

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

ORDER WR 2012-0014-EXEC

In the Matter of the Diversion and Use of Water by
HIDDEN VALLEY LAKE COMMUNITY SERVICES DISTRICT

**ORDER APPROVING SETTLEMENT AGREEMENT
AND CEASE AND DESIST ORDER**

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a draft Cease and Desist Order (CDO) and an Administrative Civil Liability (ACL) complaint to the Hidden Valley Lake Community Services District (Hidden Valley). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Hidden Valley have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

Hidden Valley holds Water Right License 13527A and Permit 20770B, both of which are conditioned to require supplemental water releases downstream from the points of diversion to augment low flows in Putah Creek from July 15 to October 31 each year, in accordance with the schedule set forth in the License and Permit.

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On April 19, 2012, the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACL") and a Draft Cease and Desist Order ("Draft CDO") against Hidden Valley, alleging that on a number of days in 2010, Hidden Valley continued to divert water while failing to comply with the supplemental water release terms.

On May 6, 2012, Hidden Valley timely requested hearings on the ACL and Draft CDO. At the time of this Settlement Agreement, the State Water Board had not scheduled hearings for the ACL and Draft CDO.

Hidden Valley and the Division Prosecution Team engaged in settlement discussions and mutually agreed to settle the matters identified in the ACL and Draft CDO in lieu of hearings.

3.0 SETTLEMENT AGREEMENT

Hidden Valley and the Division Prosecution Team executed the Settlement Agreement attached hereto. The general terms of the settlement are that Hidden Valley: (1) withdraws its request for hearing on the ACL and CDO, and agrees to the terms for cease and desist as described in the Settlement Agreement and incorporated herein, and (2) is subject to administrative civil liability in the amount of \$8,000, payable within 30 days of issuance of this Order, to be deposited into the Water Rights Fund pursuant to Water Code section 1054, et seq.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and Hidden Valley is approved and is incorporated by reference into this Order.

This Order constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of

this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General 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).)

Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order 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


Thomas Howard
Executive Director

Dated:

OCT 03 2012

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Hidden Valley Lake Community Services District ("Hidden Valley") and the Prosecution Team of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division Prosecution Team") and is executed this 13th day of September, 2012.

RECITALS

1. The State Water Board issued License 13527A and Permit 20770B to Hidden Valley on November 29, 2001. The license and permit both authorize diversion of Putah Creek Underflow from wells for municipal use within portions of the Hidden Valley Lake Subdivision in the Coyote Valley, near Middletown, California. Permit 20770B also authorizes underflow diversion for fish and wildlife preservation within Putah Creek in the vicinity of the United States Geological Survey (USGS) Guenoc gage site, located downstream from the points of diversion. License 13527A and Permit 20770B respectively authorize diversion of 1.5 cubic feet-per-second (cfs) (up to 651 acre-feet per year) and 4.4 cfs (up to 1,649 acre-feet per year) from January 1 to December 31 of each year.
2. The State Water Board specifically conditioned License 13527A and Permit 20770B (at Term 14) to require Hidden Valley to "provide supplemental water downstream from the points of diversion to augment low flows in Putah Creek." The license and permit each provide that "said supplemental water shall be introduced at a point on Putah Creek located approximately North 406,600 feet and East 1,848,100 feet, California Coordinate System, Zone 2, being within the NW ¼ of the NW ¼ of projected Section 28, T11N, R6W, MDB&M, as shown on the map entitled 'Hidden Valley Lake Community Services District – Supplemental Water Release Location'." This point is upstream from the USGS Guenoc gage site.
3. The point of diversion for a senior water right, License 918 (Application 3797), commonly known as the Luchetti water right, diverts water from Putah Creek at a point located between the supplemental release point and the USGS Guenoc gage site. The current location of the Luchetti diversion is documented in Hidden Valley's 2007-2012 annual Coyote Groundwater Basin Monitoring Reports.
4. License 13527A and Term 14 of Permit 20770B each provide that "the point of supplemental water discharge may be changed upon written approval of the Chief, Division of Water Rights." To date, Hidden Valley has not requested a change in the point of supplemental water discharge.
5. License 13527A and Term 14 of Permit 20770B each provide the following supplemental water release schedule:

"For the period July 15 to October 31 of each year, [licensee/permittee] shall make-up the difference between actual discharge, as measured at the site of the

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former Guenoc USGS gaging station on Putah Creek at Guenoc as shown on the 1958 USGS 7.5 minute series quadrangle map for Middletown, California and the median daily discharge listed below:

Median Daily Discharge for Putah Creek at Guenoc, 1954-1975, (all amounts in cfs)

<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
4.7	1.7	0.9	0.6

[Licensee/Permittee] shall not be required to provide supplemental water at a rate greater than two cubic feet per second. [emphasis added]

[Licensee/Permittee] shall maintain a measuring device, acceptable to the Chief of the Division of Water Rights, which is capable of measuring both the instantaneous rate and the total amounts of supplemental water discharged to Putah Creek."

