

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

DIVISION OF WATER RIGHTS

ORDER WR 2004 – 0002 – DWR

In the Matter of License 10911 (Application 10456)

Cease and Desist Order 262.31-04

California Department of Veterans Affairs

SOURCE: Rector Creek tributary to Napa River

COUNTY: Napa 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 5, 2003, and in accordance with the provisions of section 1834 of the California Water Code, the SWRCB provided notice of the CDO to the California Department of Veterans Affairs (Licensee) for the threatened violation and violation of: (1) the prohibition against unauthorized diversion and use of water; and (2) a term or condition of a license issued under this division. The Division of Water Rights (Division) did not receive a request for hearing within 20 days from the date when the California Department of Veterans Affairs received the notice of the CDO. In accordance with the SWRCB Resolution 2003-0106, section 2.8.2, Delegation of Authority, the Chief of the Division is authorized to issue an Order imposing a cease and desist order when a notice of cease and desist has been issued and no hearing has been requested within the period provided under Water Code section 1834.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are the following:

1. License 10911 (Application 10456) authorizes the diversion to storage of 1,767 acre-feet per annum from October 1 of each year to May 31 of the following year and the direct diversion of 5.55 cubic feet per second between January 1 and December 31 for the purposes of irrigation, domestic, municipal, and fish culture uses. The Division issued License 10911 to California Department of Veterans Affairs on May 7, 1979, and the County Recorder of Napa County recorded the license on May 8, 1979.

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. Division records indicate that the Licensee is the current owner of the above-mentioned License.
3. On September 13, 2001, Division staff conducted a compliance inspection of the Licensee's water right project and found that water is being served to property on Silverado Trail that is outside the authorized place of use.
4. In a letter to the Licensee dated January 2, 2002, the Division requested that the Licensee submit a Petition for Change to add the place of use on Silverado Trail to the license. No petition has been filed with the Division.
5. 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." Serving water outside the authorized place of use is a trespass.

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

Licensee shall cease to serve Rector Reservoir water to the Silverado Trail portion of Yountville's service area within 60 days of issuance of the CDO. This requirement may be suspended if, within 45 days of issuance of the CDO, Licensee submits a Petition for Change with required fees, environmental forms, and maps to add the portion of the Town of Yountville service area on Silverado Trail to the authorized place of use under the license and diligently pursues approval of the Petition for Change.

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 who 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 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.
- (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 11 2004