



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JUN 12 2014

CERTIFIED MAIL NO. 7004-2510-0003-9148-3872
Return Receipt Requested

Stanford Vina Ranch Irrigation Company
c/o Gary Rumiano – Agent for Service of Process
5485 Hwy 99E
Vina, CA 96092

Dear Mr. Rumiano:

ENFORCEMENT ACTION ENF001023- NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED DIVERSION OF WATER FROM DEER CREEK TRIBUTARY TO THE SACRAMENTO RIVER IN TEHAMA COUNTY AND VIOLATION OF EMERGENCY REGULATIONS FOR CURTAILMENT OF DIVERSIONS DUE TO INSUFFICIENT FLOW FOR SPECIFIC FISHERIES

Enclosed is a draft Cease and Desist Order (CDO) issued to Stanford Vina Ranch Irrigation Company (Stanford Vina). This letter serves as notice to Stanford Vina of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with this enforcement action. Therefore, this matter requires your immediate attention.

On June 5, 2014, the Deputy Director of the State Water Board issued Curtailment Order WR 2014-0022-DWR (Curtailement Order) to all diverters in the Deer Creek watershed. Stanford Vina received notice and a copy of the Curtailment Order by personal service on June 6, 2014. The Curtailment Order was effective starting on June 6, 2014. The Curtailment Order is issued under the emergency regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (California Code of Regulations, title 23, sections 877 through 879.2) (Emergency Regulations) adopted by the State Water Board on May 21, 2014. The Emergency Regulations went into effect on June 2, 2014 and established 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 Curtailment Order curtailed diversions on Deer Creek as necessary to obtain/maintain those minimum flows.

Stanford Vina diverts water from Deer Creek and is required to bypass the minimum flows before diverting any water. The current minimum flow requirement for Deer Creek is 50 cubic feet per second (cfs). Based on staff's review of the United States Geological Survey (USGS) stream gauge 11383500 and the Department of Water Resources (DWR) stream gauge below the Stanford Vina Dam, the minimum flow requirements are not being met. Stanford Vina diverted in violation of the Curtailment Order since June 6, 2014 and is subject to Administrative Civil Liability (ACL) penalties for the unauthorized diversion of water. Recent gauge readings show the flow at the

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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upstream USGS stream site at approximately 75 cfs and the flow at the downstream DWR stream site at approximately 15 cfs. The flow past the DWR stream site must be 50 cfs in order for Stanford Vina to be in compliance with the Order and Regulations. Stanford Vina has diverted water beyond what is legally available to them and threatens to violate the Order and Regulations without corrective action.

Based on these findings, I signed the enclosed draft CDO that requires Stanford Vina to: (1) immediately cease or reduce diversion from Deer Creek to ensure the drought emergency minimum flows are satisfied; (2) provide pulse flows when required under the Emergency Regulation; (3) submit certification of curtailment in accordance with Emergency Regulations; (4) submit a Compliance Monitoring Plan within 30 days; and (5) comply with all future drought emergency minimum flow requirements in the Emergency Regulations.

In addition, Stanford Vina is subject to further enforcement actions such as administrative fines or prosecution in court. The State Water Board may levy fines of up to \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Cal. Water Code, §§ 1052, 1055, and 1846.) Additionally, if the State Water Board issues the proposed Cease and Desist Order, then any violation of the Cease and Desist Order could result in an Administrative Civil Liability (ACL) of up to \$10,000 per day. (See Cal. Water Code, §§ 1831, 1845.) Stanford Vina has been in violation of the Curtailment Order and Emergency Regulations since June 6, 2014. Should Stanford Vina continue to divert in violation of the Order and Regulations, the Division will consider additional liabilities for all continued violations. Therefore, Stanford Vina needs to take immediate action to come into compliance with the Curtailment Order and Emergency Regulations and prevent future violations.

If Stanford Vina disagrees with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, Stanford Vina may request a CDO hearing before the State Water Board no later than 20 days from the date of receipt of this notice. Unless a written request for hearing regarding the CDO signed by or on behalf of Stanford Vina is delivered to or received by mail by the State Water Board within 20 days after receipt of this letter, the State Water Board may adopt the CDO, with the statement of facts and information set forth in the enclosed draft CDO without a hearing. (Cal. Water Code, §1834.)

If Stanford Vina requests a hearing concerning the proposed CDO, then a hearing before the State Water Board or a hearing officer for the State Water Board will be scheduled; and Stanford Vina will be notified of the hearing date. Prior to the hearing, Stanford Vina will be required to submit any written testimony and other evidence Stanford Vina would like the State Water Board to consider.

Failure to respond to this letter and the issuance of the proposed CDO in the time period provided will result in the State Water Board issuing a final CDO. Furthermore, the State Water Board may consider additional enforcement of those Orders without further notice.