6. To demonstrate compliance with the license and permit terms, Hidden Valley is required to submit an annual groundwater basin monitoring report to the Division of Water Rights ("Division"). Those Reports have been submitted to the Division annually as required.
7. On January 31, 2011, the consultants for Hidden Valley provided Hidden Valley's 2010 Coyote Valley Groundwater Basin Report to the Division. Table 4 within the report lists the average daily discharge at the USGS Guenoc gage for July through October. Table 5 lists the daily supplemental water discharged to Putah Creek by Hidden Valley for the same time period. These tables are reviewed annually by the Division to determine compliance with the supplemental water release schedule.
8. Table 4 indicates that in 2010 for fifteen days in August (14 through 16, and 18, and 21 through 31), the average daily discharge was less than the required 1.7 cfs flow listed in the conditions of the license and Term 14 of the permit. Additionally, Table 4 also indicates that for eight days in September (15 through 17, 19, 20 and 28 through 30), the average daily flow was less than the required 0.9 cfs flow. Hidden Valley diverted water from its wells for municipal use pursuant to the license and permit on each of these days.
9. Table 5 indicates that in 2010 on the same days, Hidden Valley discharged supplemental water to Putah Creek at rates less than the maximum 2 cfs identified in the license and permit.
10. Hidden Valley's obligations and actions on these days can be summarized as follows:

USGS Guenoc Gage Average Flow , cfs	Required Average Flow , cfs	24-hour Deficiency, cfs	24-hour Deficiency, ac-ft	HV CSD average Released Flow , cfs
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8/14/2010	1.6	1.7	0.1	0.20	0.77
8/15/2010	1.5	1.7	0.2	0.40	0.7
8/16/2010	1.6	1.7	0.1	0.20	1.09
8/18/2010	1.6	1.7	0.1	0.20	1.49
8/21/2010	1.5	1.7	0.2	0.40	1.31
8/22/2010	1.3	1.7	0.4	0.79	1.2
8/23/2010	1.2	1.7	0.5	0.99	1.33
8/24/2010	1.4	1.7	0.3	0.60	1.45
8/25/2010	1.4	1.7	0.3	0.60	1.16
8/26/2010	1.5	1.7	0.2	0.40	1.32
8/27/2010	1.4	1.7	0.3	0.60	1.27
8/28/2010	1.2	1.7	0.5	0.99	1.28
8/29/2010	1.3	1.7	0.4	0.79	1.34
8/30/2010	1.2	1.7	0.5	0.99	1.33
8/31/2010	1.1	1.7	0.6	1.19	1.33
9/15/2010	0.75	0.9	0.15	0.30	0.91
9/16/2010	0.56	0.9	0.34	0.67	1.36
9/17/2010	0.71	0.9	0.19	0.38	1.39
9/19/2010	0.75	0.9	0.15	0.30	1.13
9/20/2010	0.7	0.9	0.2	0.40	1.28
9/23/2010	0.85	0.9	0.05	0.10	1.34
9/29/2010	0.81	0.9	0.09	0.18	1.17
9/30/2010	0.76	0.9	0.14	0.28	1.25

11. Hidden Valley's 2010 Coyote Valley Groundwater Basin Monitoring report states that Luchetti's diversion from the pool immediately upstream of the Guenoc gage as a reason for the daily fluctuations in the recorded streamflow which makes it difficult to maintain the minimum flow requirement. Hidden Valley has indicated in each of its annual reports that the diversion of the supplemental water by Luchetti causes an immediate reduction in the streamflow as recorded at the USGS Guenoc gage. Division staff warned Hidden Valley in an April 2010 letter that such outside influences did not absolve Hidden Valley's requirement to release supplemental water (up to 2 cfs) in order to maintain flows at the Guenoc gage.
12. In its annual Coyote Valley Groundwater Basin Monitoring reports, Hidden Valley stated that the diversion of the supplemental water by Luchetti causes an immediate reduction in the streamflow as recorded at the USGS Guenoc gage. The location of the Luchetti diversion is documented in the 2007-2011 reports. Aquatic Ecologist Mike Podlech has conducted twice yearly aquatic habitat assessments of the Putah Creek channel to evaluate the condition of the channel and the supplemental water program. The habitat assessments were conducted prior to and following the supplemental water season. The "Putah Creek Aquatic Habitat Assessments" for 2007 through 2011 were provided to the Division in the annual reports. The Assessments conclude that there appears to be no tangible ecological benefit of the supplemental water program.
13. On April 19, 2012, the Division Prosecution Team issued an Administrative Civil Liability Complaint ("ACLC") and a Draft Cease and Desist Order ("Draft CDO")

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against Hidden Valley, alleging that Hidden Valley continued to divert water while failing to comply with the supplemental water release terms of their license and permit, and that continued diversion of water while in violation of a license or permit term requiring supplemental water releases constitutes an unauthorized diversion and a trespass against the State of California in violation of California Water Code section 1052.

14. On May 6, 2012, Hidden Valley timely requested hearings on the ACLC and Draft CDO. At the time of this Settlement Agreement, the State Water Board has not scheduled hearings for the ACLC and Draft CDO.
15. In lieu of hearings on the matter, Hidden Valley and the Division Prosecution Team agree to settle the matters identified in the ACLC and Draft CDO through this Settlement Agreement.
16. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Hidden Valley and the Division Prosecution Team do hereby agree to settle the ACLC and Draft CDO as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Administrative Civil Liability.** Hidden Valley shall be subject to administrative civil liability in the amount of \$8,000. This amount includes the estimated costs incurred by State Water Board staff to investigate and prosecute the administrative civil liability and cease and desist enforcement actions that are the subject of this Settlement Agreement.
4. **Administrative Civil Liability Payment.** Within 30 days following the State Water Board Executive Director's approval of this Settlement Agreement, Hidden Valley shall pay to the State Water Board \$8,000. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water code sections 1054, et seq.

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5. **Satisfaction of Administrative Civil Liability Complaint.** Hidden Valley's full payment under paragraph 4 will be a complete and final satisfaction of the administrative civil liability described in the ACLC, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLC.
6. **Draft Cease and Desist Order.** Hidden Valley and the Division Prosecution Team agree to settle the Draft CDO as follows:
 - a. For the July 15 to October 31 period of 2012, 2013 and 2014, Hidden Valley shall submit weekly reports to the Division detailing: Hidden Valley's daily diversions under License 13527A and Permit 2077B, the amount of its daily supplemental release flows and the reported average daily flow at the USGS Guenoc gage. The weekly reports may be provided by email or made available to the Division on a website.
 - b. Hidden Valley stipulates that it diverts water daily under its permit and/or license from July 15 through October 31. Therefore, any failure to comply with the supplemental water release required by conditions of the permit and license from July 15 through October 31 of each year will be treated as a violation of a cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825), and shall be subject to penalties as provided by Water Code section 1845.
7. **Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and this Order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
8. **Hearing.** Upon execution of this Settlement Agreement by both parties, Hidden Valley and the Division Prosecution Team shall request that the hearing in this matter be indefinitely postponed pending approval of this Settlement Agreement by the Executive Director. Upon approval of this Settlement Agreement by the State Water Board's Executive Director, Hidden Valley's request for hearing on the ACLC and Draft CDO is withdrawn.
9. **Waiver of Reconsideration.** Hidden Valley waives its right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
10. **Successors.** This Settlement Agreement is binding on any successors or assigns of Hidden Valley and the State Water Board.

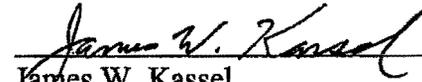
Hidden Valley Settlement Agreement

11. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
12. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board. This Settlement Agreement also shall not be construed to be an admission by Hidden Valley of the liability or of any of the allegations set forth in the Draft CDO or ACLC. Hidden Valley and the Division's Prosecution Team disagree on the State Water Board's authority to issue an administrative civil liability complaint for violation of the permit and license terms identified herein.
13. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
14. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes 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.
15. **Mutual Agreement.** The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
16. **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.
17. **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.
18. **Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
19. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.

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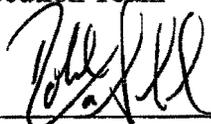
- 20. Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- 21. Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
- 22. State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Hidden Valley, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Hidden Valley's directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

Dated: September 13, 2012



James W. Kassel
Assistant Deputy Director
State Water Board, Division of Water Rights
Prosecution Team

Dated: September 4, 2012



Roland Sanford, Manager
Hidden Valley Lake CSD