

WR-3

TESTIMONY OF JEFFREY H. WETZEL

My name is Jeff Wetzel. I am a Senior Water Resource Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). I have over four years of experience working in the Division, which includes almost three years in the Enforcement unit, and approximately one year as Chief of the Water Quality Certification Unit 1. My experience with the Enforcement Unit includes inspecting permitted and licensed water right projects for compliance with terms and conditions, and inspecting potential unauthorized diversions of water and use. Duties include preparing inspection reports, reviewing compliance reports, and drafting administrative civil liabilities and cease and desist orders. A copy of my resume is attached as exhibit WR-4.

My testimony, herein provided, addresses my personal knowledge of the evidence, actions, and rationale for the Division's recommendation to issue an Administrative Civil Liability (ACL) Order and Cease and Desist Order (CDO) against Robert Mann (Individual and Trustee) and Robert C. Mann 1999 Trust (collectively referred to hereafter as Mann). (WR- 11.)

Initial Investigation

In June of 2011, I began reviewing potentially unauthorized reservoirs that were identified in an Arc GIS database using United States Geological Survey quadrangle map of Sonoma and Napa counties and National Agriculture Imagery Program orthophoto images obtained from the United States Department of Agriculture. (WR-19.) The Arc GIS database was developed by Stetson Engineers Inc. in order to complete a report entitled "Potential Indirect Environmental Impacts of Modification or Removal of Existing Unauthorized Dams" that is included as Appendix E of the of the Substitute Environmental Document for the development of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. (WR-25 & WR-26.) The reservoir located on Sonoma County Assessor's Parcel Number 109-310-002 showed clear signs of water storage behind a single axis earthen dam with a defined downstream channel and upstream channels. (WR-19.) The quadrangle map also showed two blue line streams above the reservoir and one blue line stream below the reservoir. (WR-6.) The reservoir was shown as a blue color, blue indicating a feature was existing prior to the 1971 photo revision date on the quadrangle map. The online service Parcel Quest identified "Robert C Mann TR" as the owner of the parcel surrounding the reservoir in question. (WR-18.)

Reservoir Inspection and Field Findings

Division staff was granted access to the reservoir on September 9, 2011 to make observations and collect field measurements to determine if the reservoir is onstream and collecting water subject to the permitting authority of the State Water Board. Cheri Gehrt, a special investigator with the Division, and I met with Ms. Lucy Mann at the gated entrance to the property along King Ridge Road. Driving to the reservoir many stockwatering troughs and cows were observed. Ms. Mann told us they run approximately 300 head of cattle of the property. At the reservoir I walked along the earthen dam and found a defined spillway channel coming from the east side of the dam. I took photos and GPS measurements while walking the earthen dam. Ms. Gehrt and I then measured the dam characteristics using a reflector rod and Impulse LR laser range finder. The reservoir's water level was 3.25 feet below the top of the spillway at the time of inspection and the high waterline was observed at the same elevation as the top of the spillway. Given the size of the watershed the reservoir collects water during the winter months to replenish losses due to stockwatering and evaporation. Ms. Mann indicated that a water truck transports and delivers the stored water to the numerous stockwatering troughs throughout the property. We then drove up to a portion of the property to view a water spring and the unnamed streams that are upstream of the reservoir. As we ended the field inspection, Ms. Mann pointed out the water truck that is used on the property. Before concluding the field inspection, I described to Ms. Mann the requirements to file a Statement of Water Diversion and Use (Statement) and the potential penalties for failure to file a Statement.

I prepared a field inspection report detailing the findings, dam characteristics, a map with GPS points, and photos taken while onsite. The September 9, 2011 inspection report was reviewed and approved by Ms. Gehrt on October 21, 2011 and is included as exhibit WR-6. Based on my observations and field measurements water is collected to storage on an annual basis and used for stockwatering. Defined channels exist above the reservoir and below the dam. (WR-6.)

During the preparation of my field inspection report, I identified that Mann was listed as a primary owner for water right License No. 444 in Modoc County (WR-27) since September of 2010. License No. 444 is for the direct diversion of water for agricultural use. Based on the water right license in Modoc County, it is within reason to conclude that Mann has some familiarity with the State Water Board and California water rights.

The Field Inspection Findings for Existing Reservoir and Notice of a Requirement to File a Statement of Water Diversion and Use for Diversion of Water in Sonoma County (Findings letter) was mailed on October 28, 2011 to Robert C Mann TR. (WR-7.) The Findings letter provided to Mann included the inspection report, map, and photos. (WR-6.) The Findings Letter informed Mann that the reservoir on his property was diverting water subject to State Water Board jurisdiction and was considered an unauthorized diversion of water for which he could be subject to enforcement. The Findings Letter also provided information on the Northern California Coastal Streams Policy and its applicability to the reservoir. Finally, the Findings Letter gave Mann 45 days to either: (1) provide evidence that the reservoir does not store water, or can be operated without storing water subject to the State Water Board's permitting authority; (2) remove the reservoir or render it incapable of storing water; or (3) file an application to appropriate water. The Division received a response letter from Mann on November 29, 2011. (WR-9.) Mann's response did not provide the information requested in the Findings Letter or convey any intent to pursue the necessary corrective actions as identified in the Findings Letter.

On October 19, 2011, the Division received a Statement (S022500) from Mann for the unauthorized reservoir. (WR-5.) The Statement claimed stockwatering as the use along with fire protection, but did not claim a basis of right for the reservoir. (WR-5.) The Division mailed a letter to Mann on January 2, 2013, indicating the Statement was deficient and Ms. Mann responded with a letter on February 24, 2013 correcting the deficiencies. (WR-14, WR-16.)

The Division also mailed a letter to the California Department of Water Resources, Division of Safety of Dams (DSOD) on November 15, 2011 indicating Mann's reservoir may be under the jurisdiction of DSOD. (WR-8.) The Division was copied on a letter from DSOD dated March 8, 2012 to Mann stating that DSOD's January 10, 2012 inspection determine the dam was under State jurisdiction as to safety. (WR-10.) Since 2012, DSOD currently conducts annual field inspections of the dam and based on DSOD's 2013 and 2014 field inspection report there apparently has been no modifications to the dam. (WR-15, WR-24.)

Issuance of the ACL Complaint and Draft CDO

Based on my determination that the reservoir located on property owned by the Robert C. Mann 1999 Trust, for which Mann is the trustee and on which Mann raises cattle, Mann is storing water subject to the permitting authority of the State Water Board. I recommended that the Division consider enforcement action for the unauthorized diversion of water. Shortly after reviewing Mann's response letter regarding our Findings letter, Mr. Aaron Miller, Senior of Enforcement Unit 4, directed me to draft an ACL Complaint and proposed CDO. The ACL Complaint and proposed CDO were issued by the Division on June 14, 2012. (WR-11.) The ACL Complaint explains the State Water Board's authority to issue such a complaint as defined by California Water Code, details the investigation in chronological order followed by the maximum and proposed civil liability, and concludes with details of Mann's right to a hearing. (WR-11.) The amounts listed under the proposed civil liability section were determined by Mr. Miller based on his analysis as detailed in his testimony. (WR-1). The proposed CDO provides the State Water Board's authority as defined by California Water Code to issue such an order then details the investigation in chronological order. The proposed CDO provides Mann with two corrective action options that can be pursued to come into compliance with the proposed CDO and California Water Code. Lastly, the proposed CDO explains the consequences of non-compliance and the State Water Board's reserved enforcement authority and discretion. The ACL Complaint and proposed CDO were sent by certified mail on June 14, 2012 to Robert C Mann 1999 trust and Mann. (WR-11.) The June 14, 2012 certified mail containing the enforcement documents were accepted by signature on June 18, 2012. (WR-12.) Mann provided written response by letter dated July 2, 2012 requesting a hearing. (WR-13.)

Staff Recommendations

Based on the facts and findings discussed above and detailed in the ACL Complaint and proposed CDO, the State Water Board should issue an ACL order as proposed in the ACL Complaint. Furthermore, the State Water Board should consider that additional staff costs were incurred to pursue compliance from Mann since the issuance of the ACL Complaint. As of July 15, 2014 Mann has not submitted an application to appropriate water. The State Water Board should also issue the proposed CDO requiring Mann to take immediate action to bring into compliance the collection, storage, and use of water in the reservoir or render the reservoir incapable of storing water.

Timeline of Significant Events

Division staff identified reservoir as potentially unauthorized	July 2011
Field Inspection Date	September 9, 2011
Mann filed a deficient Statement (S022500)	October 19, 2011
Field Inspection Report Completed	October 21, 2011
Division's Findings Letter	October 28, 2011
Division letter notifying DSOD	November 15, 2011
Mann's Response Letter	November 29, 2011
DSOD Findings Letter	March 8, 2012
Enforcement Action ENF00158 – Administrative Civil Liability Complaint and Notice of Proposed Cease and Desist Order Regarding Unauthorized Diversion of Water Within the Gualala Watershed in Sonoma County	June 14, 2012
Mann's Request for Hearing	July 2, 2012
Division notifies Mann of deficient Statement	January 2, 2013
DSOD's annual field inspection	February 7, 2013
Mann's Response letter correcting deficient Statement	February 24, 2013
Enforcement's Request for a Hearing Date to be Scheduled	March 26, 2014