

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2014—0090—EXEC

In the Matter of Unauthorized Diversion and Violation of Emergency Regulations for Curtailment
of Diversions Due to Insufficient Flow for Specific Fisheries by

STANFORD VINA RANCH IRRIGATION COMPANY

SOURCES: Deer Creek, tributary to the Sacramento River

COUNTY: Tehama

ORDER APPROVING STIPULATION AND CEASE AND DESIST ORDER

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a draft cease and desist order (draft CDO) to Stanford Vina Ranch Irrigation Company (Stanford Vina). Per the terms of the attached stipulation, the State Water Board's Division of Water Rights Prosecution Team (Prosecution Team) and Stanford Vina have agreed to settle this matter in lieu of proceeding to a hearing.

2.0 LEGAL, FACTUAL, AND PROCEDURAL BACKGROUND

The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60, subdivision (a), which further provides: "no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement

¹ State Water Resources Control Board (State Water Board or Board) Resolution 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties, pursuant to Government Code section 11415.60, subdivision (c).

negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code.”

On May 21, 2014, the State Water Board adopted emergency regulations on the curtailment of diversions based on insufficient flow to meet all needs (Emergency Regulations). (Cal. Code Regs., tit. 23, §§ 877-879.2.) The Emergency Regulations went into effect on June 2, 2014 and establish minimum flow requirements for the protection of specific anadromous fish in Mill Creek, Deer Creek, and Antelope Creek. The Emergency Regulations provide that diversions from Mill Creek, Deer Creek, or Antelope Creek are wasteful and unreasonable if those diversions will cause flows to drop below the minimum flows specified in the Emergency Regulations. The Emergency Regulations empower the Deputy Director for the Division of Water Rights (Deputy Director) to issue curtailment orders directing diverters to cease or reduce their diversions as necessary to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The Emergency Regulations will expire on February 27, 2015, but the State Water Board may renew the Emergency Regulations, if the Board determines that the conditions for their issuance are still in effect. (Wat. Code, § 1058.5, subd. (c).)

On June 5, 2014, the Deputy Director issued Order WR 2014-0022-DWR (June Curtailment Order). The June Curtailment Order took effect on June 6, 2014 and required all water rights holders in the Deer Creek watershed to immediately cease or reduce their diversions from Deer Creek to ensure the minimum flows specified in the Emergency Regulations were satisfied through June 30, 2014.

On June 12, 2014, the Assistant Deputy Director of the Division of Water Rights (Assistant Deputy Director) issued a draft cease and desist order (draft CDO) against Stanford Vina for failure to comply with the Emergency Regulations and for engaging in the unauthorized diversion of water. By letter dated July 2, 2014, Stanford Vina, through its attorney Dustin Cooper, timely requested a hearing on the draft CDO. A hearing was scheduled for December 8, 2014.

On October 14, 2014, the Deputy Director issued Order WR 2014-0029-DWR (October Curtailment Order). The October Curtailment Order took effect on October 15, 2014 and requires all water rights holders in the Deer Creek watershed to ensure the minimum flows

specified in the Emergency Regulations are satisfied through February 27, 2015 or until the Deputy Director suspends the October Curtailment Order.

On November 20, 2014, the Prosecution Team and Stanford Vina entered into the attached stipulation.

3.0 STIPULATION

The stipulation sets forth that Stanford Vina will comply with the October Curtailment Order for the duration of its effectiveness and that Stanford Vina will comply with the Emergency Regulations for the duration of their effectiveness. The stipulation further sets forth that Stanford Vina will maintain a daily record of all of its diversions from Deer Creek and of the flows registered at the Department of Water Resources gaging station below Stanford Vina's points of diversion through February 28, 2015 and will make such records available to the State Water Board no later than March 15, 2015.

The stipulation further sets forth that any order approving the stipulation shall be treated as a final cease and desist order issued by the State Water Board and that violation of the stipulation and the order approving it shall be subject to further enforcement. (Wat. Code, §§ 1831-36, 1845-46.) Per the stipulation's terms, Stanford Vina withdraws its request for a hearing upon the Executive Director's approval of the stipulation and waives its right to request reconsideration of the Executive Director's order approving the stipulation, provided no material modifications to the stipulation are made and no additional requirements beyond those in the stipulation are included in the order.

Issuance of this order shall not constitute an admission by the State Water Board of the factual basis or legal effect of the allegations set forth in the Verified Complaint and Petition filed by Stanford Vina in the Superior Court of California in and for the County of Sacramento (Case No. 34-2014-80001957) and referenced in the recitals, at paragraphs 16-20, of the stipulation.

ORDER

IT IS HEREBY ORDERED that:

1. The settlement of this proceeding as provided by the attached stipulation between the Division of Water Rights Prosecution Team and the Stanford Vina Ranch Irrigation Company is approved.
2. The Stanford Vina Ranch Irrigation Company shall fully comply with Order WR 2014-0029-DWR until the earlier of February 28, 2015 or the repeal of Order WR 2014-0029-DWR.
3. The Stanford Vina Ranch Irrigation Company shall fully comply with the requirements of the State Water Resources Control Board's emergency regulations for the curtailment of diversions in certain tributaries of the Sacramento River when insufficient flows are available, set forth in California Code of Regulations, title 23, sections 877 through 879.2. The Stanford Vina Ranch Irrigation Company shall do so until the earlier of February 28, 2015 or the repeal of the emergency regulations.
4. Through February 28, 2015, the Stanford Vina Ranch Irrigation Company shall maintain a daily record of all of its diversions from Deer Creek and of the flows registered at the Department of Water Resources gaging station below the Stanford Vina Ranch Irrigation Company's points of diversion. The Stanford Vina Ranch Irrigation Company shall make such records available to the State Water Resources Control Board no later than March 15, 2015.
5. This order shall have the force and effect of a cease and desist order issued pursuant to Water Code section 1831 and shall be enforced as such.
6. The Stanford Vina Ranch Irrigation Company has withdrawn its request for a hearing on the draft cease and desist order issued against it on June 12, 2014 and waived its right to request reconsideration of this order.
7. The State Water Resources Control Board's right to take future enforcement action against the Stanford Vina Ranch Irrigation Company for any future violations is reserved.

Dated: _____

12/15/14



Thomas Howard
Executive Director