

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

ORDER WR 2007-0001-EXEC

In the Matter of Diversion and Use of Water by

Monson-Pacific, Inc.

SOURCE: Unnamed Stream tributary to Gird Creek thence Russian River

COUNTY: Sonoma

**ORDER APPROVING A SETTLEMENT AGREEMENT BETWEEN
THE DIVISION OF WATER RIGHTS AND MONSON-PACIFIC, INC.**

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board) following issuance of Administrative Civil Liability Complaint No. 262.5-43 (ACL Complaint) against Monson-Pacific, Inc. (Monson-Pacific). The State Water Board's Division of Water Rights (Division) and Monson-Pacific have agreed to settle this matter in lieu of proceeding to hearing in accordance with the attached Settlement Agreement. The issuance of this order pursuant to a settlement is authorized by Government Code section 11415.60.

2.0 BACKGROUND

Monson-Pacific is the owner of property designated as Sonoma County Assessor's Parcel Number 131-040-015, and has owned the property since at least August 29, 1986. Aerial photographs show that two reservoirs are located on this property and have been in existence since at least July 11, 1993. On January 31, 2006, Division staff conducted an inspection of the Monson-Pacific property located at 3400 Geysers Road. Division staff observed two reservoirs constructed on an unnamed stream tributary to Gird Creek. The reservoirs were storing water at the time of inspection, and Monson-Pacific confirmed that the reservoirs were used for irrigation of a vineyard. Division staff observed a stream channel existing upstream and

downstream of both reservoirs. Division staff estimated the capacities of the two reservoirs to be 38 acre-feet and 58 acre-feet.

Water Code section 1052 provides that the unauthorized diversion or use of water is considered a trespass. The State Water Board may impose administrative civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code § 1052, subd. (b).) The State Water Board may also issue a Cease and Desist Order in response to an unauthorized diversion of water. (Wat. Code § 1831.) The water being collected to storage in Monson Pacific's reservoirs is subject to appropriation under the State Water Board's permitting authority. The Division has no record of a water right authorizing storage of water in the reservoirs, nor has Monson-Pacific provided evidence supporting an existing basis of right. Monson-Pacific has collected water to storage and used stored water without a basis of right since at least 1993. On June 1, 2006, Monson-Pacific submitted a water right application for a permit to appropriate water to storage in two reservoirs with storage capacities of 15 acre-feet and 49 acre-feet. Monson-Pacific's application was accepted as Application No. 31622, but no permit has been issued.

On July 27, 2006, the Division sent the ACL Complaint and draft Cease and Desist Order No. 262.31-13 (draft CDO) to Monson-Pacific. Monson-Pacific requested a hearing on the ACL Complaint, but not on the draft CDO. In the absence of a request for hearing, the State Water Board may adopt the draft CDO without a hearing. (Water Code §1834.) The Division and Monson-Pacific have entered into a Settlement Agreement regarding the ACL Complaint. Among other provisions, the Settlement Agreement provides for Monson-Pacific to remit payment of \$12,600 within 10 days of the effective date of the agreement. The Settlement Agreement also provides that Monson-Pacific shall diligently pursue Water Right Application No. 31622, that it shall provide reasonable access to its reservoirs and related facilities for inspections by Division staff, and that acceptance of the Settlement Agreement shall rescind Monson-Pacific's request for hearing on the ACL Complaint. The Settlement Agreement becomes effective immediately upon adoption of this order by the State Water Board Executive Director approving the settlement.

ORDER

IT IS HEREBY ORDERED THAT:

1. The attached Settlement Agreement between the Division of Water Rights and Monson-Pacific, Inc., is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.
2. Approval of the Settlement Agreement between the Division of Water Rights and Monson-Pacific, Inc., shall not limit the authority of the Executive Director or the Chief of the Division of Water Rights, as delegated, to initiate any enforcement actions for any future violations of the Water Code or violations of the terms of the Settlement Agreement.

