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

DIVISION OF WATER RIGHTS

ORDER WR 2014-0029-DWR

CURTAILMENT ORDER

In the Matter of Diversion of Water from

DEER CREEK TRIBUTARY TO THE SACRAMENTO RIVER IN TEHAMA COUNTY

BACKGROUND

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015.

2. The executive order refers to the Governor's Proclamation No. 1 -17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions. Since January, state water officials indicate that reservoirs and rainfall totals remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. These conditions also threaten the survival and recovery of fish, wildlife, and plant that rely on California's rivers, including many species in danger of, or threatened with, extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20%.

3. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento River Watershed with a Post-1914 Appropriative Right." Based upon the reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board determined the existing water supply in the Sacramento River watershed (including Deer Creek) is insufficient to meet the needs of all water rights holders. With the notice, the State Water Board notified all holders of post-1914 appropriative water rights within the Sacramento River watershed of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The condition of curtailment will continue until water conditions improve. Approximately

2,648 junior water-right holders in the Sacramento River watershed received curtailment notices. The right holders who received curtailment notice in the Sacramento River watershed included creeks and rivers draining to the Sacramento River and the North Delta, including the Pit, McCloud, Feather, Yuba, and American Rivers.

4. On November 27, 1923 the Superior Court of Tehama County entered a judgment (Adjudication) granting 100% of the flow in Deer Creek (as measured at USGS gauge 11383500) to the predecessors in interest of the Stanford Vina Ranch Irrigation Company (approximately 65%) and Deer Creek Irrigation District (approximately 35%). The Adjudication designated that the average amount of water naturally flowing in Deer Creek, during the irrigation season, as 150 second feet or 6000 miner's inches and allocated 100% of that flow as previously provided. At times when the natural flow in Deer Creek is less than, or more than, 150 second feet or 6000 miner's inches, then the Adjudication diminishes, or augments the flow allocations proportionally. (Adjudication, Articles XI and XIII, pp. 10, 11.) Stanford Vina Ranch Irrigation Company's points of diversion are downstream of the point of diversion for Deer Creek Irrigation District. (Adjudication, Articles XI and XIII, pp. 10, 11.) The Adjudication was amended in 1926 to grant approximately 66 percent of the Deer Creek flows below USGS gauge 11383500 to Stanford Vina Ranch Irrigation Company, 33 percent of the Deer Creek flows to Deer Creek Irrigation District and 1 percent to Mr. Grant Leininger through Sheep Camp Ditch for stock watering.

5. Attachment A attached hereto is a summary of available water rights data on Deer Creek that was assembled from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS) queries.

6. On May 21, 2014, the State Water Board adopted emergency regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (California Code of Regulations, title 23, sections 877 through 879.2[1]) (Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on June 2, 2014. The Regulations establish drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek and Antelope Creek. The Regulations provide that diversions from Mill, Deer and Antelope creeks are unreasonable if those diversions will cause flows to drop below the specified minimum flows. Under the Regulations, diversions will be curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The diversion or use of water in violation of the Regulations is an unreasonable diversion or use and a violation of Water Code section 100.

7. Pursuant to section 877, the State Water Board has determined that it is a waste and unreasonable use under Article X, section 2 of the California Constitution to continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows provide in subdivision (c) of section 877, except as provided for minimum health and safety needs in accordance with section 878.1.

8. The Deer Creek Irrigation District has entered into a voluntary cooperative agreement with the National Marine Fisheries Service and the California Department of Fish and Wildlife to voluntarily curtail some diversions from Deer Creek.

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[1] All further section references are to California Code of Regulations, title 23 unless otherwise indicated.

9. On June 4, 2014, the Executive Director of State Water Board determined that this voluntary cooperative agreement in the Deer Creek watershed does not cover substantially all of the water diverted in the watershed, as provided in section 877, subdivision (c).

