

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

ORDER WR 2016 - 0014 - DWR

In the Matter of the Diversion and Use of Water by
SCP LLC, KHAN TRAN TRONG, AND/OR KEN TRAN

ORDER APPROVING CONDITIONAL SETTLEMENT

BY THE ASSISTANT DEPUTY DIRECTOR FOR WATER RIGHTS¹

The State Water Resources Control Board (Board) issued an Administrative Civil Liability Complaint (Complaint, attached as Exhibit A hereto) on May 4, 2016. On May 24, 2016, Ken Tran electronically submitted the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Conditional Settlement) attached hereto as Exhibit B, along with a copy of a check mailed on May 24, 2016, in an amount of \$1,900.00 as payment of the administrative civil liability Expedited Payment Amount.

The Complaint alleges that Mr. Tran violated the ornamental turf irrigation prohibition set forth in California Code of Regulations, title 23, section 875(d)(1)(A), between July 6 and December 3, 2015. The Complaint proposes an Expedited Payment Amount of \$5,000. In accordance with Paragraph 45 of the Complaint, Mr. Tran contacted Board staff and provided credible evidence that he discontinued irrigation of ornamental turf on or around August 25, 2015, and that the specific variety of turf installed on his property is extremely drought tolerant. These facts were not known to Board staff at the time of the Complaint.

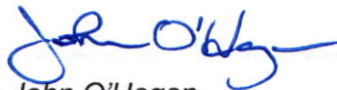
The unique facts and circumstances presented here support accepting the Conditional Settlement and Expedited Payment Amount as submitted. This Order is not intended to be precedential.

¹ State Water Board Resolution No. 2012 - 0029 delegates to the Deputy Director for Water Rights the authority to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director has redelegated this authority to the Assistant Deputy Director for Water Rights.

SCP LLC, Khan Tran Trong, Ken Tran
Order Approving Conditional Settlement
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I hereby approve the Conditional Settlement pursuant to my delegated authority. This approval shall not limit the authority of the Executive Director or the Deputy Director for Water Rights, as delegated, to initiate enforcement action for any violations not specified in the Complaint, or for violation of the terms of the Conditional Settlement.

STATE WATER RESOURCES CONTROL BOARD



John O'Hagan
Assistant Deputy Director for Water Rights

Dated: May 26, 2016

Enclosure: Attachment A – Administrative Civil Liability Complaint
Attachment B – Conditional Settlement (signed by Mr. Tran on May 24, 2016)

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

Division of Water Rights

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violation of an Emergency Regulation
for Failure to Comply with Enhanced Conservation Measures by

SCP LLC, KHAN TRAN TRONG, AND/OR KEN TRAN

SOURCE: Mark West Creek Watershed

COUNTY: Sonoma

YOU ARE HEREBY GIVEN NOTICE THAT:

1. SCP LLC, Khan Tran Trong, and/or Ken Tran (hereinafter collectively referred to as Mr. Tran) is alleged to have diverted and used water in violation of California Code of Regulations, title 23, Division 3, Chapter 2, Article 24, section 876, an emergency regulation adopted pursuant to Water Code section 1058.5.
2. California Water Code section 1846, subdivision (a)(2), provides that any person or entity violating an emergency regulation or order adopted by the State Water Resources Control Board (State Water Board) may be liable in an amount not to exceed five hundred dollars (\$500.00) for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board Resolution No. 2012-0029 authorizes the Deputy Director for Water Rights to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Directors for Water Rights pursuant to State Water Board Resolution No. 2012-0029.

BACKGROUND

4. The State of California is in a state of severe, extended drought. (See Drought Emergency Proclamation No. 1-17-2014; Proclamation of a Continued State of Emergency April 25, 2014; Executive Order B-28-14; Executive Order B-29-15; Executive Order B-36-15; United States Drought Monitor 2016.) The Russian River watershed has been experiencing severe drought conditions, and has been in an abnormally dry or drought state since 2012. (United States Drought Monitor 2016.)

5. As water supplies are severely limited in the current drought, there is a need to reduce potable urban water usage for irrigation of outdoor ornamental landscapes and for more comprehensive, current information on water diversion and use than is currently available. (See e.g. Wat. Code § 1058.5; Executive Order B-29-15, Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River Digest (June 19, 2015), and Informational Order Emergency Regulation Digest (March 11, 2015).)
6. The Central California Coast (CCC) coho salmon is currently listed as endangered under the California and federal Endangered Species Acts, and the National Marine Fisheries Service (NMFS) has determined that the species is one of eight endangered species in its jurisdiction nationwide considered to be the most at risk of extinction. (NMFS *Species in the Spotlight: Survive to Thrive Recovering Threatened and Endangered Species FY 2013-2014 Report to Congress*, May 2015.) The California Department of Fish and Wildlife (CDFW) and NMFS have identified four tributaries to the Russian River – Dutch Bill Creek, Green Valley Creek, portions of Mark West Creek and Mill Creek – as high priority to prevent the extirpation of coho salmon from the Russian River watershed. CCC steelhead is also a federally-listed threatened species in the Russian River watershed, and the four aforementioned tributaries.
7. The drought places juvenile CCC coho salmon and CCC steelhead in Russian River tributaries in a perilous situation, potentially affecting the survival of these species. CCC coho salmon have a three year life cycle, and the extended dry conditions have affected all three year-classes. Coho salmon and steelhead depend on pools with suitable temperatures and dissolved oxygen concentrations to grow during the summer months and then migrate to the ocean in the late fall through spring. Minimal water is needed to maintain acceptable conditions for these species to survive.
8. In a letter dated May 28, 2015, the CDFW and NMFS recommended that the State Water Board develop emergency regulations for the four watersheds to: (1) issue informational orders to determine the extent of current surface and subsurface diversion operations in each watershed; and (2) immediately implement conservation measures to limit the amount of water extracted from the watersheds.
9. On June 17, 2015, as requested by CDFW and NMFS, the State Water Board adopted 23 Cal. Code Regs. section 876, an emergency regulation to help protect flows for federal- and state-listed anadromous fish in four priority Russian River tributary watersheds: Dutch Bill Creek, Green Valley Creek, portions of Mark West Creek, and Mill Creek (hereinafter, section 876 is referred to as the "Emergency Regulation"). Following Office of Administrative Law (OAL) approval, the Emergency Regulation went into effect on July 6, 2015, and remained in effect until March 30, 2016. The Emergency Regulation required: (1) enhanced water conservation in critical areas of the four watersheds; and (2) information on water use if requested by the State Water Board.
10. Title 23 Cal. Code of Regs. section 876, subdivision (d)(1)(A) prohibited the application of potable and non-potable water, sourced from certain areas within the upper portion of each of the four watersheds, to ornamental turf (lawns). These areas included the portion of the Mark West Creek watershed upstream of the confluence of an unnamed tributary (the tributary flowing parallel to western Riebli Road) as defined by the Latitude/Longitude of 38.5066°N and 122.72607°W.
11. The State Water Board has conducted extensive outreach regarding the Emergency Regulation and its water conservation and informational order provisions.
 - (A) On June 5, 2015, the agenda for the June 16 to June 17, 2015 State Water Board meeting was posted to the State Water Board website, which included the Russian River Tributaries Emergency Regulation item (Item 12). This agenda was also sent by email to subscribers on the State Water Board Meetings email subscription list on June 5, 2015.

- (B) Between June 8 and June 15, 2015, the State Water Board mailed letters to all landowners in, and suppliers of water from the four priority watersheds, as defined in section 876, subsection (c)(1), providing notification of the proposed rulemaking and the date of the State Water Board meeting. A copy of the letter and a fact sheet were posted to the State Water Board website on June 8, 2015.
 - (C) On June 9, 2015 the proposed Emergency Regulation language was posted to the State Water Board website.
 - (D) On June 10, 2015, an email notice of the consideration of the proposed Emergency Regulation and Resolution was distributed via email to subscribers on the State Water Board General Regulations, Water Rights Regulation, Russian River Frost Regulation and Drought Updates email subscription lists. The proposed Resolution was posted to State Water Board's website on June 10, 2015.
 - (E) On June 16, 2015 an email Notice of Proposed Rulemaking was distributed to subscribers on the State Water Board General Regulations, Water Rights Regulation, Russian River Tributaries Emergency Regulation and Drought Updates email subscription lists¹. That same day the Notice of Proposed Rulemaking and the proposed rulemaking package were posted to the State Water Board website.
 - (F) On June 24, 2015, an email notice of submittal of the Russian River Tributaries Emergency Regulation to OAL was sent to members of the Russian River Tributaries Emergency Regulation email subscription list. On July 6, 2015 an email notice of OAL approval was sent to members of the Russian River Tributaries Emergency Regulation email subscription list, which included a link to more detailed information and a notification that all individuals using water sourced from the critical areas of the four priority watersheds were required to immediately implement the enhanced water conservation measures.
 - (G) On June 19, 2015, the State Water Board mailed flyers to all landowners in and suppliers of water from the four watersheds to announce five information meetings the State Water Board held from July 6 to 9, 2015. In addition an email notice of the meetings was sent to the members of the Russian River Tributaries Emergency Regulation email subscription list. On July 4, July 5, and July 6, 2015, the State Water Board placed advertisements, both online and in print, for the July 6 through July 9 information meeting in the Sonoma Press Democrat. Evening meetings were held on July 6, 2015 in Occidental, July 7, 2015 in Healdsburg, July 8, 2015 in Forestville, and July 9, 2015 in Santa Rosa. An afternoon meeting was held in Santa Rosa on July 9, 2015.
 - (H) On August 21, 2015, the State Water Board sent an email notification to the members of the Russian River Tributaries Emergency Regulation email subscription list notifying parties that the Information Order would be issued in sequence beginning the week of August 24, 2015, starting with Dutch Bill Creek and then in alphabetical order to the remaining tributaries.
 - (I) On August 24, August 28, August 30, and September 2, 2015, the State Water Board placed advertisements in the Sonoma Press Democrat, both online and in print, announcing the issuance of the Information Order and reminding the community of the enhanced water conservation measures in effect in the critical areas of the four watersheds.
12. On August 24, 2015, the Deputy Director for Water Rights signed Order WR 2015-0026-DWR² (Information Order). The State Water Board issued the Information Order to landowners in and suppliers of water from the four watersheds in batches by watershed. Each landowner and water

¹ Pursuant to section 876, subdivision (g) of the Emergency Regulation, "Notice provided by email or by posting on the State Water Board's webpage is sufficient for all purposes related to notices and updates regarding the provisions of this section [Emergency Regulation]." All emails sent after the June 16, 2015 email were distributed via the "Russian River Tributaries Emergency Regulation" email subscription list. The June 10 and June 16, 2015 emails, the letters sent between June 8 and June 15, 2015, and the letters sent on June 19, 2015 informed individuals how to subscribe to the "Russian River Tributaries Emergency Regulation" email subscription list to receive updates regarding the Emergency Regulation.

² Order WR 2015-0026-DWR, *Order for Additional Information in the Matter of Diversion of Water from Dutch Bill Creek, Green Valley Creek, Portions of Mark West Creek, and Mill Creek Watersheds*, as defined in California Code of Regulations, title 23, section 876(c)(1), dated August 24, 2015.

supplier was mailed the Information Order and a personalized letter that included an Identification Code(s), Password, and instructions on how to comply with the Information Order. The letters were mailed to landowners within the portions of Mark West Creek watershed covered by the Emergency Regulation on September 15, 2015. The due date for submittal of the information requested in the Information Order was determined to be 35 days following each mailing, with a due date of October 20, 2015 for the Mark West Creek watershed. As part of the Information Order, all landowners and water suppliers in the upper portion of each watershed (critical area), received a reminder notice noting that their property was located in a critical area and that the enhanced conservation measures were required for all surface water or groundwater that is sourced from the critical areas of the watersheds. Per section 876, subdivision (d)(3), the enhanced water conservation measures took effect immediately (July 6, 2015) for all water users who receive water from diversions, whether surface water or groundwater, sourced from within the upper portions of the four watersheds as designated in subdivision (c)(2). Recycled water, untreated rainwater, or gray water does not qualify as a diversion, and use of such water was not limited under the Emergency Regulation.

13. On December 15, 2015, ACL Complaints were issued to more than 1,800 landowners and water suppliers who did not respond to the Information Order or the October 2015 reminder notice. Recipients of the Information Order ACL Complaints were given the option to submit the required information and sign a Conditional Settlement Offer within 20 days of receiving the ACL Complaint. The Conditional Settlement Offer provided the opportunity for Information Order ACL Complaint recipients to resolve the violation with no fine, as long as the information provided was complete and accurate to the best of the landowner's or water supplier's knowledge. Information Order ACL Complaint recipients also had the option to request a hearing within 20 days of receiving the Information Order ACL Complaint, or doing nothing, in which case they would receive a final ACL Order with a fine of \$2,500 for violations through December 10, 2015.
14. Mr. Tran did not respond to the Information Order by December 13, 2015 and on December 15, 2015, was issued an Information Order ACL Complaint for failure to submit information on water diversion and use. Mr. Tran received the Information Order ACL Complaint on December 22, 2015. On December 29, 2015, Mr. Tran responded to the Information Order ACL Complaint for Sonoma County assessor parcel number (APN) 079-060-006-000 (Mark West Lodge property), submitting information online about one groundwater well. On January 4, 2016, the State Water Board received a signed settlement offer, dated December 29, 2015, for the Information Order ACL Complaint. The signatory was Mr. Ken Tran, Manager of SCP LLC.
15. The online information submitted to the State Water Board for the Mark West Lodge property on December 29, 2015 reported a groundwater well location and associated construction data, but did not include any information on water use and State Water Board staff determined the information provided was incomplete. Water usage at the property was initially reported as 0 gallons/month for every month from January 2014 through December 2015.
16. On March 2, 2016, State Water Board staff contacted Mr. Tran and informed him that the water use information provided in response to the Information Order ACL Complaint was incomplete. Mr. Tran was informed that the Information Order ACL Complaint Settlement Offer would not be accepted unless the information on water use was updated. On March 16, 2016, State Water Board staff again informed Mr. Tran that the water use information provided was still incomplete and that the Information Order ACL Complaint Settlement Offer would not be accepted unless the information on water use was updated to provide the required information, including estimates of the amount of water used and uses of water for the parcel. On April 14, 2016, Mr. Tran submitted information on water diversion and use for the groundwater well on the Mark West Lodge property. Based on the information reported by Mr. Tran in the Information Order online database, as of May 4, 2016, the

SCP LLC, Khan Tran Trong, Ken Tran

Mark West Lodge property's only reported water source is a groundwater well with an estimated construction date of 1960 and a depth of 300 feet.

ALLEGATIONS

17. Mr. Tran, through SCP LLC, is the owner of Sonoma County APN 079-060-006-000. The Mark West Lodge, a commercial enterprise that operates as an event hall and restaurant, is located on the parcel. The parcel is adjacent to Mark West Creek and has an intermittent stream running through the property.
18. The Mark West Lodge property (APN 079-060-006-000) is located at 2520 Mark West Springs Road, Santa Rosa, CA 95404-9506 (Latitude 38.548450 N, Longitude 122.720470 W), within the upper watershed area of Mark West Creek as defined in section 876, subdivision (c)(2) of the Emergency Regulation.
19. On August 13, 2015, at approximately 10:30 a.m., while conducting water conservation inspections on Mark West Springs Road, State Water Board staff observed lush, green ornamental turf (lawn) in the front of the Mark West Lodge building.
20. On August 25, 2015, State Water Board staff conducted a site inspection of the Mark West Lodge property. The lawn in front of the property was still in excellent condition (i.e., healthy, green and lush). State Water Board staff discussed the potential violation (requirement of section 876, subdivision (d)(1)(A) that prohibits watering of lawns) with the property manager for Mark West Lodge and issued a Notice of Noncompliance with Russian River Tributaries Emergency Regulation warning form describing the potential violation of the Emergency Regulation.
21. On September 10, 2015, State Water Board staff conducted a follow-up inspection to evaluate if the condition of the lawn had changed to indicate that watering had ceased. State Water Board staff determined that the lawn was still in a healthy condition. State Water Board staff issued a second form, a Notice of Potential Noncompliance with Russian River Tributaries Emergency Regulation specific to the Watering of Ornamental Turf. No persons were present at Mark West Lodge at the time of the inspection, so State Water Board staff slipped the form under the front door of Mark West Lodge.
22. On October 1, 2015, State Water Board staff conducted an additional follow-up inspection to evaluate if the condition of the lawn had changed to indicate that watering had ceased. State Water Board staff determined that the lawn was still in a healthy condition.
23. On October 9, 2015, State Water Board staff conducted a final follow-up inspection to evaluate if the condition of the lawn had changed to indicate that watering had ceased. State Water Board staff determined the lawn was still in a healthy, well-watered condition.
24. On March 2, 2016, State Water Board staff contacted Mr. Ken Tran by telephone at the number provided in his Information Order report. Mr. Tran stated that he has owned the Mark West Lodge property (APN 079-060-006-000), through SCP LLC, for four years. Mr. Tran stated that the property had between 100-200 square feet of lawn which was watered. Mr. Tran affirmed that the lawn sprinkler system is fed by the groundwater well on the property. Mr. Tran added that the property does not have surface water diversions. Mr. Tran was advised to update his diversion and water use information for the Russian River Informational Order to reflect water use associated with the property, including water use associated with maintaining the lawn.
25. On March 16, 2016, State Water Board staff conducted a site inspection of the Mark West Lodge property with Mr. Tran present, along with his landscape contractor, Steven Nojima. State Water

Board staff found lawns in both the front (north) and back (south) side of the property. Mr. Nojima explained that the grasses used for the lawns were low-water using hybrids designed for use in that area. State Water Board staff measured the front and back lawn areas and determined that the front of the property is landscaped with approximately 1,200 square feet of lawn, and the back of the property is landscaped with approximately 1,800 square feet of lawn.

26. During the site inspection, Mr. Nojima described the irrigation system for the lawn as a subsurface drip system controlled by an automated evapotranspiration (ET) sensor device produced by Hunter Industries. Mr. Nojima stated that the system typically came on three times daily and estimated it delivered approximately 4 gallons of water per minute for four minutes for each cycle to both the back and front lawns on the property.
27. Mr. Nojima explained that the irrigation system for the lawn uses TechLine® CV (Check Valve) dripline buried at a depth of 4 inches. Mr. Nojima reported emitter spacing on the dripline as 12 inches and an emission rate of 0.4 gallons per hour (GPH), consistent with the TechLine® CV dripline manufacturer's specifications.
28. State Water Board staff calculated estimated water use for the front and back lawns in accordance with the manufacturer's specifications. According to the manufacturer specifications, the minimum row spacing for each emitter line is 1.5 feet; every lateral can be up to 242 feet long at the lowest recommended water pressure level. Based on the manufacturer recommendations, State Water Board staff estimates that irrigating an area of 3,000 square feet (front and back lawns combined) would require 2,000 feet of TechLine® CV dripline. Per the manufacturer's specifications, flow per 100 feet of dripline with 0.4 GPH emitters spaced 12 inches apart equates to 0.70 gallons per minute.³ In total, if the system is run three times per day for four minutes during dry weather, the total water delivered to both of the lawns is approximately 168 gallons per day.
29. Given that the ET controller activates the irrigation system when evapotranspiration is high, State Water Board staff concludes that most lawn irrigation took place during the daytime, when ET is highest, resulting in violation of section 876, subdivisions (d)(1)(A) and (d)(1)(D).
30. Mr. Tran confirmed that water used for outdoor irrigation, as well as for the lodge itself, comes from the groundwater well, which is located in the northeast corner of the property, approximately 200 feet from Mark West Creek. Mr. Tran had limited information regarding the groundwater well, but thought that the well produced 2.8 gallons per minute. Water is pumped from the groundwater well to a nearby 5,000 gallon tank. Water flows from the tank, through a filtration system and then through a Y-fitting, through which water is routed to both Mark West Lodge and the irrigation system. Water to either line can be controlled with a shut-off valve.
31. During the field inspection, Mr. Tran stated that the automated low-water irrigation system was in operation last year (2015). State Water Board staff observed ornamental turf, in front of the Mark West Lodge on August 13, 2015 and noted that the turf was well established at the time. Mr. Tran confirmed that all of the ornamental turf for Mark West Lodge was installed at the same time in 2015. Photographs on the website⁴ of Mr. Tran's landscape contractor (Sansui Landscaping Inc.) depict the ornamental turf installed at Mark West Lodge and are date-stamped prior to July 6, 2015. Based upon Mr. Tran's statements and the photos taken by the landscape contractor, and due to the consistently healthy condition of the lawn at the Mark West Lodge property, State Water Board staff concluded that the ornamental turf at Mark West Lodge was installed prior to July 6, 2015 and that water was applied to that ornamental turf via the irrigation system beginning by at least July 6, 2015, and occurring during the period of the Emergency Regulation.

³ <http://www.netafimusa.com/landscape/products/techline-cv>, last accessed on April 5, 2016.

⁴ <http://www.sansuilandscaping.com/about-ishimoto/>, last accessed on April 13, 2016.

32. Precipitation data from the National Oceanic and Atmospheric Administration National Centers for Environmental Information, Station Santa Rosa 4.4 NNW, CA (US1CASN0048), indicates that seasonal rains in the area of the Mark West Creek watershed began in earnest on or about December 4, 2015. State Water Board staff conservatively estimates that the automated irrigation system was not regularly in use after this date. Precipitation data indicates that there were significant storm events in September and November. State Water Board staff determined the automated system irrigated the lawns during days of no precipitation and/or high temperatures prior to the onset of the seasonal rains. Between July 6, 2015 (when the Emergency Regulation went into effect) and December 4, 2015, 151 days elapsed. State Water Board staff conservatively estimates that the irrigation system described by Mr. Tran did not regularly irrigate during or for 48 hours after storm events of significant precipitation. Based on this information, State Water Board staff estimates that the irrigation system was operated for 132 days from July 6, 2015 through December 3, 2015.
33. The circumstances described above indicate that Mr. Tran has failed to comply with section 876, subdivision (d)(1)(A) of the Emergency Regulation and was in violation of the Emergency Regulation for a minimum of 132 days.
34. During the site inspection on March 16, 2016, State Water Board staff observed that Mr. Tran has a retaining wall in the back of the Mark West Lodge property. The retaining wall serves as a waterfall feature and is part of the landscaping for Mark West Lodge. Water is released along the top ledge of the wall and runs down the rock face to an ornamental stream where the water is then collected into a sump. Mr. Nojima explained that the waterfall feature uses a re-circulating system to pump collected water back over the wall.
35. State Water Board staff observed that an intermittent stream, which was flowing at the time of the inspection, flows into the ornamental stream and the water collection system at the base of the waterfall. Mr. Nojima confirmed that, when the intermittent stream has flowing water, it refills the water lost to seepage and evaporation and that the intermittent stream provides most, if not all of the water for the recirculating waterfall feature. Mr. Tran did not report the intermittent stream as a water source in his response to the Information Order. Mr. Tran likely diverts water from the intermittent stream under a claim of riparian right and, therefore, is required to file a Statement of Water Diversion and Use prior to July 1, 2016 for any diversion made in 2015. State Water Board staff notified Mr. Tran of his need to comply with water right laws for his diversion from the intermittent stream, including reporting requirements. On April 22, 2016, Mr. Tran notified State Water Board staff, via telephone, that he mailed a Statement of Water Diversion and Use (California Water Code §5101) to the State Water Board for the intermittent stream. Additionally, on April 22, 2016, Mr. Tran emailed a copy of the Statement of Water Diversion and Use to the State Water Board staff person; however, the emailed Statement of Water Diversion and Use was inaccurate and incomplete. On April 25, 2016, State Water Board staff notified Mr. Tran of the need to update the Statement of Diversion and Use. On April 25, 2016, Mr. Tran submitted an updated Statement of Diversion and Use for the intermittent stream to State Water Board staff; however, as of May 2, 2016, the updated Statement of Diversion and Use for the intermittent stream remains incomplete.

PROPOSED CIVIL LIABILITY

36. Water Code section 1846, subdivision (a) provides that the State Water Board may administratively impose civil liability pursuant to Water Code section 1055 for violation of State Water Board regulations in an amount not to exceed \$500 per day of violation.
37. Mr. Tran has allegedly operated an automated irrigation system for the duration of the Emergency Regulation until the beginning of the wet season, excluding certain days of or following significant precipitation. After excluding certain days, Mr. Tran has allegedly operated the irrigation system for 132 days between July 6, 2015 and December 3, 2015. Therefore, Mr. Tran is subject to a maximum civil liability in the amount of \$66,000 (132 days at \$500/day) through that date.

38. In determining the appropriate amount of a civil liability, Water Code section 1846, subdivision (d), requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.
39. In this case, extraction and use of water from the upper Mark West Creek watershed has contributed to the harm of threatened and endangered salmonids in critical stream rearing habitat during the drought. The use of water from the watershed for irrigation of lawns was explicitly prohibited. The need to protect the critical stream rearing habitats for threatened and endangered salmonids in this drought is pressing, and the irrigation system at Mark West Lodge removed water from the watershed for nearly the entire summer rearing period for state and federally listed endangered CCC coho salmon and federally listed CCC steelhead. In addition, State Water Board staff observed and photographed a person watering plants (landscapes as defined in section 876, subdivision (a)(3)) at Mark West Lodge, in violation of section 876, subdivision (d)(1)(D) of the Emergency Regulation. Subdivision (d)(1)(D) prohibits watering of landscapes between the hours of 8:00 a.m. to 8:00 p.m.
40. Mr. Tran was repeatedly notified of the enhanced water conservation measures and allegedly continued to irrigate a total of 3,000 square feet of lawns on the Mark West Lodge property in violation of the Emergency Regulation without taking corrective action to suspend such irrigation activities for at least 132 days.
41. Having taken into consideration all relevant circumstances, including, but not limited to Mr. Tran's daily use of water to irrigate lawns in violation of the Emergency Regulation, and State Water Board staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Assistant Deputy Director for Water Rights recommends the imposition of \$15,000 in ACL (Proposed Liability).

