

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

DIVISION OF WATER RIGHTS

ORDER WR 2006-0016-DWR

In the Matter of Unauthorized Diversion by

B-H Farms

Cease And Desist Order No. 262.31-24

SOURCE: Calleguas Creek tributary to Mugu Lagoon thence Pacific Ocean

COUNTY: Ventura County

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 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 August 7, 2006, 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 B-H Farms for its violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

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

1. B-H Farms is the owner of Permit 21087 (Application 29829). Permit 21087 authorizes the direct diversion of 2.61 cubic feet per second, not to exceed 780 acre-feet per year from Calleguas Creek from November 1 of each year to March 31 of the succeeding year for irrigation of 200 acres. The State Water Board issued Permit 21087 on February 22, 2001 and required B-H Farms to complete the beneficial use of water under the permit by December 31, 2010.
2. B-H Farms also claims a riparian right to divert water from Calleguas Creek (see Application 29829). State Water Board Decision 1638, issued on September 18, 1997, analyzed the availability of natural flow in Calleguas Creek for diversion by riparian water right claimants (including B-H Farms). The State Water Board found: *"Although the Calleguas Creek drainage basin is larger than the*

Conejo Creek drainage basin, flow data for Calleguas Creek provides the best available record for determining when natural flow was present prior to the importation of water from Metropolitan. The evidence regarding the flow in Calleguas Creek watershed prior to importation of water from Metropolitan shows that Calleguas Creek had water in it at the Camarillo streamgauge site during the months of December through April." (State Water Board Decision 1638, page 33). Based on analysis and findings of Decision 1638, and absent any new evidence to the contrary, Division staff concludes there normally is no natural water available to B-H Farms for diversion from Calleguas Creek watershed under a riparian claim of right from about May 1 through November 30 of each year.

3. The Division received a written complaint dated May 5, 2004 from Carol Rosendahl alleging that B-H Farms diverted water from Calleguas Creek outside of its permitted season from April 28th through May 4th, 2004. The complaint stated that B-H Farms' claimed riparian rights were "dismissed" by State Water Board's Decision 1638 and as a result B-H Farms had no basis of water right for the subject diversions.
4. B-H Farms responded to the complaint on June 1, 2004. B-H Farms did not dispute that the alleged diversions occurred, and did not present evidence establishing that a valid water right exists for the diversions. The response admitted that a subtenant had placed a pump in the creek without realizing any wrongdoing. According to B-H Farms, pumping immediately terminated upon receipt of the complaint. The response also stated that the pump on Calleguas Creek was removed and any related sand obstruction was cleared from the creek.
5. By letter to Ms. Rosendahl dated October 14, 2004; Division staff proposed closure of the complaint believing that prompt corrective action by B-H Farms had eliminated the pumping of water. Staff's letter also clarified that Decision 1638 did not "dismiss" the riparian rights of B-H Farms, but rather dismissed B-H Farms' *protest* against an application being considered by the State Water Board at that time. B-H Farms' protest was based on injury to its riparian rights.
6. By letter dated October 28, 2004, Ms. Rosendahl informed Division staff that unauthorized diversion of water on B-H Farms' property continued in a new location, despite the assurance of curtailment by B-H Farms. B-H Farms responded to Ms. Rosendahl's new allegations by letter dated November 20, 2004. B-H Farms admitted that its subtenant diverted some additional water shortly after the original complaint but stated with certainty that no water had been diverted from the creek from June 10th to the date of the letter. B-H Farms also denied Ms. Rosendahl's allegation that unauthorized diversion of water continued to be an ongoing problem.
7. Between January and June 2005, Division staff and B-H Farms exchanged correspondence regarding diversion records from Calleguas Creek and deliveries of water from the Camrosa Water District. Division staff also requested B-H Farms to submit a compliance plan as required by Term 10 of Permit 21087.
8. On June 28, 2005, Division staff conducted a site investigation of B-H Farms' property and diversion works on Calleguas Creek. Division staff inspected the location for the point of diversion covered by Permit 21087. There was no pump installed at the location or any obstructions in the creek. By letter dated March 15, 2005, B-H Farms stated that a metered 85-horsepower diesel pump is used to divert water from the creek to the adjacent offstream pond using an underground 8-inch plastic pipeline. The water is rediverted from the pond to irrigate the place of use. In its March 15 letter, B-H Farms also stated that the pump and pipeline to the creek had not been used since June 2004. At the time of inspection, the pond was full of water, and B-H Farms claimed it was filled with water purchased from Camrosa Water District. Overall, the site investigation and additional submitted documents supported B-H Farms' statement that the pump had been removed in 2004, and that B-H Farms was relying on water purchased from and delivered by Camrosa Water District to irrigate B-H Farms' property between May 1 and November 30.

