

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

**ORDER WR 2009-0035-EXEC**

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In the Matter of Unauthorized Diversion and Use of Water by

**Carreras Ranch, LLC**

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SOURCE: Unnamed Stream tributary to Dry Creek thence Russian River

COUNTY: Sonoma

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**ORDER APPROVING A SETTLEMENT AGREEMENT BETWEEN  
THE DIVISION OF WATER RIGHTS AND CARRERAS RANCH, LLC**

BY THE EXECUTIVE DIRECTOR:

**1.0 INTRODUCTION**

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board) following issuance of an Administrative Civil Liability Complaint (ACL Complaint) and a Notice of Draft Cease and Desist Order (draft CDO) against Carreras Ranch, LLC (Carreras Ranch). The State Water Board, Division of Water Rights (Division) and Carreras Ranch have agreed to settle this matter in lieu of proceeding to hearing in accordance with the attached Settlement Agreement. The issuance of this Order pursuant to a settlement is authorized by Government Code section 11415.60.

**2.0 BACKGROUND**

Carreras Ranch is the owner of property designated as Sonoma County Assessor's Parcel Number 139-190-006, and has owned the property since at least February 20, 2002. Aerial photographs show that a reservoir is located on this property and has been in existence since at least 1970. On February 23, 2006, Division staff conducted an inspection of the Carreras Ranch property. Division staff observed a reservoir constructed on an unnamed stream tributary to Dry Creek. The reservoir was storing water at the time of inspection, and Carreras Ranch confirmed that the reservoir was used for irrigation of a vineyard. Division staff observed a stream channel existing upstream and downstream of the reservoir. Division staff estimated the capacity of the reservoir to be 12 acre-feet.

Water Code section 1052 provides that the unauthorized diversion or use of water is considered a trespass. The State Water Board may impose administrative civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, subd. (b).) The State Water Board may also issue a Cease and Desist Order in response to an unauthorized diversion of water. (Wat. Code, § 1831.) Water being collected to storage in Carreras Ranch's reservoir that is not pumped from a groundwater well is subject to the State Water Board's permitting authority. The Division has no record of a water right authorizing storage of water in the reservoir from the unnamed stream, nor has Carreras Ranch provided evidence supporting an existing basis of right. Carreras Ranch has collected water to storage and used stored water without a basis of right since at least 2002. On October 27, 2008, Carreras Ranch submitted a water right application for a permit to appropriate water to storage in its reservoir with storage capacity of about 12 acre-feet. Carreras Ranch's application was accepted as Application No. 31730, but no permit has been issued.

On September 30, 2008, the Division sent the ACL Complaint and draft CDO to Carreras Ranch. Carreras Ranch requested a hearing on the ACL Complaint and the draft CDO. The Division and Carreras Ranch have entered into a Settlement Agreement regarding the ACL Complaint and draft CDO. Among other provisions, the Settlement Agreement provides for Carreras Ranch to remit payment of \$5,280 within 10 days of the effective date of the agreement. The Settlement Agreement also provides that (1) Carreras Ranch shall diligently pursue Water Right Application No. 31730, (2) Carreras Ranch shall prevent unauthorized collection of water from the unnamed stream by pumping groundwater into the reservoir if and until a permit is obtained, and (3) acceptance of the Settlement Agreement shall rescind Carreras Ranch's request for hearing on the ACL Complaint and draft CDO. The Settlement Agreement becomes effective immediately upon signature of this Order by the State Water Board Executive Director approving the settlement.

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**ORDER**

**IT IS HEREBY ORDERED THAT** the attached Settlement Agreement between the Division of Water Rights and Carreras Ranch is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.

Approval of the Settlement Agreement between the Division and Carreras Ranch shall not limit the authority of the Executive Director or the Deputy Director for Water Rights, as delegated, to initiate any enforcement actions for any future violations of the Water Code or violations of the terms of the Settlement Agreement.

Dated: \_\_\_\_\_

6-4-09

*Dorothy Rice*  
Dorothy Rice  
Executive Director

Attachment

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Carreras Ranch LLC (Carreras Ranch) acting through Mr. Richard Schluter, Director, and the Division of Water Rights (Division) of the State Water Resources Control Board (State Water Board). The parties enter into this Settlement Agreement because it is their collective desire to settle the civil liability complaint and draft cease and desist order issues related to Carreras Ranch's unauthorized diversions of water to storage to an onstream reservoir located on its property. This Settlement Agreement will be submitted to the Executive Director of the State Water Board for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director of the State Water Board issues an order approving the Settlement Agreement.

### BACKGROUND

The Division and Carreras Ranch stipulate to the following facts:

1. Pursuant to Water Code section 1052, subdivision (a), the "diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass." Subdivision (b) provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. The State Water Board may also issue a cease and desist order in response to a trespass or threat thereof, or a violation of a permit or license term or condition. (Wat. Code, § 1831, subds. (a) & (d).)
2. Carreras Ranch is the current owner of Sonoma County Assessor's Parcel number 139-190-006 and has owned the property since at least February 20, 2002. Aerial photographs show a reservoir is located on this property and has been in existence since at least 1970. Carreras Ranch representatives confirmed that the reservoir was initially constructed in the 1950's and then reconstructed (silt removal) in 1970 and 1971.
3. By letter dated July 5, 2005, the Division notified property owners within the Russian River watershed in Sonoma County whose property contained reservoirs but according to Division records did not have a water right authorizing the storage of water. The letter included a questionnaire about the existing reservoir, source of water, current water usage, and any existing basis of water right, when applicable. Each party receiving the questionnaire was requested to complete and return the form to the Division. The Division's letter also informed recipients of the State Water Board's discretionary authority to initiate enforcement action for any unauthorized diversion without further notice. Carreras Ranch was one of the contacted property owners.
4. Carreras Ranch responded to the Division's contact letter on July 23, 2005, advising that the reservoir on its property is 15 feet deep, holds less than 10 acre-feet of water and is used for stockwatering, recreation, frost protection and irrigation of 22 acres of vineyard. In recent discussions with the Division, Carreras Ranch stated the reservoir capacity is now estimated at approximately 12.9 acre-feet and is currently used for only irrigation of a 22-acre vineyard and recreational purposes. No stockwatering or frost protection uses are made currently.

5. On February 23, 2006, Division staff conducted an inspection of the Carreras Ranch property located at 22700 Walling Road. Division staff observed the reservoir constructed on an unnamed stream tributary to Dry Creek. The reservoir was storing water at the time of inspection and Carreras Ranch confirmed that the reservoir was used for irrigation of vineyard, in addition to other uses. Division staff observed a stream channel existing upstream and downstream of the reservoir. Division staff estimated the capacity of the reservoir to be 12 acre-feet.
6. Division staff determined that the water being collected to storage in Carreras Ranch's reservoir is subject to the State Water Board's water right permitting authority. The Division has no record of a water right authorizing the storage of water in the reservoir and Carreras Ranch did not provide evidence supporting an existing basis of right for use of water other than that pumped from its wells. Carreras Ranch has collected water to storage and used stored water since at least 2002 without a basis of right.
7. By letter dated March 30, 2006, the Division notified Carreras Ranch of the inspection findings and that it should consider corrective actions by submitting an application to appropriate water for the existing reservoir. The letter again notified Carreras Ranch that unauthorized diversions of water are subject to enforcement at the discretion of the State Water Board.
8. On April 26, 2006, Carreras Ranch filed an application seeking a permit to appropriate water. On May 25, 2006, the Division rejected and returned the application identifying that information was either missing or incomplete.
9. Because records of the Division indicate that Carreras Ranch did not resubmit an application to appropriate water by permit, on September 30, 2008, the Assistant Deputy Director for Water Rights issued an Administrative Civil Liability (ACL) Complaint against Carreras Ranch in the amount of \$20,600. The Assistant Deputy Director also issued a Notice of Draft Cease and Desist Order (CDO) on the same day that requires Carreras Ranch to take certain corrective actions within specific time frames.
10. By letter dated October 8, 2008, Carreras Ranch requested a hearing before the State Water Board, as provided by Water Code sections 1055, subdivision (b) and 1834, subdivision (b), on the ACL Complaint and Notice of CDO. Carreras Ranch also submitted a new application to appropriate water by storage with the Division on October 27, 2008, which the Division accepted as Application No. 31730.
11. The Division's Prosecution Team and Carreras Ranch representatives met on November 5, 2008 to discuss potential settlement and to clarify Carreras Ranch's use of groundwater that is pumped into the reservoir on a regular basis to maintain water levels and irrigate the 22-acre vineyard.

### **AGREEMENT**

The Division and Carreras Ranch agree to settle this matter on the following terms:

1. Within 10 days of the effective date of this Settlement Agreement, Carreras Ranch shall remit payment of \$5,280 to the State Water Board. By submittal of this payment, Carreras Ranch acknowledges that it has annually diverted approximately five acre-feet per annum of water to storage in its reservoir from the unnamed stream without authorization. For purposes of this settlement only, the parties agree that water currently stored in excess of

five acre-feet per annum was pumped from the adjacent well. If and until the State Water Board receives new evidence to the contrary, it will presume that the water pumped from Carreras Ranch's well is percolation groundwater and not subject the State Water Board's water right permitting authority.

2. Carreras Ranch shall diligently pursue securing a water right permit pursuant to Application No. 31730. Diligently pursuing a permit includes, but is not limited to, prompt submittal of all necessary filing and annual fees, maps, responses to protests, and information necessary for environmental review under the California Environmental Quality Act (CEQA). The Division will process Application No. 31730 pursuant to applicable provisions of the Water Code and the California Code of Regulations. The Settlement Agreement does not obligate the State Water Board to issue a water right permit on the application. Also, Carreras Ranch retains its rights to discontinue its pursuit of the permit application so long as it renders the reservoir incapable of storing water from the unnamed stream to the satisfaction of the State Water Board. Should Carreras Ranch discontinue its diligent pursuit of Application No. 31730 before rendering the reservoir incapable of storing water from the unnamed stream, it will be in violation of this agreement and subject to additional enforcement for any unauthorized diversion or use of water.
3. Carreras Ranch dismisses its request for hearing regarding the ACL complaint and draft CDO notice on the effective date of this Settlement Agreement. Carreras Ranch also waives its right to request reconsideration by the State Water Board of the Order Approving the Settlement Agreement between the Division of Water Rights and Carreras Ranch, provided no additional requirements are included in that order beyond the requirements of this Settlement Agreement.
4. The Division acknowledges that Carreras Ranch can and has used a groundwater well to irrigate the 22-acre vineyard on its property. The well water is pumped into the reservoir at about 295 gallons per minute commencing on the first irrigation of the vineyard in spring and for each irrigation application, thereafter. According to Carreras Ranch's representative, it drip irrigates its vineyard on average with 12 weekly irrigations per year for an annual use of approximately 3.68 acre-feet. The Division also acknowledges that Carreras Ranch can partially or completely fill and store water in the reservoir with water from its wells.
5. If and until the State Water Board issues a permit pursuant to Application No. 31730, Carreras Ranch agrees to use the groundwater well for irrigation and for maintaining water levels in the reservoir to prevent unauthorized diversions of water to storage from the unnamed stream. Carreras Ranch shall maintain a staff gage in the reservoir and keep readings of the reservoir's water surface elevation at the end of each irrigation season, or on October 1, whichever occurs last. By December 30 of each year, Carreras Ranch shall also pump groundwater from its well to fill the reservoir up to the spillway invert to replace any water withdrawn from storage before runoff from the unnamed stream is collected. Carreras Ranch will maintain records of the staff gage readings and the amount of groundwater pumped and have these records available to the Division upon request.
6. By this Settlement Agreement, the Division agrees to release Carreras Ranch from any further enforcement related to the Carreras Ranch's past unauthorized diversion of water to storage to the subject reservoir located on the Carreras Ranch property (APN 139-190-006) prior to the effective date of this Agreement.

7. Miscellaneous:

- (a) *Independent Judgment.* Each party represents and declares that in executing this settlement agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.
- (b) *Additional Documents.* Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.
- (c) *Entire Agreement.* This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises, or representations, made by the other party other than those contained in this Settlement Agreement.
- (d) *Mutual Agreement.* The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
- (e) *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.
- (f) *Reasonableness of Settlement.* The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- (g) *Section Headings.* The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.
- (h) *Effective Date.* This Settlement Agreement shall become effective immediately on signature of the State Water Board Executive Director's Order Approving the Settlement Agreement.
- (i) *Choice of Law.* This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- (j) *Authorization.* Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
- (k) The terms and conditions of this Agreement are binding on the heirs, successors, and assigns of the parties hereto.

Date: 5/19/09

Carreras Ranch, LLC

By Mary Schlot

Date: 5/20/09

Division of Water Rights

By James W. Kassel  
James W. Kassel  
Assistant Deputy Director for Water Rights