CONDITIONAL SETTLEMENT OFFER

42. To promote resolution of the alleged violations and administrative efficiency, the Division of Water Rights makes the following conditional settlement offer (Conditional Offer). Mr. Tran can avoid further enforcement action and settle the alleged violation of the Emergency Regulation and failure to implement the enhanced water conservation measures by agreeing to comply with the terms of the Conditional Offer, provided below, as well as in the Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration (Acceptance and Waiver) enclosed hereto as Attachment A.
43. This Conditional Offer requires Mr. Tran to: (a) pay an Expedited Payment Amount of \$5,000; (b) accept the Conditional Offer and waive the right to a hearing and reconsideration of the alleged violations; (c) provide complete and accurate information pursuant to the Information Order; (d) comply with all future enhanced water conservation measures required by the State Water Board; and (e) file a complete and accurate Statement of Diversion and Use for the riparian diversion used to refill the recirculating fountain (waterfall). The Expedited Payment Amount is based on the proposed penalties for Mr. Tran's failure to comply with the enhanced water conservation measures and staff costs incurred while investigating Mr. Tran's diversion and use of water from the Mark West Creek watershed and in preparing this ACL.
44. To accept the Conditional Offer, Mr. Tran must do all of the following within 20 days of receipt of this ACL Complaint: (a) sign and return the Acceptance and Waiver (Attachment A); (b) pay the Expedited Payment Amount; (c) submit the required information for the Mark West Lodge property (Sonoma County APN 079-060-006-000) electronically through the Online Informational Order Form; and (d) file a complete and accurate Initial Statement of Water Diversion and Use for the riparian diversion on the Mark West Lodge property. Additionally, the Conditional Offer requires compliance with all future enhanced water conservation measures required by the State Water Board. Remit Attachment A and payment of the Expedited Payment Amount of \$5,000 (by check, cashier's check or money order), as set forth in paragraph 43 above, to:

SCP LLC, Khan Tran Trong, Ken Tran

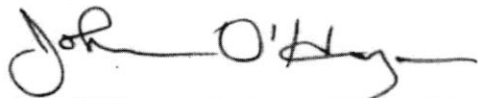
Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Attn: Public Trust Unit – Russian River Tributaries
P.O. Box 2000
Sacramento, CA 95812-2000

45. If there are extenuating circumstances that Mr. Tran would like to discuss, such as an inability to pay the Expedited Payment Amount, then Mr. Tran may contact Daniel Schultz, Public Trust Unit Supervisor, with that information as soon as possible but no later than the 20 days from receipt of this ACL Complaint.

RIGHT TO HEARING

46. Mr. Tran may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that this notice is received as required by Water Code section 1055, subdivision (b).
47. If Mr. Tran requests a hearing, Mr. Tran will have an opportunity to be heard and to contest the allegations in this ACL Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date. The Division of Water Rights may convene a settlement conference prior to noticing a hearing date.
48. If Mr. Tran requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code and/or its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
49. If Mr. Tran does not remit and comply with the conditions of the Acceptance and Waiver (Attachment A) or request a hearing within 20 days of receipt of this ACL Complaint, Mr. Tran shall waive the right to a hearing and reconsideration of this matter.
50. If Mr. Tran does not remit and comply with the conditions of the Acceptance and Waiver (Attachment A) nor request a hearing within 20 days of the date this ACL Complaint is received, then the State Water Board will issue an ACL Order and seek recovery of the Proposed Liability (\$15,000) imposed as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director
Division of Water Rights*

Date: **MAY 04 2016**



KP
WR 2015-0026-DWR 5/24/2016

STATE WATER RESOURCES CONTROL BOARD

2016 MAY 31 PM 12:35



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

Name: SCP LLC, KHAN TRAN TRONG, AND/OR KEN TRAN
Source: Mark West Creek Watershed
County: Sonoma

**ATTACHMENT A – ACCEPTANCE AND WAIVER
ACCEPTANCE OF CONDITIONAL SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING OR RECONSIDERATION**

By signing below and returning this Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver) to the State Water Resources Control Board (State Water Board), SCP LLC, Khan Tran Trong, and/or Ken Tran (collectively referred to as Recipient) hereby accepts the conditional settlement offer (Conditional Offer) and waives the right to a hearing before the State Water Board regarding the Administrative Civil Liability Complaint (ACL Complaint) issued to Recipient on May 4, 2016, to which this Acceptance and Waiver is attached. Additionally, the Recipient waives the right to reconsideration of any order adopting the Conditional Offer. These waived proceedings are the venues through which the violations alleged in the ACL Complaint could be disputed.

