

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

DIVISION OF WATER RIGHTS

CEASE AND DESIST ORDER WR 2008-00XX-DWR

In the Matter of Unauthorized Diversion by

**HARRIET JEAN PIPER, WILLIAM PIPER, MATTHEW PIPER,
CAROLE CANAVERI, KATHLEEN STORNETTA
AND MANCHESTER RIDGE LLC**

SOURCE: Unnamed Stream tributary to Alder Creek thence Pacific Ocean

COUNTY: Mendocino County

Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri, Kathleen Stornetta and Manchester Ridge LLC, (Piper et al. and Manchester) is alleged to have violated or is threatening to violate Water Code section 1831, which states:

The State Water Resources Control Board (State Water Board) is authorized 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 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 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 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.

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 Piper et al. for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2007-0057, 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 Water Code section 1831 et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

FACTS AND INFORMATION

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

- 1) Records of the Mendocino County Assessor's Office show that Piper et al., is the current owner of Mendocino County Assessor's Parcel number 132-260-03 located at 39000 Crispin Road and has owned the property since at least July 1, 1996. Aerial photographs show that reservoirs are located on this property and have been in existence since at least 2003.

- 2) During a June 16, 2003 onsite field inspection requested by Manchester, Division staff observed the existence of four reservoirs, in various stages of construction within the project located at 39000 Crispin Road and operated by Manchester. After reviewing the project area and comparing the development with topographic and aerial maps of the area, the Division concluded that at least two of the reservoirs, existing Reservoir No. 1, storing approximately 30 acre-feet (AF) of water located within the NE¼ of the NE¼ of Section 16, T13N, R16W, MDB&M and proposed Reservoir No. 3, located within the NE¼ of the SW¼ of Section 15, T13N, R16W, MDB&M, were located on stream channels with beds and banks and were subject to the permitting authority of the State Water Board. Water stored in the reservoirs is to be used to irrigate 150 acres of vineyard.
- 3) On September 11, 2003, the Division sent a letter of finding to Manchester. The letter advised that existing Reservoir No. 1 was storing water subject the permitting authority of the State Water Board and Reservoir No. 3, if constructed, would store water subject to the permitting authority of the State Water Board. The letter gave Manchester 60 days to either: (1) submit evidence showing how these two reservoirs are not subject to the permitting authority of the State Water Board; (2) submit evidence supporting an existing water right authorizing storage of water; (3) submit an application to appropriate water by permit for storage; or (4) submit a plan including a timetable to render the reservoirs incapable of storing water. The Division's letter also informed Manchester of the State Water Board's discretionary authority to initiate enforcement action for any unauthorized diversion without further notice.
- 4) On November 21, 2003, Mr. Chris Stone, agent for Manchester, replied with a letter stating that he believed the reservoirs were not subject to the State Water Board's permitting authority. Mr. Stone enclosed a Wetland Delineation report prepared by Golden Bear Biostudies, Inc. that included a discussion indicating that stream channels begin at the point where groundwater surfaces. He concluded that since his reservoirs are located up-channel of this point, he was not within the State Water Board's permitting authority.
- 5) On February 5, 2004, the Division, after reviewing the Wetland Delineation report including the claim that stream channels begin at the location where groundwater surfaces, concluded Reservoir Nos. 1 and 3 were still within the State Water Board's permitting authority. The Division restated its prior conclusion that the reservoirs were built onstream and bed and banks exist throughout the reservoir sites. Manchester was directed to resolve the matter within 30 days through one of the following actions: (1) file an application to appropriate water; or (2) provide a plan demonstrating how water subject to the State Water Board's permitting authority would not be stored in Reservoir Nos. 1 and 3. The Division advised that failure to provide the requested information would lead to enforcement action as allowed by Water Code section 1052, subdivision (b), which allows the Division to impose a civil liability of up to \$500 per day for each day of unauthorized diversion.
- 6) On September 17, 2004, the Division received a letter from Beyers, Costin, and Case, attorneys representing Manchester. They requested copies of all correspondence in this matter, as Chris Stone had left the company and failed to route all documents to the appropriate party. On December 9, 2004, the Division mailed the requested correspondence regarding this matter to Mr. Cameron Scott Kirk of Beyers, Costin, and Case.
- 7) On December 14, 2004, Division staff contacted the Mendocino County Assessor's Office and learned that the current owners of Mendocino County Assessor's Parcel Number 132-260-03 are Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri, and Kathleen Stornetta, dating back to June 2003.

- 8) An aerial photograph dated August 12, 2006, from Manchester's website depicts water storage in existing Reservoir No. 1 and a limited amount of storage in Reservoir No. 3. The collection of water to storage in Reservoir Nos. 1 and 3 constitute an unauthorized diversion of water.
- 9) As of the date of this action, the Division has not received an application for a permit to appropriate water to storage, or any response from the parties.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Piper et al., and Manchester shall cease the unauthorized diversion of water from the unnamed streams tributary to Alder Creek and shall pursue the following schedule of corrective actions and satisfy the time schedules outlined herein:

1. Piper et al., and Manchester shall within 90 days of the date of this order, have a registered Civil Engineer perform a survey of the reservoir(s) to establish the existing capacity of the reservoir(s). The engineer shall also design and install a staff gauge(s) that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir(s) at varying water levels in the reservoir(s).
2. No later than **120 days** from the date of this order, Piper et al., and Manchester shall submit a copy of the capacity survey(s), the depth vs. capacity relationship curves (charts) and photographic evidence that a staff gauge(s) have been installed.
3. Following the installation of the staff gauge(s), Piper et al., and Manchester shall maintain a record of the monthly staff gage readings of the reservoir. The readings shall be supplied to the State Water Board on May 1 of each year. Until such time as a basis of right is approved by the Division, Piper et al., and Manchester shall release any surface water that has been collected above the previous month's staff gauge reading using the existing outlet works, or any other means (pumping or siphoning), to prevent water not authorized to be collected to storage from being stored in the reservoir.
4. Within **150 days** of the date of this Order, Piper et al., and Manchester shall; (1) File the appropriate Water Right Application with the Division of Water Rights and pursue securing a legitimate basis of right, or (2) submit a plan that will render the reservoir incapable of storing surface waters subject to the State Water Boards permitting authority.
5. Piper et al., and Manchester, upon filing of the application, shall diligently pursue processing of the application by satisfying all Division requests for information, environmental documents, maps, and fees within the designated time frames, or any extension of time granted by the Division.
6. Piper et al., and Manchester shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding the unauthorized diversion of water in the reservoir until such time as the State Water Board issues a water right permit or directs otherwise.
7. If the State Water Board does not issue a permit, Piper et al., and Manchester shall take all necessary action to render the reservoir incapable of storing water subject to the permitting authority of the State Water Board using best management practices and in compliance with any other federal, state and local agencies' requirements.

In the event that Piper et al., and Manchester fail to comply with the requirements, Piper et al., and Manchester shall be in violation of this CDO and subject to monetary penalties and further enforcement actions as described below:

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. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel, Assistant Deputy Director
Division of Water Rights*

Dated: