

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004 - 0001 - EXEC

In the Matter of
Administrative Civil Liability Complaint No. 262.5-33
ROBERT O. VALENTINE

SOURCE: Unnamed Stream tributary to Edwards Creek thence Russian River
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. 262.5-33 (ACL Complaint), on April 23, 2003, against Robert O. Valentine (Valentine or Licensee). The SWRCB's Division of Water Rights (Division) and Valentine have agreed to settle this matter in lieu of proceeding to hearing on the ACL Complaint. Both parties acknowledge that a trespass occurred and Valentine will remit payment of three thousand dollars (\$3,000) to the Division, the amount of liability assessed in the ACL Complaint. In addition, the parties have agreed on a schedule of actions to bring the project into compliance with the Water Code and Valentine's license and permits. The issuance of an order or decision pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

Valentine is the owner of License 5175 and Permits 17266A and 17266B (Applications 16334, 24790A and 24790B). License 5175 authorizes direct diversion of Russian River water at an average rate of 0.025 cubic foot per second (cfs) from May 1 to October 1 of each year for irrigation of 6 acres. Permit 17266A authorizes collection of 60 acre-feet (af) to offstream storage at a maximum rate of 1.2 cfs from Edwards Creek from January 1 to May 30 of each year

for frost protection and irrigation of 88 acres. Permit 17266B authorizes a maximum direct diversion rate of 1.2 cfs from Edwards Creek for frost protection of 88 acres to be diverted from March 15 to May 30 of each year. The total amount taken under Permit 17266A and 17266B cannot exceed 77 af per year. Both permits specify bypass flows for Edwards Creek.

By 1992, construction of the offstream reservoir covered by Permit 17266A had been completed; however, the reservoir leaked and did not hold water. On June 14, 1991, the Division received petitions for extension of time to establish full beneficial use of water under Permits 17266A and 17266B. The SWRCB approved these petitions by orders dated March 16, 1992. The complete application of the water to the proposed use was extended to December 31, 1997, for Permit 17266A, and to December 31, 2002, for Permit 17266B. On April 10, 2002, Valentine requested revocation of both Permits 17266A and 17266B, but later rescinded this request by letter dated April 19, 2002.

On April 16, 2002, Division staff conducted a compliance inspection of Valentine's property served by License 5175 and by Permits 17266A and 17266B. Division staff found that Valentine irrigates 93 acres of vineyard with water diverted from the Russian River. License 5175 authorizes irrigation of 6 acres, and the remaining 87 acres are irrigated from the Russian River without a known basis of right. Valentine had removed the offstream reservoir covered by Permit 17266A and planted vineyard in that reservoir site. Valentine had also constructed a new unpermitted reservoir on an unnamed stream tributary to Edwards Creek. This reservoir is located within the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 23, Township 12 North, Range 11 West, Mount Diablo Base and Meridian. At the time of visit, Division staff found this reservoir full and spilling with two feet of flashboards in the spillway. Division staff estimated the reservoir capacity to be 30 af based on measurements of the surface area and dam height. Division staff was informed that water stored in this reservoir was used to irrigate 3.5 acres of existing vineyard located north of Edwards Creek and outside the place of use covered by Valentine's license and permits.

Pursuant to Water Code section 1052, subdivision (b), the Chief Deputy Director of the SWRCB issued ACL Complaint No. 262.5-33 against Valentine on April 23, 2003. In the ACL Complaint, the Chief Deputy Director alleges that Valentine 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.”

By letter dated June 23, 2003, Valentine requested a hearing before the SWRCB as provided for in Water Code section 1055, subdivision (b).

3.0 SETTLEMENT AGREEMENT

Both the Division and Valentine agree to settlement, in lieu of proceeding to hearing on the ACL Complaint. Specifically, Valentine acknowledges that a trespass occurred and agrees to pay the amount of liability assessed in the ACL Complaint (\$3,000). In addition, the Division and Valentine agree upon the following schedule to bring the project into compliance with the Water Code.

- A. To initiate actions to correct the unauthorized storage of water at the reservoir constructed on the unnamed stream, Valentine shall within 90 days from the date of this order file with the SWRCB either: (1) an application to appropriate water by permit for storage; or (2) petitions for extension of time and change in point of diversion and place of storage of Permit 17266A. Any application or petitions must be accompanied with the applicable SWRCB and Department of Fish and Game fees. In the alternative, Valentine shall within 90 days from the date of this order, submit a plan with timetable to render the reservoir incapable of storing water. Within 3 months following notice of approval of the plan by the Chief of the Division of Water Rights, Valentine shall complete all work necessary to render the reservoir incapable of storing water.
- B. If Valentine pursues options 1 or 2 above, Valentine shall file a petition for change in place of use under the permits to cover any acreage served by the reservoir. Valentine shall proceed with due diligence on all petitions or the application, including timely submittal of all fees, documents or other materials requested by the Division that are necessary for the processing of a new permit or change petition.

- C. Because the time to complete beneficial use of water under Permits 17266A and 17266B elapsed on December 31, 1997, and December 31, 2002, respectively, Valentine must submit and diligently pursue petitions for extension of time for the permits if he opts to file change petitions for the permits. Valentine shall request revocation if petitions for extensions are not filed.
- D. Within 90 days of the date this order, Valentine shall provide evidence supporting a basis of right to irrigate the acreage served from the Russian River that is not covered by License 5175. If a riparian right is claimed, as previously claimed by Statement of Water Diversion and Use No. 13696, the evidence shall document by chain of title or deed that riparian status was reserved for the Mendocino County Assessor's Parcels that are not contiguous to the Russian River. If the basis of right is to be water supplied by the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District), Valentine shall support this claim with written confirmation from the District.
- E. Within 90 days of the date of this order, Valentine shall install an in-line flow meter at the Russian River point of diversion covered by License 5175. Following installation, Valentine shall calibrate and maintain the flow meter and maintain monthly records of the amounts diverted at this point of diversion. Valentine shall submit records of diversions to the Division, upon request.

ORDER

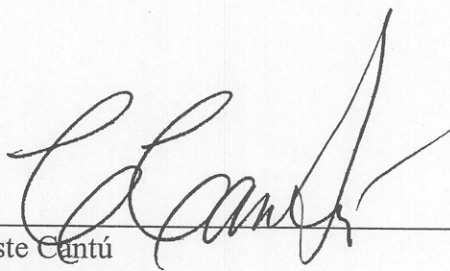
IT IS HEREBY ORDERED THAT:

1. The settlement agreement between the Division of Water Rights and Robert O. Valentine described above is approved and incorporated by reference as conditions of this order. Robert O. Valentine shall comply with the terms of the settlement agreement. This order applies to any successor in interest to the property in question, including future owners of the water right license and permits, and place of use. Robert O. Valentine shall notify the Division of any change in ownership promptly, and shall notify any future owner of the requirements of this order.
2. Administrative Civil Liability Complaint No. 262.5-33 will be resolved by the Division of Water Rights' receipt of Robert O. Valentine's liability payment of \$3,000, and by Robert O. Valentine's compliance with the terms of the settlement agreement.

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3. Approval of the settlement agreement between the Division of Water Rights and Robert O. Valentine 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 and permits, and this settlement agreement; 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: 1-7-04



Celeste Cantú
Executive Director