

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

DIVISION OF WATER RIGHTS

ORDER WR 2024-0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion by

GARY SPARLIN

SOURCE: Unnamed Stream tributary to Little Cow Creek

COUNTY: Shasta

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code (Water Code) section 1831, to issue a Cease and Desist Order (CDO), requiring Gary Sparlin (Diverter), to cease and desist from an ongoing, or a threatened, violation of Water Code section 1052.

Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate the prohibition set forth in section 1052 against the unauthorized diversion or use of water, subject to Division 2 of the Water Code.

On April 26, 2024, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division), provided notice of the CDO against the Diverter for the violation and/or threatened violation of the prohibition against unauthorized diversion and use of water.

Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of Cease and Desist Order, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831, et seq. On April 20, 2023, this authority was redelegated to the Assistant Deputy Director for the Permitting and Enforcement branch of the Division of Water Rights.

BACKGROUND INFORMATION

1. The Diverter owns an off-stream reservoir, located on Shasta County Assessor's Parcel Number [REDACTED], which is their primary residence. The reservoir is filled with water from an unnamed natural stream channel tributary to Little Cow Creek (Unnamed Stream). The Unnamed Stream flows through the Diverter's property. The water rights in the Little Cow Creek watershed (including the Unnamed Stream) have been fully adjudicated as described in the North Cow Creek Judgment and Decree No. 5804 (Decree) issued in 1932 by the Superior Court of the State of California for the County of Shasta.
2. The reservoir is filled via a diversion ditch that connects the reservoir to the Unnamed Stream. When the reservoir is filled, it spills into another diversion ditch, and is conveyed back to the Unnamed Stream. During the winter season, the Unnamed Stream has natural surface flow, and during the Decree season (May 1 through October 31) the water in the Unnamed Stream collects excess tailwater from upstream irrigation occurring on an upstream property which receives water under a Decree water right.
3. The Diverter is not part of the Decree nor does the Diverter hold any appropriative water rights permits or licenses issued by the Board for diversion and use of water subject to appropriation from the Cow Creek watershed. Furthermore, the Diverter has not filed a Statement of Water Diversion and Use claiming either a riparian right to the Unnamed Stream, or a pre-1914 appropriative water right to appropriate water from the Unnamed Stream.
4. In July 2014, the Division started receiving water right complaints from downstream neighbors of the Diverter, alleging that, at times, all the water in the Unnamed Stream was being diverted by the Diverter and that the Diverter did not have an appropriative water right or Decree water rights for their diversion.

INVESTIGATION

5. Division staff conducted inspections of the Diverter's property on October 25, 2014, October 15, 2015, and October 29, 2015. Ira Alexander, Watermaster for the Decree, and Sean Pike, Watermaster Supervisor were both present for the October 15, 2015 site visit.
6. During the site visit, Division staff confirmed that there is an unauthorized reservoir on the Diverter's property holding approximately 7 acre-feet of water for wildlife enhancement and aesthetic purposes. filled via a diversion structure that was placed in the Unnamed Stream. This diversion structure diverts part of the flow of the Unnamed Stream into a manmade ditch, that flows easterly across the Diverter's property, and into the Reservoir. The reservoir is equipped with a spillway that allows water to flow back into the Unnamed Stream.