Dated: **JAN - 5 2007**


Tom Howard
Acting Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Monson-Pacific, Inc. (Monson-Pacific) acting through its president Dwight Monson and the Division of Water Rights (Division) of the State Water Resources Control Board (State Water Board). The parties enter into this Settlement Agreement because it is their collective desire to settle the civil liability issues related to Monson-Pacific's unauthorized diversions of water that were the subject of Administrative Civil Liability (ACL) Complaint No. 262.5-43. This Settlement Agreement will be submitted to the Executive Director of the State Water Board for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director of the State Water Board issues an order approving the Settlement Agreement.

BACKGROUND

The Division of Water Rights and Monson-Pacific stipulate to the following facts:

1. Pursuant to Water Code section 1052, subdivision (a), the "diversion or use of water subject to this division other than as authorized in this division is a trespass." Subdivision (b) provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. The State Water Board also may issue a cease and desist order in response to a trespass and threat thereof, or a violation of a permit or license term or condition. (Wat. Code, § 1831, subds. (a), (d).)
2. Monson-Pacific is the owner of Sonoma County Assessor's Parcel Number 131-040-015 located at 3400 Geysers Road (Monson-Pacific Property or "property"). Monson-Pacific has owned the property since at least August 29, 1986. Aerial photographs show that two reservoirs located on the property have been in existence since at least July 11, 1993.
3. Following notice to Monson-Pacific, Division staff conducted an inspection of the Monson-Pacific property on January 31, 2006. Division staff observed two reservoirs constructed on an unnamed stream tributary to Gird Creek. The reservoirs were storing water at the time of inspection and Monson-Pacific confirmed that the reservoirs were used for irrigation of a vineyard. Division staff observed a stream channel upstream and downstream of both reservoirs. At the time of the inspection, Division staff estimated the capacities of the two reservoirs to be 38 acre-feet and 58 acre-feet.

4. The surface water being collected to storage in the reservoirs is subject to appropriation under the State Water Board's permitting authority. The Division has no record of a water right authorizing the storage of surface water in the reservoirs, and Monson-Pacific did not provide evidence supporting an existing basis of right for that storage. Monson-Pacific has collected surface water to storage and used stored water without a basis of right since at least 1993.
5. By letter dated April 03, 2006, the Division notified Monson-Pacific of its inspection findings and that it should consider corrective actions by submitting an application to appropriate water for the existing reservoirs. The letter notified Monson-Pacific that unauthorized diversions of water are subject to enforcement at the discretion of the State Water Board.
6. Wagner & Bonsignore, a consulting engineering corporation, contacted Division staff on April 13, 2006, following receipt of the Division's April 3, 2006, letter and indicated that it would be preparing an application to appropriate water by permit for the storage of water in Monson-Pacific's reservoirs. Wagner & Bonsignore requested a 45-day extension of time to complete the application. The Division approved the request but informed Wagner & Bonsignore that approval of the extension of time does not preclude the State Water Board from considering or taking enforcement action.
7. On June 1, 2006, Monson-Pacific filed a water right application for a permit to store water for the two reservoirs on its property. The application supports the conclusion that the two onstream reservoirs were constructed prior to 1993. The application accepted as Application No. 31622 requests a permit to divert water for storage in the two reservoirs to be used for irrigation, frost and heat protection of existing and proposed vineyard, as well as for recreational and fire protection purposes. The application states the existing capacities of the reservoirs are 15 acre-feet and 49 acre-feet, approximately 32 acre-feet less than the Division's staff estimates.
8. On July 27, 2006, the Division Chief, acting through delegation of authority from the State Water Board Executive Director, issued ACL Complaint No. 262.5-43 and Draft Cease and Desist Order No. 262.31-13. ACL Complaint No 262.5-43 proposed to impose administrative civil liability of \$17,000 for the unauthorized diversion of water at the two reservoirs on the Monson-Pacific property.
9. By letter dated August 14, 2006, to the Division Chief from Dwight Monson, Monson-Pacific requested a hearing on ACL Complaint No. 262.5-43.
10. Following receipt of Monson-Pacific's request for hearing, staff from the Division's enforcement team met with Dwight Monson and counsel for Monson-Pacific to discuss Monson-Pacific's disagreement with some allegations in the ACL Complaint No. 262.5-43 and Monson-Pacific's position that the amount of administrative civil liability should be less than proposed in that complaint. Monson-Pacific representatives stated that a

