

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-00XX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion of Water by
Woods Irrigation Company

SOURCE: Middle River
COUNTY: San Joaquin County

YOU ARE HEREBY GIVEN NOTICE THAT:

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Woods Irrigation Company (Woods) to cease and desist its unauthorized diversion, collection and use of water in violation of section 1052 of the Water Code.

Woods is alleged to have violated or is threatening to violate Water Code section 1831, which provides:

The 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 Woods 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 CDO 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. On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta. The Workplan also identified that, if and when illegal diversions were found, those diversions would be subject to enforcement action and directed to cease diversions, obtain a legal water right, or pursue a contract for water supplies with Department of Water Resources, United States Bureau of Reclamation, or another party.
2. On February 18, 2009, the Division mailed letters to property owners on Roberts and Union Islands within the Delta. Based on reviews of U.S. Geological Survey maps, aerial photography, and San Joaquin County Assessors Maps, the Division sent letters to each property owner that was determined to have been irrigating in the last few years, and for whom the Division has no record of any basis of right for water diversion. The Division requested that each property owner either: inform the Division within 60 days as to the basis of their right by filing a Statement of Water Diversion and Use with appropriate evidence; define a contractual basis for diversion of water; or cease diversion of water until a basis of right is secured. The letter also informed the contacted property owners that a failure to respond may result in enforcement action.
3. On March 4, 2009, Woods submitted evidence of a 1911 non-statutory appropriative water right to divert water from Middle River to lands within and upon Roberts Island at a rate of up to 77.7 cubic feet per second (cfs).
4. On April 20, 2009, Division staff requested that Woods provide delineation of the area served and the amount of water delivered under the pre-1914 water right. The Division received correspondence from Woods dated June 16, 2009, but it did not include the requested place of use map nor the diversion amount information.
5. On July 30, 2009, Division staff conducted an onsite inspection of the Woods facility and met with Woods' staff. Following that meeting, Division staff performed a subsequent inspection of the Roberts Island area on August 4, 2009, during which measurement of the flow in Woods' two main irrigation canals were made. The combined canal flow measurements totaled approximately 90 cfs. This rate exceeds the maximum diversion rate of 77.7 cfs claimed in Woods' pre- 1914 water right.
6. On October 22, 2009, the Division requested that Woods present within 30 days a list of riparian parcels that it serves on behalf of the property owners through its diversion works. Woods was again requested in accordance with our letter of February 18, 2009 to complete and submit a Statement of Water Diversion and Use for its point(s) of diversion which serve its pre-1914 claim customers, and for any claimed riparian rights of property owners within the Woods service area.
7. As of December 10, 2009, Woods has not submitted the requested Statement of Water Diversion and Use or information supporting riparian diversions requested by the Division that would identify which of the parcels are exercising either riparian rights or pre-1914 appropriative right, nor has the Division received justification for the diversion in excess of 77.7 cfs.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Woods cease and desist from diverting water in excess of 77.7 cfs at any time, until compliance with the following is accepted and approved by the Assistant Deputy Director for Water Rights:

1. Woods shall within 60 days of the date of this order, file a Statement of Water Diversion and Use for each of its points of diversion, consistent with the requirements of Water Code section 5103, paragraphs (a) through (i). The Statement(s) shall provide sufficient evidence supporting a pre-1914 appropriative right and any other type of right being exercised at Woods' diversion(s).
2. Woods shall within 60 days of the date of this Order, submit a list of all properties and owners receiving water delivered by Woods' diversion system, and the basis of right for any properties receiving water either outside Woods' service area, or in excess of Woods' claimed pre-1914 right. If no basis of right can be established acceptable to the Assistant Deputy Director for Water Rights, Woods shall immediately cease delivery of water to that property.
3. Woods shall within 120 days of the date of this order, provide a Monitoring Plan for approval by the Assistant Deputy Director for Water Rights that includes:
 - (1) A time schedule for the development and installation of measuring devices (1) at the points of diversion for the Woods' system; (2) on the main supply canals above the point at which fresh water discharges into the drainage canals; and (3) at all points of discharge from the Woods' system into the Delta waters. The plan shall include, at minimum, provisions for monthly record keeping of the amounts diverted from Delta sources, amounts delivered to users, acreage and crops served, and amounts spilled back to Delta waters.
 - (2) The measures taken to ensure reasonable beneficial diversion and use of water by Woods' users, and for the reduction of discharges of unused fresh water back into Delta waters. The plan shall consider the installation of meters at all points of delivery to water users.
 - (3) An operator's manual, or flow charts, that identifies the process taken by Woods' employees to routinely measure and record diversions at Woods' pump stations, discharge systems, and if necessary, users' meters, and the maintenance and calibration schedule of all measuring devices used to comply with this order. The operator's manual should be available to any Woods' employees that are trained to operate the Woods irrigation system.

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 (\$1,000) 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).) 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

James W. Kassel
Assistant Deputy Director for Water Rights

Date: