



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

SEP 19 2014

In Reply Refer to:
SAnderson:CAL/EPA16658

CERTIFIED MAIL

Certified Mail Number 7004-2510-0003-9148-4053

Mr. Francis Thompson
3868 Leak Lane
Loomis, CA 95650

Dear Mr. Thompson:

ENFORCEMENT ACTION - NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING THE THREAT OF UNAUTHORIZED DIVERSION OF WATER FROM UNNAMED CHANNEL TRIBUTARY TO SECRET RAVINE IN PLACER COUNTY

Enclosed is a draft Cease and Desist Order (CDO). This letter serves as notice to Francis Thompson (Thompson) 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.

Enclosed is a draft CDO that requires Thompson to cease and desist from diverting or using water that spills from the Barton Canal and flows down the Unnamed Channel prior to water diversions appropriated under License 4648 and 12741. The corrective actions proposed include:

- (1) Thompson must immediately cease and desist diverting from the Unnamed Channel; and
- (2) Within 30-days from the date of the draft CDO, Thompson must: Submit a corrective action plan that identifies the action(s) to be taken to correct the unauthorized diversion and a time schedule for completion that will be subject to approval by the State Water Board.

If you disagree with the facts, proposed actions, or time schedules for the corrective actions set forth in the enclosed draft CDO, you may submit additional information providing grounds for your disagreement and make a written request for a CDO hearing before the State Water Board. Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice. If no hearing request is received by the State Water Board within 20 days after you receive this letter, the State Water Board may adopt the CDO as a final Order, with the statement of facts and information set forth in the enclosed draft CDO, without a hearing. (Water Code, § 1834.)

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

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

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A request for a CDO hearing may be made by mailing the request to the State Water Board at the following address:

State Water Resources Control Board
Division of Water Rights
Attn: Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

A Request for hearing may also be hand-delivered to:

Division of Water Rights
Records Unit
1001 I Street, 2nd Floor
Sacramento, CA 95814

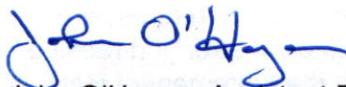
In summary, you should take immediate action to:

- (1) Begin complying with the provisions of the draft CDO by immediately ceasing and desisting diversions from the Unnamed Channel; and
- (2) Within 30 days submit a corrective action that identifies the action to be taken to correct the unauthorized diversions and a schedule for completion of the corrective actions to the State Water Board for review and approval.

Failure to respond to this letter and the issuance of the enclosed draft 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. If you fail to comply with the adopted final CDO, the State Water Board may consider additional enforcement of the CDO, subjecting you to up to \$10,000 for each day of non-compliance during an emergency drought period or referral to the Attorney General for further action. (Water Code, § 1845.)

If you have any questions concerning this matter or if there are facts or circumstances that you would like to discuss, then please contact one of the following: Taro Murano, Supervisor, Enforcement Unit 5, at (916) 341-5399 or by e-mail at taro.murano@waterboards.ca.gov; or Yvonne West, Senior Staff Counsel, Office of Enforcement, at (916) 322-3626 or by e-mail at yvonne.west@waterboards.ca.gov.

Sincerely,



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

Enclosures:

- Draft Cease and Desist Order
- 6-6-2014 Inspection Report

cc with Enclosures:

Yvonne West, Staff Counsel
State Water Resources Control Board
Office of Enforcement
Yvonne.West@waterboards.ca.gov

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 Threat of Unauthorized Diversion by

Francis Thompson

SOURCES: Unnamed Channel, Tributary to Secret Ravine, Sacramento River

COUNTY: Placer

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code (Water Code) section 1831 to issue a Cease and Desist Order (CDO) requiring Francis Thompson (referred to herein as Thompson) to cease and/or abate a threatened or ongoing violation of Water Code section 1052.

Thompson is alleged to have violated or is threatening to violate Water Code section 1052. Water Code section 1831, subdivision (d) states in part that the State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate the prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to this division. (Water Code division 2, commencing with section 1000.)

On {DATE}, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Thompson for the violation and threatened violation of the prohibition against unauthorized diversion, storage, 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 CDO in accordance with Water Code section 1831, et seq. State Water Board Resolution 2012-0029 also authorizes re-delegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights (Assistant Deputy Director). This authority has been re-delegated.

FACTUAL BASIS FOR ISSUING THE CDO

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

1. Thompson owns property associated with the parcel numbers 037-071-067-000 and 037-080-089-000 that includes one storage reservoir. The reservoir currently receives water from two sources: 1) purchased water from Perry Canal; and 2) abandoned foreign water from the Barton Canal that is discharged into the Unnamed Channel. Any water diverted from Unnamed Channel, is subject to the State Water Board's permitting and licensing authority as detailed in division 2 (commencing with section 1000) of the California Water Code.
2. The Barton Canal and the Perry Canal are part of Placer County Water Agency (PCWA) water conveyance infrastructure that delivers water to PCWA customers in rural central Placer County.