portion of the water used for irrigation of the vineyards, including some of the water in the reservoirs, was percolating groundwater pumped from wells on Monson-Pacific's property. Division staff has not confirmed that any of the water in the reservoirs was pumped from percolating ground water. .

AGREEMENT

The Division and Monson-Pacific agree to settle this matter on the following terms:

1. Within 10 days of the effective date of this Settlement Agreement, Monson-Pacific shall remit payment of \$12,600 to the State Water Board. By submittal of this payment, Monson-Pacific acknowledges that it has diverted water without authorization.
2. Monson-Pacific shall diligently pursue securing a water right permit pursuant to Application No. 31622 that it submitted for two reservoirs on Sonoma County Assessor's Parcel Number 131-040-015, located at 3400 Geysers Road in Sonoma County. Diligently pursuing a permit includes, but is not limited to, prompt submittal of all necessary filing and annual fees, maps, responses to protests, and information necessary for environmental review under the California Environmental Quality Act (CEQA). The Division will process Application No. 31622 pursuant to applicable provisions of the Water Code and the California Code of Regulations. This Settlement Agreement does not obligate the State Water Board to issue a water right permit on the application.
3. Monson-Pacific agrees that it did not request a hearing on Draft Cease and Desist Order No. 262.31-13 within the time allowed by statute and, therefore, the cease and desist order may be issued without a hearing.
4. Monson-Pacific agrees to allow Division staff reasonable access to the reservoirs and related facilities and places of use on its property for routine water right inspections and to verify compliance with Cease and Desist Order No. 262.31-13.
5. The Division agrees that Monson-Pacific's acceptance and compliance with the terms of this Settlement Agreement are sufficient to satisfy its civil liability for past unauthorized diversions of water on Assessor's Parcel Number 131-040-015. In its discretion, however, the Division may make future findings or initiate enforcement proceedings for any future violations of the Water Code.
6. Monson-Pacific agrees that acceptance of this Settlement Agreement shall rescind Monson-Pacific's August 14, 2006, request for hearing on ACL Complaint No. 262.5-43.

7. Monson-Pacific agrees to waive its right to request reconsideration by the State Water Board of the Order Approving the Settlement Agreement between the Division of Water Rights and Monson-Pacific, Inc. and Cease and Desist Order No. 262.31-13, provided that no additional requirements are included in those orders beyond the requirements of this agreement and the requirements set forth in Draft Cease and Desist Order No. 262.31-13.
8. Miscellaneous:
 - (i) *Independent Judgment.* Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.
 - (ii) *Additional Documents.* Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.
 - (iii) *Entire Agreement.* This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises, or representations, made by the other party other than those contained in this Settlement Agreement.
 - (iv) *Mutual Agreement.* The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
 - (v) *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.
 - (vi) *Reasonableness of Settlement.* The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
 - (vii) *Section Headings.* The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.

- (viii) *Effective Date.* This Settlement Agreement shall become effective immediately on adoption of the State Water Board's Executive Director's order approving the Settlement Agreement.
- (ix) *Choice of Law.* This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- (x) *Authorization.* Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

Date: November 16, 2006 Monson-Pacific, Inc.
By: [Signature]
Dwight Monson
President

Date: December 7, 2006 Division of Water Rights
By: [Signature]
Victoria Whitney, Chief
Division of Water Rights