9. Division staff also found that B-H Farms was in violation of Term 10 of Permit 21087. Term 10 requires the submittal of a compliance plan satisfactory to the Division Chief, that adequately describes how B-H Farms will comply with the bypass flow conditions needed to protect the fishery resources in Calleguas Creek. During the four-year period following issuance of Permit 21087, B-H Farms did not submit a compliance plan as required by the permit. On July 24, 2005, B-H Farms submitted a compliance plan to the Division proposing to utilize the United States Geological Survey streamflow gage Station No. 11106550 to measure the required bypass flow. The Division Chief has not yet accepted that plan.
10. The facts described above support the finding that diversion and use of water from Calleguas Creek occurred on property owned by B-H Farms on at least two occasions in 2004 during a time when diversion is not authorized under B-H Farms' Permit 21087, and when natural flow is not typically available for riparian use as determined by Board Decision 1638. In addition, B-H Farms did not provide any evidence to demonstrate that natural flow was available during the periods of diversion in question. These facts support a finding that diversions by B-H Farms and/or its subtenant constitute either actual or threatened unauthorized diversions of water. These facts also support a finding that B-H Farms violated Term 10 of Permit 21087 when diversions occurred during its authorized season of diversion without an approved compliance plan.

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

1. During the season of May 1 to October 31 of each year in perpetuity, B-H Farms and/or its tenants or subtenants, shall cease and desist from diverting water from Calleguas Creek to serve its property unless the Division Chief acknowledges that sufficient evidence supports a basis of right for B-H Farms to divert water from Calleguas Creek during the period involved.
2. B-H Farms and/or its tenants or subtenants, shall cease and desist from diverting water pursuant to Permit 21087 until the Division Chief provides written confirmation of B-H Farms' compliance with the terms and conditions of this order as outlined in provisions 3 and 4 below.
3. B-H Farms shall, within 60-days of the date of this order, submit to the Division Chief written confirmation that it has provided written notice to its present tenant(s) and subtenant(s), and will provide written notice to all future tenants and subtenant(s), that the diversion of water to the place of use specified in Permit 21087 is subject to the terms and conditions of the Permit 21087 and this order. B-H Farms shall also provide written confirmation that it has provided its present tenant(s) and subtenant(s), and will provide all future tenants and subtenants, a copy of Permit 21087 and this order. B-H Farms and its tenants or subtenants are jointly, or separately subject to enforcement action by the State Water Board if future unauthorized diversions or violations are found.
4. For compliance with Term 10 and other terms of Permit 21087, B-H Farms shall:
 - a) Submit within 60 days of the date of this order, a revised compliance plan for the Division Chief's approval showing how B-H Farms will measure and record the flows of Calleguas Creek on a daily and real-time basis in order to demonstrate full compliance with the six cubic feet per second bypass flow conditions of Term 10 of Permit 21087. The report shall identify the method and source of measurements, and provide any example of measurements that may have been maintained.
 - b) Submit within 60-days of the date of this order, an example for the Division Chief's approval of how B-H Farms will measure and maintain a record of the amount of water diverted and used under Permit 21087 on a daily basis. The information provided by B-H Farms will be used by the State Water Board for determining the amount applied to beneficial use pursuant to Water Code section 1605.

- c) No diversion under Permit 21087 shall be undertaken until the Division Chief provides written confirmation that the submittals pursuant to the provisions of paragraphs 4(a) and 4(b) immediately above are acceptable to the Division.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water 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. (Wat. Code, § 1845 subd. (a).) Any person or entity that violates a CDO issued pursuant to chapter 12 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).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: November 2, 2006