3. The terminus section of the Barton Canal is composed of gunite and is approximately 3-feet wide and 2-feet in depth. The end of the Barton Canal is located near the northern border of Thompson property in Placer County, parcel number 037-071-067-000. At various times, water spills from the Barton Canal and flows down the Unnamed Channel.
4. The Perry Canal is located approximately a half mile to the east of the Thompson's property. Water from the Perry Canal is gravity fed to the Thompson property and stored in a reservoir located near the end of the Barton Canal.
5. On April 25, 2014, the Division received a complaint alleging that Thompson is illegally diverting water directly from the Unnamed Channel where downstream property owners have appropriate water rights under License 4648 and 12741.
6. On June 2, 2014, the Division received an additional complaint alleging that Thompson is illegally diverting and storing the entire flow of water from the Unnamed Channel and not allowing water to flow downstream to the complainant's point of diversions (POD).
7. The water that downstream property owners are authorized to divert under License 4648 and 12741 is abandoned or spill water from the Barton Canal. Excess purchase water released by PCWA in the Barton Canal flows down past the end of the Barton Canal into the Unnamed Channel and to the POD's specified in License 4648 and 12741.
8. On June 6, 2014, Division staff inspected the Thompson property, Placer County Assessor Parcel Number 037-071-067-000. Staff observed that the end of the Barton Canal and a portion of the Unnamed Channel is located on Thompson's property. Water was not actively spilling from the Barton Canal at the time of inspection. Staff observed that Thompson has the ability to gravity divert water to storage from the Unnamed Channel into his storage reservoir via two 4-inch PVC-pipes. The location of the two PVC pipes would allow Thompson to divert from Unnamed Channel upstream of where the POD's of License 4648 and 12741 are located and into his reservoir.
9. Licenses 4648 and 12741 authorize the diversion of water and use from the Unnamed Channel. License 4648 has a priority date of April 10, 1951 and authorizes the diversion of 0.38 cubic foot per second between April 1 and October 31. License 12741 has a priority date of February 17, 1984 and authorizes the diversion of 6.0 acre-feet per year to storage in two reservoirs between November 1 and April 30.
10. Thompson cannot hold riparian rights to water in the Barton Canal or the Unnamed Channel because that water does not naturally flow through the Barton Canal or the Unnamed Channel; it is foreign water. "Foreign water that is abandoned in a stream, with no intention on the part of the one so abandoning such water to recapture them, is subject to appropriation and not to the rights of riparian owners on the stream." (Crane v. Stevinson (1936) Cal.2d 387, 394-395.)
11. Any water abandoned in and then diverted from Unnamed Channel is subject to the State Water Board's permitting and licensing authority, as detailed in division 2 (commencing with section 1000) of the California Water Code.
12. Thompson does not have a water right permit or license to divert or use water from the Unnamed Channel.
13. Any water diverted from the Unnamed Channel and used by Thompson is an unauthorized diversion and use in violation of Water Code section 1052, and the on-stream diversion structure from the Unnamed Channel to the reservoir on Thompson's property presents a threat of future unauthorized diversion and use of water in violation of Water Code section 1052.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Thompson must immediately cease and desist diverting or using water from the Unnamed Channel.

2. Within 30-days of the date of this letter, Thompson must:

Submit a corrective action plan that identifies how the diversion structure from the Unnamed Channel to the reservoir will be rendered incapable of diverting water and a time schedule for the completion of the corrective actions to the State Water Board. The proposed actions and time schedule for completion is subject to the State Water Board's approval.

Consequences of Non-Compliance

In the event Thompson fails to comply with the requirements of this Order, he shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO issued during a period for which the Governor has issued a proclamation of state of emergency based on drought conditions is subject to the imposition of administrative civil liability, pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occurs, or referral to the Attorney General to take further injunctive enforcement actions as described in California Water Code section 1845, subdivision (a).

Upon the failure of any person to comply with a cease and desist order issued by the Board, pursuant to this chapter [California Water Code division 2, part 2, chapter 12], the Attorney General, upon request of the Board, 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.

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 Thompson for unauthorized diversion or use of water in violation of Water Code section 1052.

Regulatory Changes

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

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse Thompson from meeting any additional regulatory requirement that may be imposed by other local, state, or federal regulatory entities for corrective actions taken by Thompson to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD

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

Dated:

DRAFT