7. During the site visit, the Watermaster explained their understanding of the Decree. The Watermaster claimed that they allowed the Diverter to divert water from the Unnamed Stream for the purpose of conveying water across the Diverter's property to a Mr. Hugh Stewart, a neighbor who was believed to be entitled to water under the Decree.
8. In a conference call on November 17, 2015, Division staff notified the Watermaster that according to historical watermaster reports, Mr. Stewart's predecessor-in-interest transferred their water rights to another neighbor in 1948, thereby severing water rights from that property. Thus, Mr. Stewart's property is not entitled to any water that flows through the Unnamed Stream.
9. In a letter dated February 29, 2016, the Watermaster informed the Diverter and neighboring properties that they had confirmed Division staff's findings: Mr. Stewart was not entitled to any water from the Unnamed Stream, and that there is no legal basis for the diversion structure located on the Sparlin's property and informed the parties that the Watermaster would no longer ensure water flows to the Stewart property. The watermaster also informed the parties that they should take steps to alter the diversion structure located in the Unnamed Stream to ensure that the water remains in the natural channel of the Unnamed Stream.
10. By letter dated May 3, 2016, Division staff notified the Diverter that their off-stream reservoir is an unauthorized diversion and provided the following list of findings:
 - a. Diverter has no basis of right to divert water during the Decree season - May 1 through October 31;
 - b. Outside of the Decree season, the Diverter may have a riparian claim to the natural flow of the stream;
 - c. A riparian right does not allow the Diverter to store water in the reservoir and that storage of water in the reservoir requires an appropriative water right;
 - d. Effective immediately, Diverter shall remove all diversion structures from the stream channel; and
 - e. Diverter should consult with the Department of Fish and Wildlife before removing the diversion structures on the stream channel or initiating any changes in operation of the reservoir to prevent public trust resource impacts.
11. On October 7, 2021, Division staff issued a Report of Investigation to the Complainants and to the Diverter with a cover letter including the findings of the report.
12. On May 18, 2022 and again on August 31, 2023, Division staff sent a certified letter to the Diverter explaining that the reservoir was still unauthorized and requires an appropriative water right. According to United States Postal Service records, the letters were not delivered.

13. On October 6, 2023, Division staff used a process server to deliver a Notice of Violation (NOV) to the Diverter with enclosures of the May 18, 2022 letter and the August 31, 2023 letter.
14. By phone on November 9, 2023, Division staff spoke with the Diverter and confirmed that he received the October 6, 2023 Notice of Violation letter. Division staff further explained to the Diverter that he is required to obtain an appropriative water right for the reservoir. Diverter stated he would submit an application for a Small Domestic Use Registration "in the next couple weeks".
15. The Division's October 6, 2023 NOV informed the Diverter that he is required to apply for an appropriative water right or cease unauthorized diversions immediately. To date, Diverter has not taken the corrective actions detailed in the Division's NOV.
16. The Diverter has diverted and used water from the unnamed stream to the off-stream reservoir with no basis of right for the purposes of aesthetics and wildlife enhancement. This diversion constitutes either a violation or a threatened violation of the prohibition against unauthorized diversion or use of water under Water Code section 1052, which states that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 of the Water Code is a trespass.

THE STATE WATER RESOURCES CONTROL BOARD THEREFORE ORDERS, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Diverter shall immediately cease and desist any diversion and use of water from the unnamed stream tributary to Little Cow Creek.
2. Diversion and use shall continue to cease until a water right is established.
3. Within 30 days of this Order, the Diverter must apply for an appropriative water right. Only after the appropriative water right is obtained can the diversion continue.
4. If the Diverter fails to meet the requirements of the application process, then the Diverter must remove the diversion structure after consulting and adhering to Department of Fish and Wildlife requirements.

Notice and Opportunity for Hearing

This draft CDO serves as notice pursuant to Water Code section 1834 that a violation is occurring or threatening to occur. You may request a hearing not later than 20 days after receipt. Unless a written request for a hearing is delivered to or received by mail by the State Water Board within 20 days after receipt of the notice, the State Water Board may adopt the CDO.

Consequences of Non-Compliance

In the event the Diverter fails to comply with the requirements of this Order, they shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO may be referred to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a):

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the 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.

Failure to comply with this Order may subject Diverter to the imposition of an administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the violations occur during a non-drought year. In a period for which the Governor has issued a proclamation of state of emergency based on drought conditions, Diverter is subject to the imposition of administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occur.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board or other entities from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, administrative civil liability under Water Code section 1846, the authority to bring enforcement against the Diverter for infractions under Water Code section 1058.5, subdivision (d), and Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse the Diverter from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse the Diverter from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken by Diverter to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: April 26, 2024

DRAFT