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If you have any questions concerning this matter or there are facts or circumstances that you would like to discuss, then please contact one of the following: Aaron Miller, Senior Water Resources Control Engineer at (961) 341-5390 or Aaron.Miller@waterboards.ca.gov; or Yvonne West, Senior Staff Counsel Office of Enforcement at (916) 322-3626 or Yvonne.West@waterboards.ca.gov.

Sincerely,



John O'Hagan, Assistant Deputy Director
Division of Water Rights

ec: Yvonne West, Senior Staff Counsel
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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2014 –00XX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion and violation of Emergency Regulations for
Curtailment of Diversions Due to Insufficient Flow for Specific Fisheries by

STANFORD VINA RANCH IRRIGATION COMPANY

SOURCE: Deer Creek tributary to the Sacramento River

COUNTY: Tehama

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Stanford Vina Ranch Irrigation Company (Stanford Vina) to cease their unauthorized diversion and use of water in violation of California Water Code section 1052 and come into compliance with Emergency Regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (California Code of Regulations, title 23, sections 877 through 879.2¹) (Emergency Regulations).

Diverter is alleged to have violated and is threatening to violate California Water Code section 1052 and/or Emergency Regulations adopted under California Water Code section 1058.5. The State Water Board is authorized by California Water Code section 1831 et seq. to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the California Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the California Water Code.
- (3) Any decision or Order of the Board issued under Part 2 (commencing with section 1200) of division 2 of the California Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the California Water Code, in which decision or Order the person to whom the Cease and Desist Order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or Order.
- (4) A regulation adopted under section 1058.5

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Stanford Vina for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a Cease and Desist Order in accordance with California Water Code section 1831, et seq. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director of Water Rights. This authority has been redelegated.

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

FACTS AND INFORMATION

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

1. 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 (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 6,000 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 6,000 miner's inches, then the Adjudication diminishes or augments the flow allocations proportionally. (Adjudication, Articles XI and XIII, pp. 10, 11.) Stanford Vina'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, 33 percent of the Deer Creek flows to Deer Creek Irrigation District, and 1 percent to Sheep Camp Ditch for stock watering.
2. On February 27, 1926, the Division issued water rights License 485, pursuant to Application 1041, to Stanford Vina. License 485 authorizes the direct diversion of 15 cubic feet per second (cfs) from Deer Creek for agricultural use from May 1st to October 1st of each year. The points of diversion authorized by License 485 are the same points of diversion identified in the Adjudication.
3. 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;
4. On May 27, 2014, the 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 most recent 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.
5. On May 21, 2014, the State Water Board adopted the Emergency Regulations (California Code of Regulations, title 23, sections 877 through 879.²). The Emergency Regulations were reviewed by the Office of Administrative Law and went into effect on June 2, 2014. The Emergency 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 Emergency 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 Emergency Regulations, diversions are 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 Emergency Regulations is an unauthorized diversion and use under California Water Code section 1052.

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

6. On June 5, 2014, the Deputy Director for the Division of Water Rights issued a Curtailment Order for Deer Creek (Curtaiment Order). The Curtailment Order took effect on June 6, 2014 and requires all water rights holders in the Deer Creek watershed to 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 June 30, 2014 or until the Deputy Director suspends the Curtailment Order under section 877, subdivision (c)(2)(E).
7. Notice of the Curtailment Order was provided to Stanford Vina via personal service on June 6, 2014 at 9:12 a.m.
8. In accordance with section 879.2, diversion or use in violation of the Curtailment Order constitutes an unauthorized diversion subject to further enforcement and any applicable penalties, pursuant to California Water Code sections 1052, 1831, 1845, and 1846.
9. The Curtailment Order requires all diverters on Deer Creek to bypass 50 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows for adult Central Valley Spring Run (CV SR) salmon migration. Flows in excess of the 50 cfs base flow can be taken in accordance with priority and basis of right.
10. On June 3, 2014, the flow measured at the California Data Exchange Center (CDEC) Deer Creek Below Stanford Vina Dam gauge (DVD) reached minimum flow levels of 17.7 cubic feet per second (cfs) after lower Deer Creek diversions. Water temperatures measured at the CDEC DVD gauge ranged from 67.5 to 78.5°F. Ambient air maximum daily temperatures reached in excess of 100°F at Vina, California between June 6, 2014 and June 10, 2014. It is anticipated the increase in ambient air temperature has increased water temperatures in Deer Creek and could increase amounts of water diverted in the upcoming week.
11. In accordance with section 877 subdivision (d), water rights holders or agents of record who receive the Curtailment Order were responsible for immediately providing notice of this Order to all diverters exercising a water right on Deer Creek. Accordingly, Stanford Vina and Deer Creek Irrigation District are responsible for providing notice of this Curtailment Order to all water rights holders to which they provide water under the curtailed water rights.
12. All water users or water right holders receiving the Curtailment Order are required, within five days of issuance of the Curtailment Order, to submit under penalty of perjury a certification in accordance with section 879. As of June 11, 2014, SVRIC has not filed a certification in accordance with section 879.
13. Between June 7, 2014 and June 11, 2014, the flow measured at USGS gauge 11383500 located above Stanford Vina and Deer Creek Irrigation District's (DCID) has ranged between 87 cfs and 71 cfs. During this same time period the flow measured at the CDEC DVD gauge has ranged between 17 cfs and 13 cfs. A field inspection of DCID's diversions on Deer Creek was made on June 11, 2014. Based on that inspection, it was determined that since June 6, 2014, DCID has consistently bypassed in excess of 50 cfs upstream of Stanford Vina's points of diversion. During this time period, the DVD gauge below Stanford Vina's points of diversion shows the minimum flow has not been met.
14. A pulse flow event has been scheduled on Deer Creek of 100 cfs or full natural flow, whichever is less, from Thursday, June 12, 2014 at 5:00 p.m. until Saturday, June 14, 2014 at noon. As described in the Curtailment Order, all diverters on Deer Creek are curtailed and must cease diverting to ensure that the pulse flow of 100 cfs or full flow without diversions, whichever is less, is bypassed at their point of diversion. The flows measured at USGS gauge 11383500 have been less than 100 cfs for the month of June. Therefore, it is anticipated that all diverters on Deer Creek, including Stanford Vina, must cease diverting during this pulse flow period.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, Stanford Vina shall immediately cease the unauthorized diversion of water from Deer Creek tributary to the Sacramento River and come into compliance with the Emergency Regulations by performing the following corrective actions in the time schedule outlined herein:

