

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application 29865

Ron Beller and Jennifer Moses

ORDER CANCELING WATER RIGHT APPLICATION

SOURCE: Unnamed Stream tributary to Montgomery Creek and Unnamed Stream tributary to Dry Creek

COUNTY: Napa

WHEREAS:

1. Jean-Noel and Marketta Fourmeaux du Sartel filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on November 1, 1990, requesting the right to divert 50 acre-feet from (1) an Unnamed Spring tributary to Montgomery Creek, (2) an Unnamed Stream tributary to Montgomery Creek thence Dry Creek and (3) an Unnamed Stream tributary to Dry Creek thence Napa River.
2. Application 29865 (A029865) was accepted on November 26, 1990 and noticed on December 13, 1991. Five protests were received and accepted by the Division. Protests from Trefethen Vineyards and Wine World Estate Company have since been resolved, while protests from Charles and Margaret Rosenquist, Edy and David Allen, and George and Carmen Wyllie have yet to be resolved. On February 18, 2000 A029865 was assigned to Jackson Family Estate I, LLC. Subsequently, on October 7, 2003 the Division was notified that ownership of the A029865 had been transferred to Pine Lake Ranch LLC. On November 17, 2010 ownership of A029865 changed to Ron Beller and Jennifer Moses (Applicant).
3. Due to lack of progress, by letter dated July 6, 2012 the Division terminated a Memorandum of Understanding (MOU) for preparation of an environmental document. Determination of lack of progress was based on information in the Division's files. On January 9, 2008, the Division received a work product developed pursuant to the MOU that was deemed unacceptable by Division staff. Since that time, no revised or additional work products have been received, despite inquiries by Division staff on November 4, 2009 and February 28, 2011. Pursuant to Water Code section 1275, the Division requested that within 45 days the Applicant submit the following information: 1) notification of intent to continue processing application 29865; 2) identification of the consultants or persons that will prepare the required environmental and public trust documents and a description of their qualifications; and, 3) three originals of a new MOU fully completed and signed, except for the Deputy Director for Water Rights signature and designation of the Division's MOU manager. To date, the Division has not received any of the requested information.

4. By letter dated September 25, 2012, the Division requested that Applicant submit in writing an indication that the Applicant is still interested in pursuing the application and to submit the previously requested information. The Division allowed 30 days for Applicant to respond. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received any of the required information.
5. The Applicant, after due notice, has failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
6. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to cancel applications. (Resolution No. 2012-0029, section 4.5.2.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT APPLICATION 29865 IS HEREBY CANCELED.

Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JAMES W. KASSEL FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: NOV 13 2012