10. On June 12, 2014 Mr. Grant Leininger has entered into a voluntary cooperative agreement with the California Department of Fish and Wildlife to voluntarily curtail some diversions from Deer Creek.

11. On October 14, 2014, the Executive Director of State Water Board determined that the voluntary cooperative agreements of Deer Creek Irrigation District and Mr. Grant Leininger in the Deer Creek watershed does not cover substantially all of the water diverted in the watershed, as provided in section 877, subdivision (c).

12. Pursuant to section 877, subdivision (b), the Deputy Director for the Division of Water Rights has delegated authority to issue a curtailment order upon a determination that without curtailment of diversions flows are likely to be reduced below the drought emergency minimum flows specified in section 877, subdivision (c).

13. On October 13, 2014, the flow measured at the United States Geologic Service Deer Creek Near Vina Ca. gauge located upstream of major diversions reached minimum flow levels of 64 cfs and the flow measured at the California Data Exchange Center (CDEC) Deer Creek below Stanford Vina Dam gauge (DVD) reached minimum flow levels of 9 cubic feet per second (cfs) after being lowered by Deer Creek diversions. Water temperatures measured in Deer Creek at the Vina gauge have been conducive to migration since late September and it is not anticipated that water temperatures will be an issue for the remainder of the fall or winter when base flows are being met.

14. Central Valley spring-run Chinook salmon (CV SR salmon) and California Central Valley steelhead (CCV steelhead) are listed as threatened under the federal Endangered Species Act. (16 U.S.C. § 1531 et seq.) In addition, CV SR salmon are listed as threatened under the California Endangered Species Act. Adult CCV steelhead migrate from October through June with peak migrations typically occurring from October through November and January through March. Adult CV SR salmon migrate from February through early July. From 1994 through 2010, juvenile CCV steelhead and juvenile CV SR salmon emigrated from October through July with peak migrations occurring in November and March through May.

15. Pursuant to section 877, subdivision (c)(2)(C)(i), base flows from October 1 through March 31 of 50 cfs or full flow without diversions, whichever is less are required when Adult CCV steelhead are present. Section, 877, subdivision (c)(2)(D)(i) provides for base flows in November 1 through June 30 of 20 cfs or full flow without diversions, whichever is less if Juvenile CV SR salmon or Juvenile CCV steelhead are present and adult CV SR salmon or Adult CCV steelhead are not present.

16. As required by the Regulations, the State Water Board has established an email distribution list that water right holders may join to receive drought notices and updates regarding curtailment. Notices provided by email or by posting on the State Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

FINDINGS:

1. Section 877, subdivision (c)(2) of title 23 of the California Code of Regulations establishes drought emergency minimum flows for Deer Creek under certain conditions. Those minimum flows went into effect upon determination by the Executive Director on June 4, 2014 that voluntary agreements in the Deer Creek Watershed do not cover substantially all of the water diverted in the watershed.

2. In a memo dated October 10, 2014, the California Department Fish and Wildlife informed the State Water Board that adult CCV steelhead are present and currently migrating in the Sacramento River in the vicinity of Deer Creek. The conditions under which the drought emergency minimum flows identified in section 877, subdivision (c) apply and are now in effect. Threatened species, such as Adult CCV steelhead are present at this time. Additionally, juvenile CV salmon and CCV steelhead are potentially present based on historic life stage emigration timing and based on historic life stage migration timing, adult CV SR salmon are anticipated to be present as early as February.

3. The Deputy Director for the Division of Water Rights has determined that without curtailment of diversions from Deer Creek the flows in Deer Creek have been, and are likely to continue to be, reduced below the drought emergency minimum flows specified in section 877 subdivision (c)(2).

