

State Water Resources Control Board

SEP 18 2012

In Reply Refer to:
JWetzel:ENF00130

Mr. Douglas K. Ivey
3330 Paradise Drive
Tiburon, CA 94920

Dear Mr. Ivey:

ENFORCEMENT ACTION ENF00130 – FINAL CEASE AND DESIST ORDER AND ADMINISTRATIVE CIVIL LIABILITY REGARDING UNAUTHORIZED DIVERSION OF WATER WITHIN THE NAPA WATERSHED IN NAPA COUNTY

Enclosed is a final Cease and Desist Order WR 2012-0021-DWR (CDO) and an Administrative Civil Liability Order WR 2012-0022-DWR (ACL) issued to Douglas K. Ivey (Ivey) that I have issued in accordance with California Water Code sections 1831 and 1052 et seq. and the authority delegated to me by State Water Board Resolution 2012-0029. Notice and opportunity to request a hearing on the draft CDO and ACL Complaint was provided to Ivey by letter dated March 23, 2012.

A request for a hearing on the draft CDO and the ACL Complaint was not made, nor was payment submitted. Therefore, Ivey should take immediate action to:

- (1) Remit full payment of \$8,000 within 30 days from the date of the ACL Order; and
- (2) File a Statement of Water Diversion and Use, as required by California Water Code sections 5100-5107; and
- (3) Begin complying with the provisions of the final CDO within 30 days by submitting one of the following (in accordance with the provisions of the final CDO): (a) evidence that a registration form for the registration of a Small Domestic Use or Livestock Stockpond has been submitted to the Department of Fish and Game; (b) an appropriate water right application; or (c) a letter of intent not to pursue a water right permit and commit to develop and submit a plan to render the reservoir incapable of storing water subject to the State Water Board's authority.

If you have any questions concerning this matter or there are facts or circumstances that you would like to discuss, please contact one of the following: Mr. John O'Hagan, Manager, Enforcement Section, at (916) 341-5368 or via e-mail at johagan@waterboards.ca.gov; or Ms. Yvonne West, Senior Staff Counsel, Office of Enforcement, at (916) 322-3626 or via e-mail at YWest@waterboards.ca.gov.

Sincerely,

James W. Kassel
James W. Kassel, Assistant Deputy Director
Division of Water Rights

Mr. Douglas K. Ivey
3330 Paradise Drive
Tiburon, CA 94920

Enclosures:

- Final Cease and Desist Order
- Administrative Civil Liability
- Exhibit A: Aerial Photograph
- Exhibit B: USGS Topographical Map

ec: Andy Sawyer, Assistant Chief Counsel
State Water Resources Control Board
Office of Chief Counsel
(with enclosures)

Yvonne West, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
(with enclosures)

- (1) Remit full payment of \$8,000 within 30 days from the date of the final CDO.
- (2) File a Statement of Water Diversion and Use, as required by California Water Code section 8100-8107, and
- (3) Begin complying with the provisions of the final CDO within 30 days by submitting one of the following (in accordance with the provisions of the final CDO): (a) evidence that a registration form for the registration of a Small Domestic Use or Livestock Stocking has been submitted to the Department of Fish and Game; (b) an appropriate water right application; or (c) a letter of intent not to pursue a water right permit and commit to develop and submit a plan to control the reservoir incapable of storing water subject to the State Water Board's authority.

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

DIVISION OF WATER RIGHTS
ORDER WR 2012-0022-DWR

ADMINISTRATIVE CIVIL LIABILITY

In the Matter of Unauthorized Diversion and
Failure to File a Statement of Water Diversion and Use by

Douglas K. Ivey

SOURCE: Unnamed Stream tributary to Milliken Creek thence Napa River

COUNTY: Napa

Assistant Deputy Director James W. Kassel, Division of Water Rights, through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability (ACL) Order against Douglas K. Ivey (Ivey). On March 23, 2012 the Division of Water Rights issued an ACL Complaint against Ivey (Exhibit A, attached), which is hereby incorporated by reference as part of this Order.

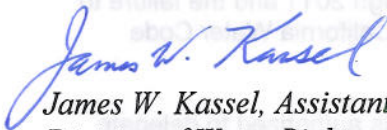
THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. On March 23, 2012, the Assistant Deputy Director of the Division of Water Rights issued an ACL Complaint against Ivey, which proposes to collect \$8,000 from Ivey for the alleged unauthorized diversion, storage, and use of water by Ivey since at least 2004 through 2011 and the failure to file the required Statement of Water Diversion and Use, pursuant to California Water Code sections 1052(b) and 5107(c)(1) respectively.
2. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Resources Control Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested in the period provided by California Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights.
3. No hearing was requested within 20 days of issuance of the ACL Complaint in accordance with California Water Code section 1055(b). California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order for \$8,000, the amount proposed in the March 23, 2012 ACL Complaint. Accordingly, the Assistant Deputy Director of Water Rights is authorized to issue this final ACL Order imposing liability.

IT IS HEREBY ORDERED THAT:

1. The ACL Complaint attached hereto as Exhibit A is fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, have considered all relevant circumstances, including but not limited to those specifically identified in the ACL Complaint, as required by California Water Code section 1055.3, in determining that Ivey shall be assessed the civil liability of \$8,000.
3. Ivey shall remit, within 30 days of the date of this Order, a cashier's check or money order payment of the full penalty of \$8,000 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
4. Fulfillment of Ivey's obligations under this Order constitutes full and final satisfaction of any and all liability for each of the alleged violations specifically identified in this Order. It does not alleviate Ivey's requirement to submit an Initial Statement of Water Diversion and Use to the State Water Board, Division of Water Rights nor Ivey's obligation to comply with Cease and Desist Order No. 0021 issued to Ivey in conjunction with this Order. The State Water Board reserves the right to take further future enforcement for any future violations.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if Ivey fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel, Assistant Deputy Director
Division of Water Rights*

Dated: **SEP 18 2012**