Recipient agrees to perform the following within 20 days of receipt of the ACL Complaint:

- Pay administrative civil liability as authorized by California Water Code section 1846, subdivision (c), in the amount of \$1,900 (Expedited Payment Amount) by personal check, cashier's check or certified check made payable to the "State Water Resources Control Board" for deposit into the Water Rights Fund. This shall be deemed payment in full of any civil liability pursuant to California Water Code section 1846, subdivision (c), that otherwise might be assessed for the violations described in this ACL Complaint.
- Sign and submit this Acceptance and Waiver (Attachment A) to the State Water Board.
- Provide information on the intermittent stream as an additional source of water and provide complete and accurate information as required under Order WR 2015-0026-DWR¹ (Information Order). Information for Sonoma County Assessor's Parcel Number 079-060-006-000 shall be submitted electronically via the web through the Online Informational Order Form (available online at: <http://www.waterboards.ca.gov/rtrribs.shtml>). Satisfactory compliance with this item will additionally eliminate any penalties pursuant to the ACL Complaint issued on December 15, 2015.
- File a complete and accurate Statement of Water Diversion and Use for the riparian diversion used to operate the recirculating fountain.

Additionally, Recipient agrees to comply with all future enhanced water conservation measures required by the State Water Board. This Conditional Offer takes into consideration additional information indicating that watering of ornamental turf may have ceased on or about August 25, 2015 and reduces the payment proportionately. This Settlement Offer does not; however, support or refute the information provided. Recipient understands that signing this document waives the Recipient's right to contest the allegations in the ACL Complaint and the civil liability amount for such violations.

¹Order WR 2015-0026-DWR, Order for Additional Information in the Matter of Diversion of Water from Dutch Bill Creek, Green Valley Creek, Portions of Mark West Creek, and Mill Creek Watersheds, as defined in California Code of Regulations, title 23, section 876(c)(1), dated August 24, 2015.

SCP LLC, KHAN TRAN TRONG, AND/OR KEN TRAN

Recipient understands that the failure to submit: 1) payment of the Expedited Payment Amount as identified and described above; 2) this signed Acceptance and Waiver; 3) the information requested in the Information Order; and 4) the complete and accurate Statement of Water Diversion and Use within 20 days of receipt of this notice, shall render the State Water Board's Conditional Offer void. If the State Water Board's Conditional Offer is deemed void due to Recipient's non-performance, then the State Water Board will issue a final Administrative Civil Liability order and seek recovery of the \$15,000 proposed liability for the violations alleged in this ACL Complaint.

Recipient also understands that if the Recipient fails to fulfill the Recipient's obligations under Order WR 2015-0026-DWR and fails to submit the complete and accurate information for Sonoma County APN 079-060-006-000 as directed in this Conditional Offer, the Assistant Deputy Director for Water Rights will issue a separate final ACL Order (pursuant to the ACL Complaint issued on December 15, 2015) for the amount of \$2,500 for violations of the Information Order up to December 10, 2015, and shall seek recovery. Continued failure to submit the requested information electronically via the web through the Online Informational Order Form may result in additional penalties or enforcement action for violations after December 10, 2015.

Recipient understands that providing incomplete data or data that are not true and correct to the best of Recipient's knowledge could subject the Recipient to additional fines and void the Conditional Offer. Recipient understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in this ACL Complaint and Acceptance and Waiver. Satisfactory compliance with this Conditional Offer will eliminate any penalties pursuant to the Information Order ACL Complaint issued on December 15, 2015. Once signed (executed) by Recipient, the Acceptance and Waiver shall be mailed to the following address:

Conditional Settlement Offer
State Water Resources Control Board
Division of Water Rights
Attention: Public Trust Unit - Russian River Tributaries
P.O. Box 2000
Sacramento, CA 95812-2000

Recipient understands that this Acceptance and Waiver is not final until it is approved by the State Water Board or by the Deputy Director for Water Rights under delegated authority or by the Assistant Deputy Director for Water Rights under re-delegated authority.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Recipient in the making and giving of this Acceptance and Waiver.

[Handwritten Signature]
Signature

5/24/2016
Date

KEN TRAN
Printed or Typed Name

Manager
Title

Manager
(Relationship to Recipient, if not Recipient)

Identification Code(s): 079-060-006-000

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
SACRAMENTO
2016 MAY 31 PM 12:35
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