IT IS HEREBY ORDERED:

1. All water rights holders in the Deer Creek watershed, including but not limited to those identified in Attachment A, are subject to curtailment pursuant to California Code of Regulations, title 23, sections 877 through 879.2[2] and shall immediately cease or reduce their diversions from Deer Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied through February 28, 2015, or until the Deputy Director suspends the curtailment order under section 877, subdivision (c)(2)(E) , as follows:

   (A) All post-1914 appropriative rights holders, in addition to being curtailed under the Notice of Unavailability of Water and Immediate Curtailment issued by the State Water Board on May 27, 2014, are also curtailed under this order except as provided in sections 878 (non-consumptive uses), 878.1 (minimum health and safety needs, and 878.2 (local co-operative solutions). Curtailment under the notice and this order must be complied with and considered separately.

   (B) All diverters on Deer Creek shall bypass 50 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows for adult CCV steelhead migration. Flows in excess of the 50 cfs base flow can be taken in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A), above.

   (C) Upon notification to the Deputy Director from the California Department of Fish and Wildlife and/or the National Marine Fisheries Service that adult CCV steelhead migration has ended but that juvenile CV SR salmon or juvenile CCV steelhead are present, base flow requirements will be reduced to 20 cfs pursuant to section 877, subdivision (c)(2)(D). At that time, the Deputy Director will inform all diverters on Deer Creek that bypass conditions are reduced from 50 cfs to 20 cfs, or full natural flow, whichever is less. This reduced flow without diversions, is necessary to maintain

[2] All further section references are to California Code of Regulations, title 23 unless otherwise indicated.

base flows for juvenile CV SR salmon or juvenile CCV steelhead migration. Flows in excess of the 20 cfs base flow can be diverted by water rights holders in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A), above.

2. This curtailment order shall be effective beginning on October 15, 2014 at 5:00 pm.

3. In accordance with section 877 subdivision (d), water rights agents of record who receive this order are responsible for immediately providing notice of this order to the diverters exercising a water right on Deer Creek that they represent. Stanford Vina Ranch Irrigation Company and Deer Creek Irrigation District are responsible for immediately providing notice of this curtailment order to all water rights users to which they provide water under the curtailed water rights.

4. All water users or water right holders receiving this order are required, within five days of issuance of this order, to submit under penalty of perjury a certification in accordance with section 879. Post-1914 water rights holder that have recently filed a certification in response to receiving the Notice of Unavailability of Water and Immediate Curtailment issued by the State Water Board on May 27, 2014 do not need to file an additional certification.

5. A diversion that would otherwise be subject to curtailment under this order, but the diversion is necessary for minimum health and safety needs may continue under the conditions described in section 878.1.

6. A diverter or diverters may request that this order be lifted prior to the times provided in section 1 above based on a local cooperative solution, as described in section 878.2.

7. In accordance with section 879.2, diversion or use in violation of this curtailment order constitutes an unauthorized diversion or use. Violations of this order shall be subject to further enforcement and any applicable penalties pursuant to Water Code sections 1052, 1831, 1845 and 1846. To the extent of any conflict between the requirements of this curtailment order and any other applicable orders or conditions of approval, the diverter must comply with the requirements that are most stringent.

8. Reservation of Enforcement Authority and Discretion: Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.

9. Regulatory Changes: Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations or water right permit requirements. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the diverter shall obtain authorization for an incidental take prior to construction or operation. Diverter shall be responsible for meeting all requirements of the applicable Endangered Species Act for the long-term changes authorized under this Order.

