent to the investigation. The Division issued a report of investigation relative to the complaints on November 13, 2003. The report contains findings and recommendations, some of which are addressed in this CDO.
6. In 1995, the Pacific Gas and Electric Company (PG&E) amended an existing complaint on file with the Division to include a complaint against the District, claiming that under certain conditions, the District's diversions violated PG&E's claim of prior rights to water in Rattlesnake Creek and the Pit River. PG&E generates power at its hydroelectric facilities on the Pit River, which are downstream of the District and Big Sage Reservoir. In 1998, the District entered into an agreement (Settlement Agreement) with PG&E whereby the District collects water into storage in Big Sage Reservoir during the District's authorized collection season, holds water in storage for PG&E through the irrigation season, and then releases a pre-determined amount of water from storage during the months following the irrigation season for PG&E's use at its hydroelectric facilities. Pursuant to the Settlement Agreement, PG&E withdrew its complaint against the District and dropped its claim of harm or injury resulting from the District's operation of Big Sage Reservoir or direct diversion or redirection of water from Rattlesnake Creek or the Pit River.

7. The release of water from storage in Big Sage Reservoir, pursuant to the Settlement Agreement with PG&E, violates the terms and conditions of Licenses 9722 and 9723 that limit the purpose and place of use of such water to irrigation within the District.
8. In 1998, 1999, and 2000, the District entered into agreements with Big Valley Ranches, LLC. Under these agreements Big Valley Ranches agreed to pay the District for releases of water made from storage in Big Sage Reservoir after the end of the irrigation season. The Division has concluded that the purpose of the releases called for in these agreements was to provide flows in the Pit River that would allow Malacha Hydro, Ltd to generate hydroelectric power. Malacha Hydro generates hydroelectric power at its facility on the Pit River, which is downstream of the District and Big Sage Reservoir.
9. The release of water from storage in Big Sage Reservoir, pursuant to agreements with Big Valley Ranches, violates the terms and conditions of Licenses 9722 and 9723 that limit the purpose and place of use of such water to irrigation within the District.
10. Between 1997 and 2001, the District entered into several agreements with the BVWUA. Under these agreements, the BVWUA agreed to pay the District for releases of water from storage in Big Sage Reservoir. Big Valley is located downstream of the District and Big Sage Reservoir and members of the BVWUA divert water from the Pit River for consumptive uses, such as irrigation and stockwatering.
11. The release of water from storage in Big Sage Reservoir, pursuant to agreements with the BVWUA, violates the terms and conditions of Licenses 9722 and 9723 that limit the purpose and place of use of such water to irrigation within the District.
12. The District does not monitor, measure, or record the flow of water in Rattlesnake Creek as it enters Big Sage Reservoir. The Division found that the District's efforts to monitor, measure and record storage in and releases from Big Sage Reservoir are inadequate because they lack accuracy and real-time value.
13. The Division found that the District does not bypass any flow from Rattlesnake Creek that enters Big Sage Reservoir during the collection season and does not make any releases from Big Sage Dam until the District's members need supplemental water for irrigation. It is likely that, in some years, there is inflow to Big Sage Reservoir beyond the authorized collection season that is not being bypassed.
14. Without adequate information regarding flows in Rattlesnake Creek, the District cannot substantiate that it is operating Big Sage Reservoir within the terms and conditions of its licenses and that it is not violating the rights of downstream prior-right holders.
15. To the extent that it occurs, the District's diversion of water to storage in Big Sage Reservoir past the authorized collection season constitutes an unauthorized diversion. In addition, any diversion to storage in Big Sage Reservoir that may adversely affect the rights of prior right holders downstream constitutes a threatened unauthorized diversion because Licenses 9722 and 9723 only authorize the appropriation of unappropriated water as defined under Water Code section 1201.
16. Most individual landowners within the District divert water from Rattlesnake Creek and the Pit River primarily under claimed riparian rights that are separate and distinct from contract deliveries from the District. Pursuant to Licenses 9722 and 9723, the District releases water from storage in Big Sage Reservoir to supplement the flows in Rattlesnake Creek and the Pit River and to satisfy the demands of the District members when natural flows diminish. Historically, the District released sufficient amounts of stored water during the irrigation season that, coupled with any natural flow in the channel and the return flow of tailwater, provided an appreciable flow of

water in the Pit River that passed beyond the District boundaries. Riparian and other water users in Big Valley claim that they could rely upon this flow to continue making diversions from the Pit River well into the irrigation season. More recently, the District has changed its method of operation, using small dams to regulate flows in the Pit River in order to meet irrigation demands within the District while reducing the amount of stored water that must be released from Big Sage Reservoir.

17. The District reconstructed and operates the Cummings, McArthur, and Mohr dams on the Pit River. The District claims that it operates these three dams only to regulate the flow of water released from storage in Big Sage Reservoir and, therefore, its operation of the dams should not constitute unauthorized diversion.
18. Until recently the District has not monitored, measured, or recorded the flow of water in the Pit River as the river enters the District. The District does not monitor, measure or record the flow of water in the Pit River at the Cummings, McArthur, and Mohr dams.
19. Without specific information on the natural flows in Rattlesnake Creek and the Pit River and the quantity of water released from storage in Big Sage Reservoir, the District cannot substantiate its claim that it is only regulating the flow of water released from storage in Big Sage Reservoir with its operation of the three dams along the Pit River.
20. The operation at Cummings, McArthur and Mohr dams constitutes a threat of unauthorized diversion by the District if natural flows are present and not bypassed.
21. The District's regulation of flow in the Pit River, coupled with a change in operation of Big Sage Reservoir, may have resulted in a significant reduction in the amount of water in the Pit River passing beyond the District's downstream boundary. Individual landowners within the District apparently have maintained historic uses of water even though less water is being released from storage in Big Sage Reservoir during the irrigation season. As a result, the individual landowners may be diverting a greater proportion of the available flow in the Pit River (including natural flows) and adversely impacting the correlative rights of downstream users. However, disputes between competing correlative right holders must be resolved either by mutual agreement or in the courts.
22. Under Licenses 9722 and 9723, the authorized place of use is defined as 10,000 acres within a gross area of 15,292 acres within the District's boundary as shown on the map filed with the SWRCB.
23. Upon request by the Division, the District was unable to provide a map depicting the lands within the District's boundary that are currently being irrigated pursuant to the District's water rights.
24. The District does not maintain the information necessary to verify that the area irrigated pursuant to Licenses 9722 and 9723 is within the limits set forth as the authorized place of use. Without specific information showing the extent and location the irrigated acreage, the Division cannot determine whether the District is using its water in accordance with the place of use authorized under its Licenses. The use of water not in accordance with the authorized place of use constitutes a threat of unauthorized diversion.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that the District shall take the following corrective actions and satisfy the following time schedule:

1. Commencing on the date that this Order is issued, refrain from releasing water for use outside of the authorized place of use, or for purposes not listed in the District's licenses, until such time as a new permit, change order, or transfer order authorizing such use is obtained from the SWRCB;
2. Commencing on the date that this Order is issued, refrain from collecting water to storage in Big Sage Reservoir after April 30 without proper authorization from the SWRCB;
3. When required, bypass the natural flow in Rattlesnake Creek as necessary to satisfy the needs of any valid, downstream prior-right holders;
4. Within 180 days from the date of this Order, submit a monitoring plan acceptable to the Chief of the Division of Water Rights that provides adequate monitoring, measurements, and recording of the flows of Rattlesnake Creek and Pit River and storage releases from Big Sage Reservoir to show compliance with the District's water right licenses. Implementation of this plan shall be completed and in operation within one year of the Division Chief's approval of the plan;
5. The District shall comply with the approved Plan;
6. Within 90 days from the date that this Order is issued, formally notify the District members that the District is unable to guarantee that downstream correlative rights are being satisfied and that each individual diverter within the District is responsible to ensure that their diversions are reasonable and not excessive in light of the needs of downstream water right holders.

Upon the failure of any person to comply with a CDO issued by the SWRCB pursuant to this chapter, the Attorney General, upon the request of the SWRCB, 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)) Any person or entity that violates a CDO issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b)) Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Victoria A. Whitney, Chief
Division of Water Rights

Dated: FEB 17 2004