

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2003 - 0005 - EXEC

In the Matter of
Administrative Civil Liability Complaint No. 262.5-32
FETZER VINEYARDS

SOURCE: Unnamed Stream and McNab Creek

COUNTY: Mendocino

**ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY
PURSUANT TO SETTLEMENT AGREEMENT**

BY THE EXECUTIVE DIRECTOR

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (SWRCB) following issuance of Administrative Civil Liability Complaint No. 262.5-32 (ACL Complaint), on November 5, 2002, against Fetzer Vineyards. The Division of Water Rights (Division) and Fetzer Vineyards have agreed to settle this matter in lieu of proceeding to hearing on disputed allegations in the ACL Complaint. Both parties acknowledge that a trespass occurred and Fetzer Vineyards will remit payment of Six Thousand Dollars (\$6,000) to the Division, the amount of liability assessed in the ACL Complaint. The issuance of an order or decision pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

License 3646 (Application 12232) authorizes the diversion of water to storage from McNab Creek tributary to the Russian River in Mendocino County. The license authorizes the collection to storage of 96.5 acre-feet per annum (afa) at McNab Reservoir from November 1 of each year

to April 1 of the succeeding year for irrigation of 50 acres. On April 23, 2002, Division staff conducted a compliance inspection of the project authorized by License 3646 held by Fetzer Vineyards. During the inspection, the Division found a second reservoir constructed on an Unnamed Stream tributary to McNab Creek storing water without a known basis of right.

Pursuant to Water Code section 1052, subdivision (b), the Chief Deputy Director issued ACL Complaint No. 262-32 against Fetzer Vineyards on November 5, 2002. In the Complaint, the Deputy Director alleges that Fetzer Vineyards committed a trespass in violation of Water Code section 1052, subdivision (a), which provides:

“The diversion or use of water subject to this division other than as authorized in this division is a trespass.”

The ACL Complaint contains a number of other allegations, some of which Fetzer Vineyards disputes. Specifically, Fetzer Vineyards disputes the allegation that: (1) McNab Reservoir holds more water than authorized under License 3646; (2) McNab Creek supports steelhead trout; and (3) the Division’s estimate of the capacity of the unauthorized reservoir. In addition, Fetzer Vineyards takes issue with the statement that “since taking ownership of the property, Fetzer Vineyards has failed to take any corrective action.” In regard to corrective actions, the Division acknowledges that after the ACL was issued, Fetzer Vineyards took several actions to bring it into substantial compliance with the directives of the Chief Deputy Director’s November 7, 2002 letter conveying the ACL Complaint.

3.0 SETTLEMENT AGREEMENT

Both the Division and Fetzer Vineyards have agreed on an alternative resolution of this matter. Specifically, Fetzer Vineyards acknowledges that a trespass occurred and agrees to pay the amount of liability assessed in the ACL (\$6,000) within ten days of the issuance of this order.

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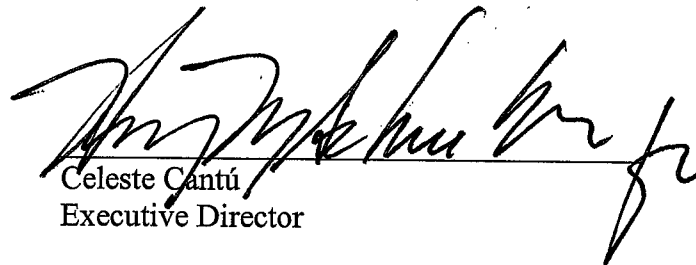
The Division and Fetzer Vineyards agree to settlement, in lieu of proceeding to hearing on other issues raised by the allegations in the ACL Complaint to which the parties cannot agree.

ORDER

IT IS HEREBY ORDERED THAT:

1. The settlement agreement between the Division of Water Rights and Fetzer Vineyards is approved.
2. Fetzer Vineyards shall make full payment of the administrative civil liability amount of \$6,000 within ten days of the issuance of this order.
3. The ACL Complaint No. 262.5-32 will be resolved upon full payment by Fetzer Vineyards without a hearing on the remaining disputed allegations of the ACL Complaint.
4. Approval of the settlement agreement between the Division of Water Rights and Fetzer Vineyards shall not limit the authority of the Executive Director or the Chief of the Division of Water Rights, as delegated, to initiate any future enforcement actions for any unauthorized diversions, violations of terms and conditions of the existing license, or for any failure to diligently pursue a permit for the unauthorized reservoir or violations of final orders pursuant to change petitions that are filed with the Division of Water Rights.

Dated: FEB 26 2003



Celeste Cantú
Executive Director