STATE WATER RESOURCES CONTROL BOARD

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: OCT 14 2014

Attachment A

Riparian Rights and Federal Filings

Application ID	License ID	Status	Primary Owner	Face Value	Reported Use (AF)	Report Date	Season	Year of First Use	Beneficial Use	Acres Irrigated
F003439S		Claimed	U S LASSEN NATL FOREST	0	NR		year-round		D,FP,R	
F003440S		Claimed	U S LASSEN NATL FOREST	0	NR				D,FP,R	
S001308		Claimed	SIERRA PACIFIC INDUSTRIES	0	0.06	2010	year-round	1900	DA	
S001309		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1900	DA	
S001310		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1900	DA	
S001311		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1900	DA	
S001312		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1900	DA	
S001313		Claimed	SIERRA PACIFIC INDUSTRIES	0	1.36	2011	year-round	1900	DA	
S001314		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1900	DA	
S007869		Claimed	JOSEPH A BENATAR	0	60	2010	year-round	1893	I,D,O	40
S010775	pre-1914	Claimed	Grant Leininger	0	56	2010	year-round	1893	I,S	192
S012359		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012360		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012361		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012374		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012375		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012376		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012377		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S012396		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	year-round	1945	FP	
S013587		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	FP	
S013594		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	FP	
S013595		Claimed	DIAMOND LANDS CORPORATION	0	1.93	2010	year-round	1905	DA	
S013596		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1990	FP	
S013597		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	DA	
S013598		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	DA	
S013599		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	FP	
S013600		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	DA	
S013601		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	FP	
S013602		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	2010	April-Nov	1900	DA	
S013603		Claimed	DIAMOND LANDS CORPORATION	0	0	2010	April-Nov	1900	DA	
S016163		Claimed	U S LASSEN NATL FOREST	4,300	4440	2011	year-round	1905	RAH	
S016808		Claimed	SIERRA PACIFIC INDUSTRIES	0.95	0	2010			DA	
S018670		Claimed	Rumiano Farms	0	NR				D	
S019663		Claimed	SIERRA PACIFIC INDUSTRIES	0.92	0	2010			FP	
S023166		Claimed	Rumiano Farms	0	NR				O	

Adjudicated pre-1914 Appropriative Rights

Application ID	License ID	Status	Primary Owner	Face Value	Reported Use (AF)	Report Date	Season	Year of First Use	Beneficial Use	Acres Irrigated
S000729		Claimed	STANFORD VINA RANCH IRRIGATION CO	0	17066	2011	04/01-10/31	1900	I,S	5700
S000730		Claimed	STANFORD VINA RANCH IRRIGATION CO	0	1264	2011	04/01-10/31	1900	I,S	5700
S000731		Claimed	DEER CREEK IRRIGATION DISTRICT	0	20400	2010	year-round	1923	I,S	1900

Post-1914 Appropriative Rights

Application ID	License ID	Status	Primary Owner	Face Value	Reported Use (AF)	Report Date	Season	Filing Date	Beneficial Use	Acres Irrigated
A001041	485	Licensed	STANFORD VINA RANCH IRRIGATION CO	4,582	17066*	2011	05/01-10/01	8/5/1918	I,S	5700
A008469	2385	Licensed	U S LASSEN NATL FOREST	1	0.55	2010	06/61-10/15	10/11/1935	R	
A012096	4976	Licensed	KEN C WILLIS	2,172	NR		year-round	9/19/1947	D,P	
A015933	5462	Licensed	DEER CREEK LODGE INC	2,896	48	2012	year round	6/29/1954	P	
A016224	6088	Licensed	JOSEPH JAMES TREMARI	0.8	2.41	2012	04/01-12/31	1/31/1955	D	
A016223	5702	Licensed	THOMAS T DENNEY	0.1	0.1	2010	year round	1/31/1955	D	
A016238	7247	Licensed	WALTER ALBERT	2.6	1.96	2010	year round	2/15/1955	D	
A018477	7356	Licensed	DOROTHY ANNE TREMARI	1.7	2.41	2010	04/01-12/31	1/19/1959	D	
A020250	9007	Licensed	DEER CREEK LODGE INC	9	0.29	2010	year-round	6/6/1961	D	
C003886	3886	Certified	EDWIN L GAULT	0	NR		11/01-5/01	8/8/1985	S	
C005299	5299	Certified	RICHARD D SUMMERS	1.5	NR		year-round	1/5/1988	S	

*Reported use under A001041 is a duplication of the use reported under S000729

I= Irrigation
S= Stockwatering
RAH= Riparian and Aquatic Habitat
D= Domestic
O= Other

DA= Dust Abatement
FP= Fire Protection
R= Recreational
P= Power