

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

DIVISION OF WATER RIGHTS

In the Matter of the Diversion and Use of Water by
**Harriet Jean Piper, William Piper, Matthew Piper,
Carole Canaveri, and Kathleen Stornetta**
Cease and Desist Order WR 2009-0031-DWR

BY THE ASSISTANT DEPUTY DIRECTOR FOR WATER RIGHTS¹

1.0 INTRODUCTION

This matter comes about following the issuance of a notice of proposed Cease and Desist Order (CDO) and an Administrative Civil Liability (ACL) complaint to Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri, Kathleen Stornetta (Piper et al.) and Manchester Ridge, LLC (Manchester). Because Piper et al. did not timely request a hearing on the notice of proposed CDO or the ACL complaint, this order requires Piper et al. to adhere to the schedule for cease and desist included herein.

2.0 BACKGROUND

Piper et al. are the current owners of Mendocino County Assessor's Parcel Number 132-260-03 located at 39000 Crispin Road (property). Manchester leases this property and has constructed and operates Pond No. 1 (also referred to as Reservoir No. 1) as a water storage facility on the property for the irrigation of a vineyard and orchard. Pond No. 1 has a capacity of approximately 30 acre-feet and is located within the NE1/4 of the NE1/4 of Section 16, T13N, R16W, MDB&M. Manchester constructed the facility without a water right permit from the State Water Resources Control Board (State Water Board). Upon request by Manchester, Division of Water Rights (Division) staff conducted a field inspection to determine whether its facility was subject to the State Water Board's water right permitting authority. Division staff informed Manchester that Pond No. 1 was subject to the State Water Board's water right permitting authority and that Manchester should file an application to appropriate water by permit or render Pond No. 1 incapable of storing water. Manchester did not timely file an application or render Pond No. 1 incapable of storing water. Therefore, on July 10, 2008 the Division issued an ACL Complaint and a draft CDO against Piper et al. and Manchester. On July 24, 2008, Manchester timely requested a hearing on the ACL complaint and draft CDO before the State Water Board. However, Piper et al. did not timely request a hearing to contest the ACL or draft CDO.

¹ Pursuant to Water Code section 1834, subdivision (b), the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in a notice of a proposed cease and desist order, without a hearing, when a hearing is not timely requested by the notified party. The State Water Board has delegated to the Assistant Deputy Director for Water Rights the authority to issue a cease and desist order when no hearing has been requested. (State Water Board Resolution 2007-0057, ¶¶ 4.9.1, 4.9.2; Mem. from Victoria A. Whitney, Chief of the Division of Water Rights, to All Water Rights Staff (Oct. 4, 2007), ¶¶ 4.9.1, 4.9.2.)

3.0 SETTLEMENT AGREEMENT BETWEEN PROSECUTION TEAM AND MANCHESTER

Manchester and the Prosecution team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Stipulation and Settlement Agreement. The Executive Director approved that settlement agreement in Order WR 2009-0030-EXEC. Piper et al. is not a party to that agreement. That settlement agreement is intended to represent complete settlement and satisfaction of the civil liability for past unauthorized diversion of water at Pond No. 1, and so Manchester's full payment pursuant to paragraph 1 of that agreement is deemed final resolution of the ACL complaint.

4.0 PIPER ET AL.

Pursuant to Water Code section 1834, subdivision (b), the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in a notice of a proposed cease and desist order, without a hearing, when a hearing is not timely requested by the notified party. Similarly, the State Water Board may issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested. The State Water Board has delegated to the Assistant Deputy Director for Water Rights (Assistant Deputy Director) the authority to issue a cease and desist order or order imposing administrative civil liability when no hearing has been requested. (State Water Board Resolution 2007-0057, §§ 4.9.1, 4.9.2; Mem. from Victoria A. Whitney, Chief of the Division of Water Rights, to All Water Rights Staff (Oct. 4, 2007), §§ 4.9.1, 4.9.2.) Because Piper et al. did not submit a timely request for hearing after proper notice of the ACL complaint and draft CDO, the Assistant Deputy Director may, in his discretion, issue a separate order against Piper et al.

ORDER

IT IS HEREBY ORDERED, pursuant to section 1831 through 1836 of the Water Code, if Manchester fails to comply fully with the terms of Order WR 2009-0030-EXEC, Piper et al. shall cease and desist from diverting water subject to the State Water Board's water rights permitting authority at Ponds No. 1 and No. 3. Upon notice from the Assistant Deputy Director, Piper et al. shall take the following corrective actions and comply with the following time schedule:

1. Piper et al. shall within 90 days of notice from the Assistant Deputy Director, have a registered Civil Engineer perform a survey of the reservoir(s) to establish the existing capacity of the reservoir(s). The engineer shall also design and install a staff gauge(s) that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir(s) at varying water levels in the reservoir(s).
2. No later than **120 days** from notice from the Assistant Deputy Director, Piper et al. shall submit a copy of the capacity survey(s), the depth vs. capacity relationship curves (charts) and photographic evidence that a staff gauge(s) have been installed.

3. Following the installation of the staff gauge(s), Piper et al. shall maintain a record of the monthly staff gauge readings of the reservoir. The readings shall be supplied to the State Water Board on May 1 of each year. Until such time as a basis of right is approved by the Division, Piper et al. shall release any surface water that has been collected above the previous month's staff gauge reading using the existing outlet works, or any other means (pumping or siphoning), to prevent water not authorized to be collected to storage from being stored in the reservoir.
4. Within **150 days** of notice from the Assistant Deputy Director, Piper et al. shall (1) File the appropriate Water Right Application with the Division of Water Rights and pursue securing a legitimate basis of right, or (2) submit a plan that will render the reservoir incapable of storing surface waters subject to the State Water Boards permitting authority.
5. Piper et al. upon filing of the application, shall diligently pursue processing of the application by satisfying all Division requests for information, environmental documents, maps, and fees within the designated time frames, or any extension of time granted by the Division.
6. Piper et al. shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding the unauthorized diversion of water in the reservoir until such time as the State Water Board issues a water right permit or directs otherwise.
7. If the State Water Board does not issue a permit, Piper et al. shall take all necessary action to render the reservoir incapable of storing water subject to the permitting authority of the State Water Board using best management practices and in compliance with any other federal, state and local agencies' requirements.

In the event that Piper et al. fail to comply with the above requirements, Piper et al. shall be in violation of this CDO and subject to monetary penalties and further enforcement actions as described below:

Failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter may subject that person to further enforcement action, including assessment of civil liability of up to one thousand dollars a day and referral to the Attorney General for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

Furthermore, if Manchester fails to make full payment in satisfaction of the civil liability for past unauthorized diversion of water at Pond No. 1, as specified in its settlement agreement with the Prosecution Team, the Assistant Deputy Director may issue an order imposing administrative civil liability on Piper et al., not to exceed the amount specified in the ACL complaint.

STATE WATER RESOURCES CONTROL BOARD


James W. Kassel
Assistant Deputy Director for Water Rights

Dated:

MAY 05 2009