1. Immediately cease or reduce its diversions from Deer Creek to ensure the drought emergency minimum flow specified in section 877, subdivision (c)(2) are satisfied through June 30, 2014 or until the Deputy Director suspends the Curtailment Order under section 877, subdivision (c)(2)(E), as follows:
 - a. Stanford Vina shall bypass 50 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows as required under section 877, subdivision (c)(2)(A).
 - b. Upon notification to the Deputy Director from the California Department of Fish and Wildlife and/or the National Marine Fisheries Service that adult CV SR salmon migration has ended but that juvenile CV SR salmon or Juvenile California Central Valley (CCV) steelhead are present, base flow requirements will be reduced to 20 cfs pursuant to section 877, subdivision (c)(2)(D). At that time Stanford Vina shall bypass 20 cfs or full natural flow without diversion, whichever is less, in order to maintain 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 Stanford Vina in accordance with priority and basis of right.
 - c. When a pulse flow is required under section 877, subdivision (c)(2)(A)(ii) or (c)(2)(B)(i), Stanford Vina is curtailed and must cease diverting to ensure that the pulse flow of 100 cfs or full flow without diversions, whichever is less, is bypassed at their points of diversion. If full natural flows exceed 100 cfs at a time when pulse flows are required, then flows in excess of 100 cfs can be diverted by Stanford Vina in accordance with water right priority and basis of right.
2. Stanford Vina must immediately submit under penalty of perjury a certification in accordance with section 879.
3. Stanford Vina shall immediately monitor the USGS gauge 11383500, the CDEC DVD gauge, and its diversions from its points of diversion to comply with the Order. Within 30 days of the date of this Order, Stanford Vina shall submit a Compliance Monitoring Plan (Plan) to the Deputy Director. The Plan shall include a description of: (1) the real time measuring devices used or to be installed in the South Main Canal, North Main Canal, and the Cone-Kimble Ditch; (2) the frequency of measurements and recordings of the diversion at these locations; (3) the dates of installation and/or calibration of measuring devices or recording equipment; and (4) how the records of the upstream and downstream stream flows and diversion data will be maintained and reported to demonstrate compliance. Stanford Vina shall immediately implement the Plan upon approval by the Deputy Director.
4. Comply with all future drought emergency minimum flows identified in section 877, subdivision (c)(2) as follows:
 - a. From October 1, 2014 through March 31, 2015 Stanford Vina must bypass 50 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows of 50 cfs required by section 877, subdivision (c)(2)(C) if adult CCV Steelhead are present.

Consequences of Non-Compliance

In the event Stanford Vina fails to comply with these requirements, they shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of an Administrative Civil Liability, pursuant to California Water Code section 1845 (b)(1) of up to \$10,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

Failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter may subject that person to further enforcement action, including assessment of civil liability of up to one thousand dollars a day and referral to the Attorney General for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

Furthermore, parties who are found to be diverting water beyond what is legally available to them or violating the Curtailment Order and Emergency Regulations may be subject to administrative fines or prosecution in court. The State Water Board may levy fines of up to \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Cal. Water Code, §§ 1052, 1055.)

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 Stanford Vina for unauthorized diversion or use in violation of California Water Code section 1052 or violations of the Emergency Regulations and Curtailment Order in accordance with California Water Code section 1846, regardless of their compliance this CDO.

Regulatory Changes

Nothing in this Order shall excuse Stanford Vina from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations, or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD

John O'Hagan, Assistant Deputy Director for Water Rights
Division of Water Rights

Dated: