

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

**DIVISION OF WATER RIGHTS**  
**ORDER WR 2009-00XX-DWR**

---

**CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion of Water by  
**Mark and Valla Dunkel**

---

SOURCE: Middle River  
COUNTY: San Joaquin County

---

**YOU ARE HEREBY GIVEN NOTICE THAT:**

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order requiring Mark and Valla Dunkel (the Dunkels) to cease and desist their unauthorized diversion, collection and use of water in violation of section 1052 of the Water Code.

The Dunkels are alleged to have violated or are threatening to violate Water Code section 1831, which provides:

The State Water Board is authorized to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against the Dunkels for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

## FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. On July 16, 2008, The State Water Board adopted a Strategic Workplan Plan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta. The Workplan also identified that, if and when illegal diversions were found, those diversions would be subject to enforcement action and directed to cease diversions, obtain a legal water right, or pursue a contract for water supplies with Department of Water Resources, United States Bureau of Reclamation, or another party.
2. On February 18, 2009, the Division mailed letters to property owners on Roberts and Union Islands within the Delta. Based on reviews of U.S. Geological Survey maps, aerial photography, and San Joaquin County Assessors maps, the Division sent letters to each property owner that was determined to have been irrigating in the last few years, and for whom the Division has no record of any basis of right for water diversion. The Division requested that each property owner either: inform the Division within 60 days as to the basis of their right by filing a Statement of Water Diversion and Use with appropriate evidence; define a contractual basis for diversion of water; or cease diversion of water until a basis of right is secured. The letter also informed the contacted property owners that a failure to respond may result in enforcement action.
3. The Division mailed the Dunkels a copy of the February 18, 2009 letter as owners of Assessor Parcel 162-090-01. To date, the Dunkels have not submitted a response to the Division's letter.
4. On September 9, 2009, the Division mailed a second letter by Certified Mail (Certification # 7004 2510 0003 9152 9983) to the Dunkels at P.O. Box 996, Tracy, CA 95376. U.S. Postal Service confirms delivery of the letter on September 18, 2009. The letter advised that existing evidence available to the Division supports the conclusion that the Dunkels have diverted water during recent years to irrigate crops on parcel 162-090-01 located on Roberts Island. The San Joaquin County Assessor's Parcel maps and aerial photographs both show that the parcel does not have continuity to a surface stream. This lack of continuity indicates that a riparian basis of right typically would not exist.
5. The 2007 San Joaquin County crop data layer identifies parcel 162-090-01 as having been planted with corn. According to the 1980 California Department of Water Resources publication "*Crop Water Use in California*," corn requires an estimated annual water consumption of 3.2 acre-feet per acre. Parcel 162-090-01 contains approximately 30.5 acres. Thirty and one-half acres planted with corn correlates to an estimated annual water consumption of 97.6 acre-feet.
6. As of December 10, 2009, the Division has not received a response from the Dunkels supporting a basis of right for the diversion and use of water on parcel 162-090-01. Acceptable information supporting a valid basis of right could include, but is not limited to: a chain of title supporting riparian status for the parcel; evidence supporting an existing or implied preservation of the riparian right established prior to severance of the parcel from the stream or another riparian parcel; evidence which verifies irrigation on the parcel prior to 1914 and documents the subsequent continuous use of water; or statements which provide an alternative valid basis of right for diversions of water to the parcel.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, that the Dunkels immediately cease and desist diverting water to parcel 162-090-01 until the following are satisfied:

- (1) The Dunkels shall submit to the Division sufficient evidence establishing a valid basis of right or an existing water supply contract to serve the property. No diversions shall be made to this parcel until the Dunkels receive approval from the Assistant Deputy Director for Water Rights to exercise the water right or contract.
- (2) Within 90 days of the date of this Order, if no basis of rights can be established, the Dunkels shall submit a plan showing how and when they will permanently remove the diversion works serving parcel 162-090-01. Upon approval of the plan by the Assistant Deputy Director for Water Rights, the Dunkels shall diligently take the actions identified in the approved plan.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water Board, shall petition the superior court 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).) Any person or entity that violates a CDO issued pursuant to chapter 12 may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
*Assistant Deputy Director for Water Rights*

Date:

MStretars\lfischer 12.14.2009

U:\COMDRV\0 - Enforcement Actions\Active Cases\Delta\Active Cases\Dunkel\Dunkel-Draft CDO.doc