

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

ORDER WR 2014 - ___ - 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

**ORDER APPROVING STIPULATION
AND CEASE AND DESIST ORDER**

BY THE EXECUTIVE DIRECTOR¹

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). In accordance with 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. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

On May 21, 2014, the State Water Board adopted the Emergency Regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (California Code of Regulations, title 23, sections 877 through 879.2) ("Emergency Regulations"). The Emergency Regulations were reviewed by the Office of Administrative Law and went into

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

effect on June 2, 2014. The Emergency Regulations establish drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek and Antelope Creek. The Emergency Regulations provide that diversion and use of water from Mill, Deer and Antelope creeks is unauthorized if those diversions will cause flows to drop below the specified minimum flows. Under the Emergency Regulations, diversions are curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The diversion or use of water in violation of the Emergency Regulations is an unauthorized diversion and use of water. Violations of the Emergency Regulations are enforceable pursuant to Water Code sections 1052, 1831, 1845 and 1846. The Emergency Regulations will expire on February 28, 2015, pursuant to subdivision (c) of Water Code section 1058.5.

Stanford Vina submitted written and verbal comments as part of the State Water Board process for considering and approving the Emergency Regulations, alleging several procedural and substantive defects.

On June 5, 2014, the Deputy Director for the Division of Water Rights issued a Curtailment Order for Deer Creek, WR 2014-0022-DWR ("June Curtailment Order") under the Emergency Regulations. 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 drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied through June 30, 2014 or until the Deputy Director suspends the June Curtailment Order under section 877, subdivision (c)(2)(E). The stipulation of Stanford Vina to the issuance of this Order shall not constitute an admission as to these facts or legal assertions.

On June 12, 2014, the Prosecution Team issued a draft Cease and Desist Order WR 2014-00XX-DWR ("Draft CDO") against Stanford Vina, alleging, among other things, that from June 6 through June 11, Stanford Vina failed to reduce diversions sufficiently to

bypass the minimum flows required under the June Curtailment Order and the Emergency Regulations.

On June 12, 2014, Stanford Vina submitted a Response to State Water Resources Control Board Regarding Emergency Regulations for Curtailment-Deer Creek, responding to Paragraph 5 of the June Curtailment Order. In this Response, Stanford Vina reiterated its earlier objections to the Emergency Regulations, and raised additional objections specific to the June Curtailment Order.

On June 24, 2014, the Deputy Director issued a Notice of Immediate Suspension of the June Curtailment Order.

On July 2, 2014, Stanford Vina timely requested hearing on the Draft CDO. Also on July 2, 2014, Stanford Vina submitted a Petition for Reconsideration Related to Emergency Regulations Curtailing Diversions on Deer Creek and Related Orders.

On September 23, 2014, the State Water Board issued Order WR 2014-0028, denying Stanford Vina's Petition for Reconsideration.

On October 14, 2014, the Deputy Director for the Division of Water Rights issued a Curtailment Order for Deer Creek, WR 2014-0029-DWR ("October Curtailment Order") under the Emergency Regulations. The October Curtailment Order took effect on October 15, 2014 and requires all water rights holders in the Deer Creek watershed to immediately cease or reduce their diversions from Deer Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied through February 28, 2015, or until the Deputy Director suspends the October Curtailment Order under section 877, subdivision (c)(2)(E). The stipulation of Stanford Vina to the issuance of this Order shall not constitute an admission as to these facts or legal assertions.

On October 22, 2014, Stanford Vina filed a Verified Complaint and Petition for (1) Inverse Condemnation, (2) Declaratory Relief Judgment, (3) Writ of Mandate, (4) Writ of Mandate, and (5) Injunction or Writ of Mandate, in Sacramento Superior Court (Case No. 34-2014-80001957), alleging various claims challenging the Emergency Regulations and the curtailment orders issued thereunder.

At the time of the Stipulation, the State Water Board has scheduled hearing for the Draft CDO commencing on December 8, 2014, although in accordance with the terms of the Stipulation, Stanford Vina and the Prosecution Team have requested that the hearing and accompanying deadlines be postponed pending consideration of this Order.

Stanford Vina and the Prosecution Team engaged in settlement discussions and mutually agreed to settle the matters identified in the Draft CDO in lieu of hearing.

3.0 STIPULATION

Stanford Vina and the Prosecution Team executed the Stipulation attached hereto. The general terms of the Stipulation are that Stanford Vina withdraws its request for hearing on the Draft CDO and agrees to the terms for cease and desist as described in the Stipulation and incorporated herein.

ORDER

IT IS HEREBY ORDERED THAT the attached Stipulation between the Division's Prosecution Team and Stanford Vina is approved and is incorporated by reference into this Order.

This Order constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Order will be subject to further enforcement under Water Code section 1845 or Water Code Section 1825, et seq..

Water Code section 1845, subdivision (a), provides that "Upon the failure of any person to comply with a cease and desist order issued by the [State Water Board], 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."

Section 1845, subdivision (b) of the Water Code provides:

(1) A person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following:

(A) If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, ten thousand dollars (\$10,000) for each day in which the violation occurs.

(B) If the violation is not described by subparagraph (A), one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

STATE WATER RESOURCES CONTROL BOARD

Thomas Howard
Executive Director

Dated: