

Exhibit 8

Exhibit # 18



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

RAYMOND HALL, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

February 23, 2000

Marietta Vineyards LLC
PO Box 1436
Healdsburg Ca 95448

SUBJECT: PROPOSED POND LOCATED AT: 30010 Hwy 128, Yorkville

Dear Sir/Madam:

On 2-16-2000, Building Inspector, Guy Parry conducted a Special Inspection at the above address. The purpose of the inspection was to document his observations regarding the location, height of dam, area in water capacity, terrain and setbacks to property lines and structures of the proposed pond.

I have reviewed Mr. Parry's documentation and have approved your proposed pond as grading in an isolated, self-contained area and that there is no danger to private or public property as long as the work is done according to the information provided by you to Mr. Parry at the time of inspection.

If you have any questions, please feel free to call Monday through Friday from 8:00am to 5:00pm.

Sincerely,


Chris Warrick
Chief Building Inspector

CW/th

APPLICATION FOR SPECIAL INSPECTION

Owner Maricetta Vineyards L.L.C. AP# 49-300-16
Mailing Address PO 1436 Healdsburg CA 95448 Telephone # 707 433 2747

Applicant CHRIS BILBO Telephone # 707 433 2747
Mailing Address PO 1436 Healdsburg CA 95448
Building Location 30010 Hwy 128 Yorkville, CA 95494

I hereby request a special inspection of the following building:

- 1. Dwelling (if only a portion, specify) _____
- 2. Apartment House (if only a portion, specify) _____
- 3. Commercial (specify present occupancy) _____
- 4. Other (specify) _____

I am requesting a special inspection for the purpose of:

- 1. Moving the building
- 2. Financing (specify agency) _____ Case # _____
- 3. Change of occupancy to _____
- 4. Other (specify) POVD EXEMPTION

I hereby certify that I will obtain the necessary permits and make any necessary corrections, alterations, or repairs required by the County of Mendocino, as a result of this inspection, to comply with building and housing code requirements. I also certify that prior to the use or occupancy of this building, I will complete the above required corrections, alterations, or repairs, or, if the building is presently occupied, I will complete the above required corrections, alterations, or repairs within thirty (30) days.

I certify that I have read this application and state the above information is correct and hereby authorize representatives of the County of Mendocino to enter upon the above-mentioned property for inspection purposes.

[Signature]
Signature of Owner

Date 1/11/2007

Fee paid \$ 60.00

Receipt # _____

3010 Hwy 128
Yorkville
49-300-16
Marietta Vineyards

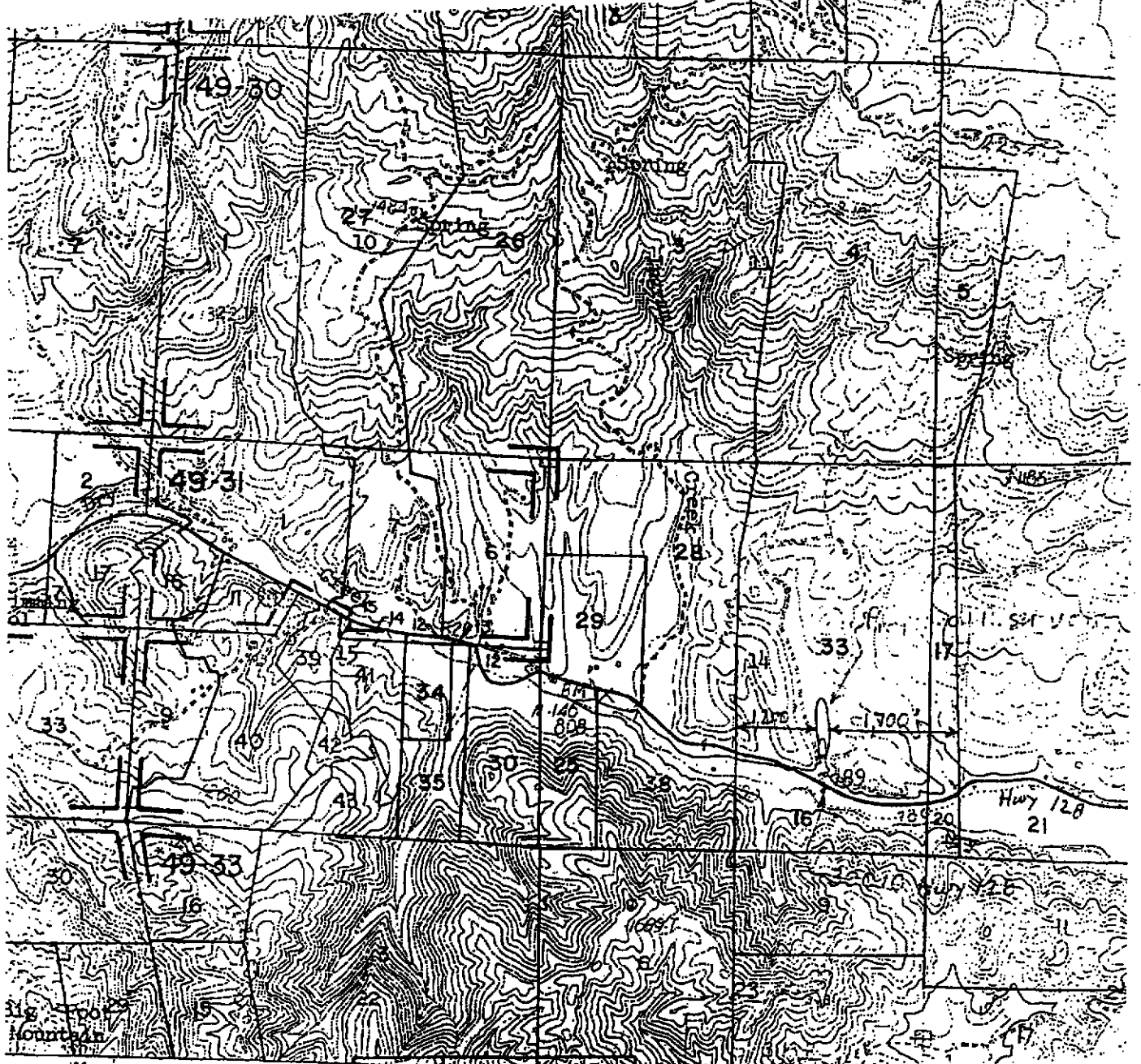


Exhibit 9

Exhibit # 19

MENDOCINO COUNTY MEMORANDUM

TO: CHRIS WARRICK, CHIEF BUILDING INSPECTOR
FROM: SCOTT WARD - BUILDING INSPECTOR II *Sw*
SUBJECT: POND EXEMPTION FOR LARRY SMITH
7811 PEACHLAND ROAD, BOONVILLE
DATE: AUGUST 31, 1999

On 8-30-99 I conducted a pond exemption inspection at the above address. Please note that there is no written office policy, adopted code, regulation or ordinance describing the parameters of pond construction, inspection or exemption provided to the building inspectors. There has been no inspector training on the subject of pond exemption inspections.

The pond location shown to me by Larry Smith was as indicated on his application and plot plan. According to Mr. Smith the pond will be at the largest 80 ft. X 85 ft with a dam approximately 10 ft. high dam. The method of filling the pond will be winter runoff and a small spring. It appears that if the pond constructed is in accordance with the information provided you may be able to consider exemption.

Exhibit ~~10~~

Exhibit # 20



State Water Resources Control Board

Duplicate 1170



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5377
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

APR 06 2001

In Reply Refer To:
363:DRB:262.0(23-44-01)

Ms. Rosalind Peterson
P.O. Box 499
Redwood Valley, CA 95470

Dear Ms. Peterson:

QUESTIONS RELATED TO GOLDEN VALLEY VINEYARD POND FAILURE IN MENDOCINO COUNTY

Your letter of March 5, 2001 poses several questions related to the failure of a pond at the Golden Valley Vineyard within the Forsythe Creek watershed. The following responses to these questions are based on the best information currently available to the Division of Water Rights (Division).

1. *Given the above information what action will you take with regard to this complaint about these two ponds, their respective dams, and the damage caused to Forsythe Creek?*

Response: You should have received a copy of a letter dated March 22, 2001 from Charles Rich, Chief of the Division's Complaint Unit, to Mr. Joseph Golden requesting a response to your complaint. Upon receipt of Mr. Golden's answer, Division staff will evaluate all of the available information to determine if further action is warranted. A review of the Division's records failed to disclose any water right filings that appear to be related to either of Mr. Golden's ponds. Consequently, unless these ponds are filled with water from a source that does not require acquisition of a permit from the State Water Resources Control Board, I would anticipate that, at a minimum, Mr. Golden would be asked to file an application(s) for these ponds.

Division staff have also contacted the North Coast Regional Water Quality Control Board (Regional Board) to determine if they are aware of the failure. We have been informed that they were notified of the pond failure and have been investigating the situation along with the Department of Fish and Game (Department) and the County of Mendocino (County). Mr. Andrew Baker of the Regional Board is the staff assigned. He can be reached at (707) 576-2220.

2. *What impact will this pond collapse have on Forsythe Creek and the spawning fish in this creek?*

The Division currently has no information regarding the impacts of this incident. As the

California Environmental Protection Agency

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."

APR 06 2001

Rosalind Peterson

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Department responded to this event, they may be able to provide you with more detailed information. The Regional Office for the Department can be contacted at:

Department of Fish and Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599
(707) 944-5500

3. *Mendocino County is issuing "Exempt Permits" on all requests for new construction of ponds and reservoirs. Is this action endangering other streams and fish in the county as well as public safety? Could this type of problem happen in this County again?*

Until recently, the County did not regulate grading operations including the construction of water impoundments. Apparently, the pond that failed at the Golden Valley Vineyard was constructed prior to imposition of any controls by the County. The County has since adopted Chapter 70 of the 1991 Uniform Building Code (UBC) to regulate grading activities. Compliance with these new requirements can be achieved by submitting a "Pond Exemption Application" and having the project site inspected by County staff. If they find that *"the proposed pond will be constructed in an isolated, self-contained area and that there is no danger to private or public property as long as the work is done according to the information provided by the applicant at the time of the inspection"*¹, an exemption is granted. I understand that this use of the UBC is ministerial in nature and does not require an environmental review of the project. If an exemption is not warranted, a building permit must be obtained. This process includes a more detailed review by County staff to see that the project will be well constructed in accordance with the UBC.

The County is essentially screening projects to reduce the number of detailed grading plan reviews. The screening process entails an onsite inspection to determine which projects qualify for an exemption. Only those projects qualify where the risk to the public and/or environment is quite low. While an extremely rigorous review of the project coupled with tight permitting control might provide a greater degree of safety to the public and environment, the cost of such a program would no doubt be much more substantial.

¹ - This language was taken from exemption letters prepared by the County.

4. *Since Mendocino County is not engaged in any program of identifying illegal ponds, dams and reservoirs, (also does not seem to know about the ones identified by State Water Resources in the Navarro Watershed and elsewhere in Mendocino County), what action can your respective agencies take to protect the streams and rivers in our county from impacts such as the one which just occurred?*

The Division does not have primary jurisdiction over the safety of small dams. This responsibility rests with the County and the State Division of Safety of Dams.

With respect to the issue of unauthorized diversion of water to storage in these types of facilities, the Division utilizes the following activities to try and prevent unauthorized diversion of water:

- a. The Division investigates complaints to determine if unauthorized diversion is taking place;
- b. the Division's Compliance Unit conducts searches of specific watersheds to identify significant unauthorized diversions;
- c. Division staff make speeches to interested groups regarding California water rights law in order to educate people about the need to obtain appropriate right permits; and
- d. the Division maintains a website and responds to public inquiries regarding water rights to assist the general public in understanding California water rights law.

Once an unauthorized diversion is identified, the diverter is required to either cease the diversion or file an application to appropriate water. The application process provides an opportunity for the public to protest. Further, an environmental review is conducted. If a permit is issued, mitigation terms are included to address issues raised by protests and the environmental review. If a protest regarding dam safety has been filed, the dam is not within the jurisdictional size of the Division of Safety of Dams, and a reasonable doubt exists as to the integrity of the dam or spillway; the following term is typically included in the permit:

Construction of the storage dam (or storage of water if the dam is already built) under this permit shall not begin until the County Engineer, the United States Soil Conservation Service, or a civil engineer registered by the State of California has approved the plans and specifications for the dam, or has otherwise certified as to the safety of the dam, and any modification, reconstruction, or enlargement of the dam is under the direction of said party. (Standard Permit Terms K1 & K2)


APR 06 2001

Rosalind Peterson

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If you have any questions or additional concerns, you may contact me at (916) 341-5302 or Charles Rich of the Division's Complaint Unit at (916) 341-5377.

Sincerely,



Harry M. Schueler, Chief
Division of Water Rights

cc: Mr. Raymond Hall, Director
Mendocino County Planning Department
501 Low Gap Road, Room 1440
Ukiah, CA 95482

Mr. Andrew Baker
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

Department of Fish and Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599

Exhibit # 21



H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-1940
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

JUL 28 2000

To: Chairmen of the County Boards of Supervisors and Regional Director of National Resources and Conservation Service (NRCS) on Enclosed Mailing List

STATE OF CALIFORNIA APPROPRIATIVE WATER RIGHT PERMIT REQUIREMENTS

The Division of Water Rights (Division) is requesting your cooperation to better serve your local residents and the general public. We ask that county planning offices incorporate the enclosed notice with any grading permit application for ponds and reservoirs, or with any building permit application that includes a private water supply. If federal NRCS offices receive applications for design assistance for small ponds or reservoirs, the enclosed notice could also be included.

The State Water Resources Control Board (SWRCB), Division is conducting compliance and enforcement inspections and investigations of water diversion facilities within selected high-resource value watersheds. These ongoing annual inspections and investigations find that many pumping facilities, ponds and reservoirs were recently constructed without proper water rights. Owners of some of these facilities suggest that they obtained design assistance or county permits for grading and building, but were never informed or advised of the State's water right requirements. These owners must now either file an application to appropriate water by permit, if water is available, or remove the unauthorized diversion. In some cases, the SWRCB has imposed administrative civil liabilities for the unauthorized diversions of water when the diversions persist without necessary corrective action being taken.

The Division is charged with the administration and regulation of post-1914 appropriative water rights throughout the State. A water right is usually required for any diversion of water for direct use or for storage in a pond or reservoir. In 1999, the Governor and Legislature directed the SWRCB to establish a proactive enforcement program in water rights to prevent illegal and unauthorized diversions of water throughout the State. The protection of the State's limited water supply for beneficial use by legitimate water right holders, and for its public trust resources is paramount.

Please note that the best source of current California water right information can be obtained from the Division's internet website www.waterrights.ca.gov.

Chairmen of the County Boards of Supervisors, et al
Page 2

JUL 28 2000

Thank you for your cooperation and assistance in this matter. If you or any resident have questions regarding the filing of a water right application, staff from the Division's Application Unit is on call to answer questions at (916) 657-2170. If you have questions regarding this letter, please contact Mr. John O'Hagan of my staff at (916) 657-1940.

Sincerely,

ORIGINAL SIGNED BY.

Harry M. Schueller, Chief
Division of Water Rights

Enclosures: Mailing List and Notice

JOHAGAN:ivalin 07/26/2000
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Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights
1001 I Street, 14th Floor - Sacramento, California 95814 - (916) 341-5300
Mailing Address: P.O. Box 2000 - Sacramento, California - 95812-2000
FAX (916) 341-5400 - Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>



Gray Davis
Governor

Water Users:

GENERAL INFORMATION REGARDING THE STATEMENTS OF WATER DIVERSION AND USE LAW

With certain exceptions, the law requires each person or organization who uses diverted surface water or pumped groundwater from a known subterranean stream during the previous calendar year to file with the State Water Resources Control Board (SWRCB) a Statement of Water Diversion and Use (Statement). This applies to water diverted under claim of riparian right and to appropriations commenced prior to establishment of the permit system in 1914, even though recorded in the county.

If you have an appropriative water right issued by the SWRCB and claim a riparian right for all or part of the diversion, you should file a Statement for the water diverted under your claim of riparian right. A valid riparian claim is a vested right that is superior to any right issued by the SWRCB. Therefore, it is to your advantage to document your riparian claim by filing a Statement for the diversion.

The types of diversion excluded from the requirements of the law are:

- a. Springs that do not flow off the property on which they are located;
- b. Applications, permits, or licenses to appropriate water filed with the SWRCB;
- c. Notices filed with the SWRCB under provisions of the Water Code (commencing with section 4999) requiring recordation of groundwater extractions and diversions in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura;
- d. Diversions regulated by a watermaster appointed by the Department of Water Resources;
- e. Diversions reported by the Department of Water Resources in its annual hydrologic data bulletins;
- f. Diversion included in annual reports filed with a court or the SWRCB by a watermaster appointed by a court or pursuant to statute to administer a final judgement determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity of water which has been diverted from each source;

- g. Water right certificates issued by the SWRCB for a stockpond constructed prior to January 1, 1969; and
- h. Groundwater not flowing in a subterranean stream (percolating groundwater).

The Statement should be completed for diversions during a calendar year and should be filed before July 1 of the following year. Supplemental Statements are required at three-year interval on a prescribed form that will be mailed by the SWRCB to owners of record.

The main purpose of this law is to create a central repository for records of diversion and uses of water. This law enables water users to record their diversion and uses with the State. It also enables the SWRCB to notify water users of applications by others to appropriate water, which might affect their supply. The information collected will be helpful in protecting vested rights of diverters and determining whether unappropriated water exists for new applications. Over a period of years, the filings will also provide a valuable record of use.

The information needed to preparation of this Statement is indicated on the enclosed form. Statements should be filed with the SWRCB in duplicate. After the Statement has been received, a Statement Number will be assigned and copy returned for the diverter's record. Future correspondence concerning these Statements should refer to the assigned Statement Number.

If you have any questions, please call the Division of Water Rights at (916) 341-5300 and a staff engineer will be available for assistance.

The attached material is sent in reply to your recent request. If it does not meet the purposes of your inquiry, please communicate further with the

STATE WATER RESOURCES CONTROL BOARD
P.O. BOX 2000
SACRAMENTO, CA 95812-2000.
(916) 657-2170

NOTICE

PLEASE BE ADVISED THAT ANY ACTUAL OR THREATENED DIVERSION OF WATER, EXCEPT UNDER EXISTING RIGHTS, PRIOR TO OBTAINING AN APPROPRIATION PERMIT FROM, OR REGISTERING A SMALL DOMESTIC USE WITH THE STATE WATER RESOURCES CONTROL BOARD, IS IN VIOLATION OF LAW. SUCH VIOLATION MAY RESULT IN ASSESSMENT OF MONETARY PENALTIES AGAINST THE DIVERTED (SEE CALIFORNIA WATER CODE SECTIONS 1052 AND 1225). ALSO, CONSTRUCTION OF A WATER PROJECT MAY BE SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND SHOULD NOT BE COMMENCED PRIOR TO COMPLETION OF NECESSARY ENVIRONMENTAL CLEARANCES. SUCH CLEARANCE MAY BE EVIDENCED BY RECEIPT OF AN APPROPRIATION PERMIT FROM THE STATE WATER RESOURCES CONTROL BOARD OR, IN CASE OF REGISTRATION OF A SMALL DOMESTIC APPROPRIATION, BY RECEIPT OF WRITTEN APPROVAL FROM THE CALIFORNIA DEPARTMENT OF FISH AND GAME.

WATER CODE SECTIONS

275. The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass. (b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not to exceed five hundred dollars (\$500) for each day in which the trespass occurs. (c) The Attorney General, upon request of the board, shall institute in the superior court in and for any county wherein the diversion or use is threatened, is occurring, or has occurred appropriate action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction. (d) Any person or entity committing a trespass as defined in this section may be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the trespass occurs. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration 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. (e) All funds recovered pursuant to this section shall be transferred to the General Fund of the state. (f) The remedies prescribed in this section are cumulative and not alternative.

Exhibit # 22



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5368
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

FEB 27 2002

Mr. Raymond Hall
Director of Planning and Building
Mendocino County Planning and Building Department
501 Low Gap Road, Room 1440
Ukiah, CA 95482

Dear Mr. Hall:

STATE OF CALIFORNIA APPROPRIATIVE WATER RIGHT PERMIT REQUIREMENTS

This letter is a follow-up to our letter of July 28, 2000, (enclosed), to the Chairmen of the County Boards of Supervisors in California, and subsequent telephone conversations with your staff requesting assistance in providing water right Notices to grading permit or building permit applicants.

The State Water Resources Control Board, Division of Water Rights (Division) has been conducting compliance and complaint investigations in your county regarding the illegal use of water and has found that ponds and reservoirs have been recently constructed without first obtaining a water right. We have also received complaints from concerned citizens that your department is exempting grading permits for ponds and reservoirs without providing applicants with the Notice we provided to you regarding the need for proper water rights.

It was our understanding based on discussions with your staff that your grading permits and projects found exempt by the county, include information regarding possible water right requirements. Please confirm to us in writing that you provide your applicants with our prepared water right Notice or that you provide this information to them in another manner. If not, please provide a suggestion as to how we can work with your office to provide the water right requirements to your local residents proposing to construct reservoirs. This information will greatly assist us in our water right compliance activities as well as aid in reducing illegal diversions of water in your county. Also enclosed for your use is an updated NOTICE.

Thank you for your cooperation and assistance in this matter. If you have any questions regarding this letter, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or me at (916) 341-5446.

Sincerely,

ORIGINAL SIGNED BY

James W. Kassel, Chief
License and Compliance Section

Enclosures

STATE WATER RESOURCES CONTROL BOARD
P.O. BOX 2000
SACRAMENTO, CA 95812-2000
(916) 341-5300

NOTICE

ANY DIVERSION OR USE OF WATER NOT COVERED BY AN EXISTING WATER RIGHT REQUIRES A PERMIT, LICENSE, OR REGISTRATION OF SMALL DOMESTIC USE OR LIVESTOCK STOCKPOND ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD (SWRCB). ANY OTHER DIVERSION OR USE OF WATER IS UNAUTHORIZED AND CONSTITUTES A TRESPASS AGAINST THE STATE OF CALIFORNIA. ALL UNAUTHORIZED DIVERSIONS, OR THREAT THEREOF, ARE SUBJECT TO AN ADMINISTRATIVE CIVIL LIABILITY OF \$500 PER DAY, OR INJUNCTIVE RELIEF (CALIFORNIA WATER CODE SECTION 1052).

AN APPLICATION FILED WITH THE SWRCB DOES NOT PROVIDE A BASIS OF RIGHT TO DIVERT WATER UNTIL THE SWRCB ISSUES A PERMIT.

ALSO, WATER SUPPLY PROJECTS MAY BE SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONSTRUCTION SHOULD NOT BE COMMENCED PRIOR TO COMPLETION OF NECESSARY ENVIRONMENTAL CLEARANCES, WHICH MAY BE EVIDENCED BY RECEIPT OF A PERMIT OR REGISTRATION CERTIFICATE FROM THE SWRCB.

California Environmental Protection Agency

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."

Exhibit # 23

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000-03

In the Matter of
Administrative Civil Liability Complaint No. 262.5-16
PHILLIP W. WASSON AND GENEVA WASSON

SOURCES: An Unnamed Stream tributary to Con Creek thence Anderson Creek
thence Navarro River

COUNTY: Mendocino

ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY

1.0 INTRODUCTION

The Chief of the Division of Water Rights (Division) of the State Water Resources Control Board (SWRCB) issued Administrative Civil Liability (ACL) Complaint No. 262.5-16 on December 14, 1999, pursuant to Water Code section 1055, subdivision (a), against Mr. Phillip W. Wasson and Mrs. Geneva Wasson (Wassons) in the amount of \$2,000. The complaint was issued for the illegal diversion of water to storage at a reservoir located on their property (Mendocino County Assessor's Parcel Number (APN) 046-170-60). By letter dated December 16, 1999, Mr. Wasson expressed his intention to appeal the proposed civil liability specified in the ACL complaint. The SWRCB conducted a hearing on the matter in accordance with Water Code section 1055 on March 1, 2000. Staff of the SWRCB's Division of Water Rights (Division) presented testimony and other evidence supporting adoption of the proposed order. Mr. Wasson presented testimony and argument opposing imposition of civil liability. The SWRCB's findings are set forth below.

2.0 BACKGROUND

The unauthorized diversion or use of water subject to appropriation under division 2 of the Water Code (commencing with section 1000) is a trespass for which civil liability may be imposed in an amount not to exceed \$500 for each day in which the trespass occurs. (Wat. Code, § 1052.) Under division 2, a permit is required to appropriate water flowing in a natural channel, unless the water is diverted under basis of riparian or pre-1914 appropriative right or other valid right. (Wat. Code, § 1201.) Moreover, water may not be seasonally stored under basis of riparian right. (*People v. Shirokow* (1980) 26 Cal.3d 301, 307, fn. 7 [162 Cal. Rptr. 30, 605 P.2d 859].) Water Code section 1825 also provides the following general enforcement policy for the SWRCB:

“It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of existing permits and licenses to appropriate water and to prevent the unlawful diversion of water.” (Emphasis added.)

2.1 WATERSHED INVESTIGATION PROGRAM

In 1998, the Division initiated a pilot watershed investigation program in three high resource-value watersheds to determine the extent to which illegal reservoirs are a problem. The watersheds selected for the investigation were:

- (1) Maacama Creek in Sonoma County,
 - (2) Navarro River in Mendocino County, and (3) Pescadero Creek in San Mateo County.
- The program focused on reservoirs which are shown on United States Geological Survey maps or on available aerial photographs and for which the Division has no record of an existing water right. The Division sent letters to the owner(s) of each identified reservoir and asked the owner to identify the basis of the water right for the reservoir, explain why the reservoir is not subject to the SWRCB's permitting authority, file a new water right application, or render the reservoir incapable of storing water.

Within the Navarro River watershed, Division staff identified 130 reservoirs that had no known water rights. The owners of 41 of these reservoirs filed water right applications for their reservoirs without the necessity of a field inspection; 6 reservoir sites are pending inspections; and 83 reservoir sites were inspected by Division staff to determine if a water right permits were required. Of the 83 sites that have been inspected, Division staff determined that water right permits were not required for 36 of the facilities; 2 reservoirs have been removed; and new applications were filed for 44 of the inspected facilities without further Division action. To date, within all three watersheds only Mr. Wasson has required Division staff to acquire an inspection warrant. The Wassons are also one of only five parties identified in the watershed investigation program to whom an ACL complaint has been issued to date.

2.2 CORRESPONDENCE AND FIELD INSPECTION OF MR. AND MRS. WASSON'S RESERVOIR

As part of the unauthorized diversion investigation within the Navarro River Watershed in Mendocino County, the Division identified a reservoir on the Wassons' property. The reservoir is depicted on a 1991 United States Geological Survey topographic map, Philo Quadrangle. On March 6, 1998, the Division initially contacted the Wassons by letter regarding the reservoir on their property (Staff Exhibit No. 1). No response was received. The Division then sent a letter by certified mail, dated June 23, 1998, to the Wassons, advising that the reservoir located on their property was not authorized by any water right known to the Division (Staff Exhibit No. 2). The letter requested them either to identify an existing water right, to file an application to appropriate water by permit for storage, or to render the reservoir incapable of storing water. However, the letter was returned to the Division by return mail and the envelope was marked "Unclaimed." Mr. Wasson provided evidence that confirms that he signed the certification card for receipt of the June 23, 1998 letter, but before leaving the Post Office, he returned the letter unopened to the Postal Service for return to the Division (Wasson Exhibit No. 2).

Division staff attempted to contact Mr. Wasson by telephone on March 8, 1999, to arrange an inspection of the reservoir. During this telephone conversation, Mr. Wasson

indicated that he would not agree to the inspection. On March 10, 1999, Division staff again spoke by telephone with Mr. Wasson in an attempt to arrange an inspection of the reservoir and of the direct diversions authorized under water right licenses held by the Wassons. Mr. Wasson stated he would not allow Division staff access to his property without a court order (Staff Exhibit Nos. 4 and 5).

The SWRCB subsequently obtained an inspection warrant from the Mendocino County Superior Court which authorized SWRCB staff to conduct an inspection of the property on July 27, 1999 (Staff Exhibit No. 7). Two engineers from the Division conducted the inspection, accompanied by Mr. Wasson and a Mendocino County Deputy Sheriff. The inspection found an existing reservoir with an approximate maximum capacity of 36 acre-feet, but at the time of the inspection it was about half full (18 acre-feet). An unnamed stream channel with bed and banks was found leading into the reservoir (Staff Exhibit No. 11, 1999 Reservoir Investigation of Navarro River Watershed, page 2 and Figures 2, 3, and 4 of said exhibit). Based on photographic evidence (Attachments 3, 4 and 5 of Staff Exhibit No. 6), the Division also concluded that water had been collected to storage in the reservoir during the 1998-1999 run-off season. The Division sent a letter to Mr. Wasson by certified mail, dated August 17, 1999, advising him of the findings of the July 27, 1999, field investigation (Staff Exhibit No. 14). This letter further advised him that unless an application for storage in the reservoir, or a proposed schedule to remove the reservoir, was received by the SWRCB within 45 days of the date he received the letter, enforcement action might be taken without further notice.

The Division received a letter from Mr. Wasson dated August 26, 1999, in response to the Division's August 17, 1999 letter (Staff Exhibit No. 16). In this letter, Mr. Wasson claimed that the reservoir was filled by a spring but otherwise failed to provide any

information or evidence that indicates that a permit is not required to divert water to storage in the reservoir. The Division sent a letter to the Wassons, dated September 16, 1999, that responded to Mr. Wasson's August 26, 1999, letter and stated that an application for storage or a plan to remove the reservoir was still required by October 1, 1999 (Staff Exhibit No. 17). The Division did not receive a reply from Mr. or Mrs. Wasson. On December 14, 1999, ACL Complaint No. 262.5-16 was issued against Mr. and Mrs. Wasson (Staff Exhibit No. 18).

3.0 THE MARCH 1, 2000 HEARING

On March 1, 2000, the SWRCB conducted a hearing to receive testimony and exhibits from Division staff and from Mr. Wasson. Division staff introduced Staff Exhibit Nos. 1 through 20 related to the project. Mr. Wasson submitted written testimony and his exhibits (Wassons Exhibits Nos. 1 through 7) during the course of the hearing. Mr. Wasson's exhibits were received after the deadline for submittal of written comments outlined in the hearing notice. Mr. Wasson testified that a spring located above Peachland Road and on a separate assessor parcel of land is the source of water for the water stored in his reservoir (Map, Wasson Exhibit No. 5). Mr. Wasson also testified that the reservoir does not spill off his property, but that he releases water from the reservoir into Con Creek through the reservoir's outlet pipe to keep the reservoir from spilling. Mr. Wasson stated that the reservoir is used for fire protection and wildlife enhancement purposes. He stated that he does not use the water stored in his reservoir for irrigation purposes. Ms. Jan Wasson-Smith testified that heavy storm events were the cause for the severe erosion conditions of the channel above the reservoir (Figure 4 of Staff Exhibit No. 11). Staff summarized the findings in the field inspection of Mr. Wasson's reservoir. Staff testified that the reservoir collects water from an unnamed stream that historically flowed into Con Creek before Wasson's construction of the reservoir. Staff testified that the unnamed stream now flows directly into the reservoir. Field observations by Division staff revealed a suspended pipe, downslope of the reservoir, that crossed Con Creek then went underground at the opposite bank of Con Creek (Figure 8 in Staff Exhibit No. 11). Beyond the point where the pipe crossed Con Creek, a pipe was seen emerging from the ground towards a vineyard (Figure 10 in Staff Exhibit No. 11).

However, Mr. Wasson testified that the pipe crossing Con Creek observed during the field inspection discharges water from the reservoir into the gravels in the far bank of Con Creek.

4.0 SWRCB CONCLUSIONS

The Wassons' reservoir located within the NE 1/4 of the NE 1/4 of Section 34, T14N, R14W, MDB&M on Mendocino County APN 046-170-060 is seasonally storing water from an unnamed stream subject to the permitting authority of the SWRCB. While the spring identified by Mr. Wasson as the source of water for the reservoir may contribute flow to the reservoir, it is not the sole source of supply, and it is on a separate parcel from the parcel which contains the reservoir. A 27-acre watershed above the reservoir also can contribute from 35 to 50 acre-feet per year to the reservoir under average rainfall conditions. In the absence of the reservoir, water from the unnamed stream would have historically flowed into Con Creek. Further, Mr. Wasson testified that he releases water into Con Creek from the reservoir to prevent uncontrolled spilling. The Wassons' diversion of water to storage without an appropriate water right permit is an unauthorized diversion of water and a trespass against the State subject to administrative civil liability under Water Code section 1052 et seq. Water Code section 1055.3 provides:

"In determining the amount of civil liability, the Board shall take into consideration 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."

The unnamed stream which is diverted into the Wassons' reservoir would normally, in the absence of the reservoir, contribute seasonal flows to the Navarro River watershed via Con Creek and Anderson Creek. The Navarro River supports coho salmon, a species listed as threatened under the Federal Endangered Species Act, and steelhead trout, a potential candidate for listing.

Division staff has not investigated the environmental damage, if any, caused by this unauthorized diversion, but would be expected to review potential environmental impacts as part of processing a new water right application.

At a minimum, the violation was ongoing during the 1998-1999 run-off season. The violation likely has been ongoing for much longer, judging from the fact that the reservoir is depicted on a 1991 United States Geological Survey topographic map.

In addition, following notification of the violation, the Wassons have not taken any action to correct the violation, despite warning of potential enforcement action, after the Division's field inspection. Even after issuance of the ACL complaint, the Wassons failed to file an application to obtain a water right for the reservoir.

The \$2,000 liability proposed in the ACL complaint is based on the length of time over which the violation occurred and the lack of corrective action by the violator. The SWRCB's costs in this matter exceed the liability.

Water Code section 1052 authorizes imposition of administrative civil liability in the amount of up to \$500 for each day of violation. Having taken into consideration all relevant circumstances, the SWRCB concludes that imposing civil liability in the amount of \$2,000 is appropriate.

2. The Wassons shall file, within 30 days of the date of this order, either a water right application for the storage reservoir located on their property or a plan, acceptable to the Chief of the Division of Water Rights, that describes how and when the reservoir will be rendered incapable of storing water subject to the SWRCB's permitting authority; and
3. If the Wassons fail to remit the \$2,000 and to submit either the water right application and all necessary fees (\$100 fee to SWRCB and \$850 fee to the Department of Fish and Game) or the plan to render the reservoir incapable of storing water within the periods specified above, this will be cause for additional administrative civil liability.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 26, 2000.

AYE: Arthur G. Baggett, Jr.
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None

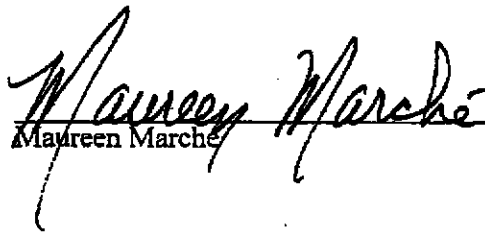

Maureen Marche

Exhibit # 24

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000 - 11

In the Matter of
Administrative Civil Liability Complaint No. 262.5-14
WILLIAM SLOAN AND JENNIFER SLOAN

SOURCES: An Unnamed Stream tributary to Briggs Creek thence Maacama Creek thence Russian River

COUNTY: Sonoma

ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY

1.0 INTRODUCTION

The Executive Director of the State Water Resources Control Board (SWRCB) issued Administrative Civil Liability (ACL) Complaint No. 262.5-14 on May 14, 1999, pursuant to Water Code section 1055(a), against Mr. William Sloan and Mrs. Jennifer Sloan in the amount of \$500. The complaint was issued for the illegal diversion of water to storage at a reservoir located on their property (Sonoma County Assessor's Parcel Number (APN) 132-230-18). By letter dated June 14, 1999, Mrs. Sloan expressed her intention to appeal the proposed civil liability specified in the ACL complaint. The SWRCB conducted a hearing on the matter in accordance with Water Code section 1055 on May 9, 2000. Staff of the SWRCB's Division of Water Rights (Division) presented testimony and other evidence supporting adoption of the proposed order. Mr. and Mrs. Sloan did not attend the hearing. Mrs. Sloan faxed to the SWRCB a letter dated May 9, 2000, stating that she would be unable to attend the hearing. Mrs. Sloan's letter stated that she has adequately stated in previous correspondence dated July 9, 1999, which is Staff Exhibit 10, why she believes the civil liability should be waived. Mrs. Sloan's letter dated May 9, 2000, was read into the record and accepted as evidence (Sloan Exhibit 1). Based on the testimony and evidence, the SWRCB's findings are set forth below.

2.0 BACKGROUND

The unauthorized diversion or use of water subject to appropriation under the provisions of the Water Code is a trespass for which civil liability may be imposed in an amount not to exceed \$500 for each day in which the trespass occurs. (Water Code section 1052.) Water Code section 1825 provides:

"It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of existing permits and licenses to appropriate water and to prevent the unlawful diversion of water." (emphasis added).

2.1 Watershed Investigation Program

In 1998, the Division initiated a pilot watershed investigation program to determine the extent to which illegal reservoirs are a problem in three high resource-value watersheds. The watersheds selected for the investigation were: (1) Maacama Creek in Sonoma County, (2) Navarro River in Mendocino County, and (3) Pescadero Creek in San Mateo County. The program focused on investigation of reservoirs shown on United States Geological Survey maps or on available aerial photographs and for which the Division has no record of an existing water right. The Division sent letters to the owner(s) of each identified reservoir and asked the owner to identify the basis of the water right for the reservoir, explain why the reservoir is not subject to the SWRCB's permitting authority, file a new water right application, or render the reservoir incapable of storing water.

Within the Maacama Creek watershed, Division staff initially identified 73 sites, of which 64 had reservoirs with no known water rights. Some reservoir owners filed water right applications for 19 of these facilities without requesting a field investigation. Owners of 39 of the reservoirs requested site inspections to determine if a water right permit was required; six reservoirs were not inspected but enforcement action was initiated as noted below. Following the inspections, Division staff determined that water right permits were not required for 16 of the inspected facilities; new applications were filed for 18 of the inspected facilities without further action; two reservoirs were subsequently removed; and 3 ACL complaints were issued against the remaining three inspected facilities. A fourth ACL complaint was issued against an owner of six facilities

that were not inspected. The ACL complaints against the 6 uninspected facilities and one inspected facility were closed because the owners paid the proposed administrative civil liability of \$500 and filed new water right applications. One of the two remaining ACL complaints against inspected facilities was imposed on the Sloans for their failure to voluntarily submit a water right application with due diligence. Following receipt of the ACL Complaint, the Sloans submitted an Application for Small Domestic Registration, but did not pay the \$500 administrative civil liability specified in the ACL complaint.

2.2 Correspondence and Field Inspection of Mr. and Mrs. Sloan's Reservoir

By letter dated April 9, 1998, the Division notified the Sloans that a reservoir located on their property was not authorized by any water right known to the Division (Staff Exhibit 1). The Division's April 9, 1998, letter requested that the Sloans identify an existing water right for the reservoir or file a water right application. The Division files indicate that there was no written response to the April 9, 1998 letter. Division staff conducted a field inspection on May 5, 1998, and found an offstream pit-type reservoir with an estimated capacity of 5 acre-feet. At the time of inspection, water was being diverted into the reservoir via pipeline from a stream on a neighbor's property. Staff Exhibit 2 is an inspection report detailing the findings and recommendations for this inspection.

By certified letter dated July 6, 1998 (Staff Exhibit 3), the Division informed the Sloans that their reservoir was found to be subject to the SWRCB's permitting authority because it was collecting water to off-stream storage from an unnamed stream located on their neighbor's property. They were advised that unless they either ceased the diversions to off-stream storage, submitted evidence showing the diversion to off-stream storage was not subject to SWRCB's permitting authority, or submitted a water right application, enforcement action could be taken without further notice. On September 1, 1998, the SWRCB received a letter dated August 25, 1998, from Jennifer Sloan requesting a water right application (Staff Exhibit 4). Mrs. Sloan's letter agrees to submit a water right application. As requested, a new application was mailed to the Sloans on about September 15, 1998. On January 25, 1999, Division staff spoke with Jennifer Sloan by telephone and she confirmed that she had received the application. Division staff's contact report on the telephone conversation states that Mrs. Sloan stated the Division could expect the

application in 30 days (Staff Exhibit 6). Pursuant to Water Code section 1055(a), the State Water Resources Control Board's (SWRCB) Executive Director issued Administrative Civil Liability (ACL) Complaint No. 262.5-14 on May 14, 1999, in the amount of \$500, against the Sloans (Staff Exhibit 7). This complaint was issued for the illegal storage of water in a reservoir collecting water from an unnamed stream within the Maacama Creek watershed in Sonoma County. No water right application was filed for the Sloan's reservoir and the Division received no information regarding the curtailment of diversion from the neighbor's property prior to issuance of the ACL complaint.

By letter dated June 14, 1999, Mrs. Sloan submitted an application for Registration of a Small Domestic Use Appropriation and requested a hearing on the proposed civil liability of \$500 as specified in Complaint 262.5-14. Mrs. Sloan's June 14, 1999, letter states that her family is one of many in the area with a small agricultural pond, that they received a permit from Sonoma County for construction of the pond, and that neither their engineer, general contractor, nor the county informed them that a permit was required from the state (Staff Exhibit 8). Mrs. Sloan questions why her family was "singled out" for enforcement action and states that the diversion of water to the pond from her neighbor's property had been turned off.

3.0 SWRCB CONCLUSIONS REGARDING CIVIL LIABILITY

The reservoir located within the SE ¼ of the NE ¼ of Section 29, T10N, R7W, MDB&M on Sonoma County APN 132-230-18 is storing water subject to the permitting authority of the SWRCB. This diversion of water to storage without an appropriative water right permit is an unauthorized diversion of water and a trespass against the State subject to administrative civil liability under Water Code section 1052 et seq. Water Code section 1055.3 provides:

"In determining the amount of civil liability, the Board shall take into consideration 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."

Following notification of the violation, Mr. and Mrs. Sloan did not take any action to correct the violation, despite warning of potential enforcement action, after the Division's field inspection. It was not until after issuance of the ACL complaint that Mr. and Mrs. Sloan filed an application for Registration of Small Domestic Use Appropriation for the reservoir. This application was accepted by the Division as Registration No. 507R, Small Domestic Use Application D031005R. This registration authorizes the Sloan's diversion of water from the unnamed stream for 4,320 gallons per day by direct diversion and 2.5 acre-feet by storage.

The unnamed stream used at Mr. and Mrs. Sloan's reservoir contributes seasonal flows to the Maacama Creek watershed tributary to the Russian River. That river supports steelhead trout, which are listed as threatened under the Federal Endangered Species Act. Division staff has not investigated the environmental damage, if any, caused by the Sloan's unauthorized diversion. For all Registrations of Small Domestic Use Appropriations, the Department of Fish and Game is charged with reviewing the application for potential environmental impacts.

The costs associated with issuance of the ACL complaint, including writing letters and conducting the field inspection are in excess of the \$500 liability proposed in the ACL complaint. The SWRCB has incurred additional costs in preparing a hearing notice and scheduling a hearing in response to Mrs. Sloan's request. Enforcement costs would have been much less if Mr. and Mrs. Sloan had filed an application for Registration of a Small Domestic Use when first contacted by the Division. Adoption of an order imposing civil liability in the amount of \$500 as proposed in ACL Complaint No 262.5-14 is well-supported by the record.¹

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¹ The record before the SWRCB would support administrative civil liability in excess of \$500. In the absence of evidence of harm to the environment or other water users, this order imposes liability in the amount of \$500. However, failure to comply with this order may result in imposition of additional civil liability.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings, that:

1. William Sloan and Jennifer Sloan are liable for administrative civil liability in the amount of \$500 and Mr. and Mrs. Sloan shall remit payment of the \$500 liability within 10 days of the date of this order;
2. Failure to remit the \$500 within the period specified above will be cause for additional civil liability.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 20, 2000.

AYE: Arthur G. Baggett, Jr.
Mary Jane Forster
John W. Brown
Peter S. Silva

NO: None

ABSENT: None

ABSTAIN: None

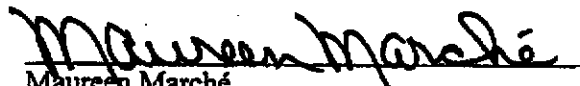

Maureen Marché
Administrative Assistant to the Board

Exhibit # 25



Memorandum

Date: May 28, 2003

Mr. Edward C. Anton, Chief
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812
Fax: (916) 341-5400

Attention Ms. Barbara Leidigh

From : Robert W. Floerke, Regional Manager
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

COPY - Original signed by Robert W. Floerke

Subject: Response to Issues in the Administrative Civil Liability Complaint
Number 262.5-31 Issued to Omnium Estates for Diverting Water to
Storage Without a Permit, McNab Creek, Tributary to the Russian
River in Mendocino County

On November 15, 2002, the State Water Resources Control Board (SWRCB) Chief of the Division of Water Rights issued an Administrative Civil Liability (ACL) complaint against Omnium Estates (Omnium) alleging that it violated Water Code Section 1052. That provision states that the diversion of water other than as authorized by the Water Code is a trespass against the State subject to fines. The November 15, 2002 complaint proposed imposition of an ACL fine of \$3,000 for the alleged continued diversion to storage of water from McNab Creek without an appropriate permit. The Department of Fish and Game (DFG) received notice of the Public Hearing on this issue scheduled for May 14, 2003. The hearing was later canceled because a Notice of Intent to Appear was not received from Omnium by the deadline required by the hearing notice. While DFG chose not to participate in the hearing, we do want to take this opportunity to provide some brief comments on the issues involved.

DFG offers support for the SWRCB enforcement efforts. In addition, our agency wishes to present reasons why future enforcement efforts should include stronger disincentives to illegal water use in order to ensure that the resource impacts of water projects are eventually mitigated by appropriate and effective permit conditions.

It is DFG's understanding that the storage reservoir was discovered in July of 2001 and a certified letter requesting identification of a basis of right authorizing the storage of water at the Omnium reservoir was sent in October of 2001. In December of 2001, an Omnium representative confirmed that water was being pumped to storage from McNab Creek and that Omnium intended to pursue a water right permit to authorize storage. For 17 months, Omnium continued to use the facility without authorization and did not file an application to appropriate water. In addition, the

May 28, 2003

notice states that aerial photographs show the reservoir existed prior to July, 1993. Therefore, it is probable that this reservoir has been operational for nearly 10 years without authorization.

DFG again commends the SWRCB for taking action and issuing an ACL to remove the incentive from diverting water without authorization. However, we believe that a stronger stance is necessary. Section 1052 allows for an ACL amount not to exceed \$500 for each day a proscribed trespass occurs. Since it appears at least 400 days passed from SWRCB's certified notification to Omnium of the trespass to the time of the issuance of the ACL complaint, DFG fails to understand how an ACL of only \$3,000 was imposed. The \$3,000 imposed results in an amount of approximately \$7.50 per day for each day of trespass after notification. We question the economic deterrent value of this amount and believe it sends a message to other unauthorized diverters that illegal water use is an acceptable and economic alternative to the more costly and restrictive lawful permitting process.

Based on review of the correspondence, it also appears that, after paying the ACL and submitting the required water rights application, this diverter is tacitly being allowed to continue diversions without penalty until the completion of the required California Environmental Quality Act (CEQA) review prior to permit issuance. If this is the case, the argument for the ACL acting as a disincentive to unauthorized diversions is further eroded.

The already profligate unauthorized diversions now occurring in Mendocino County will continue to flourish unless there is active SWRCB enforcement of the Water Code. DFG believes the situation requires immediate attention. These unauthorized projects have the potential, either directly or cumulatively, to significantly impact fish and wildlife resources. This is especially so if diversions are allowed to continue prior to CEQA environmental review to develop conditions to protect instream flow. Many of the streams in Mendocino County support not only native species, but also species listed under the Endangered Species Act.

In addition, allowing projects to proceed for significant periods of time without adequate and appropriate CEQA review forces deficient assessments of project impacts due to the setting of the environmental baseline at either:

1. Currently degraded conditions; or
2. "Pre-project" conditions that oftentimes require a more speculative, "forensic" assessment of impacts.

As DFG has indicated in previous memos to the SWRCB, we have serious concerns regarding the setting of the CEQA environmental

Mr. Edward C. Anton

3

May 28, 2003

baseline so as to mask the impacts of an ongoing illegal diversion and prevent an appropriate environmental assessment according to the intent of CEQA.

It is inappropriate to establish the CEQA environmental baseline on unauthorized diversions occurring at the project site that are in violation of Section 1052 of the Water Code. In effect, using a baseline that includes an unauthorized diversion allows projects to be assessed in such a way as to avoid addressing any impacts over those currently present. This artificial baseline inflation, in concert with mild enforcement penalties, creates an incentive towards illegal water use. In addition, this practice circumvents the intent of CEQA review to disclose the true impacts of projects.

Again, DFG's position is that ongoing illegal diversions must not be used as baseline environmental conditions for CEQA review. Therefore, DFG advocates for the SWRCB to persist with enforcement actions to stop illegal diversions in order to eventually allow the imposition of truly effective resource-protective permit conditions. We commend the steps the SWRCB is taking in this direction with the Omnium ACL and hope that stronger economic disincentives will be offered in future enforcement actions.

cc: Mr. Steven Grover
Omnium Estates
c/o Fine Wines International
Pier 19
San Francisco, CA 94111

Dr. William Hearn
Dr. Stacy Li
National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Mr. Harllee Branch
Department of Fish and Game
Office of the General Counsel
1416 9th Street
Sacramento, CA 95814

Mr. Steven Herrera
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812-2000

e: C. Wilcox, S. Wilson, L. Hanson

LH/pm

Exhibit # 26



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

OCT 22 2002

In Reply Refer
to:331:PJM:31262

Ash Cree Vineyards
c/o John and Susan Statzer
31617 Pine Mountain Road
Cloverdale, CA 95425

Dear Mr. and Mrs. Statzer:

APPLICATION 31262 OF ASH CREEK VINEYARDS, THREE UNNAMED STREAMS
TRIBUTARY TO BIG SULPHUR CREEK THENCE THE RUSSIAN RIVER IN SONOMA COUNTY

We have received your letters of response to the protests filed by the National Marine Fisheries Service and Trout Unlimited against this application. In your letter you ask why protests have been accepted against your project when these reservoirs have been in existence since the 1960s and no objections were received during construction. It is my understanding that these reservoirs have been storing water without a valid basis of right for over 40 years and that this application was filed in order to legalize the use of water as described in your application. The protests that have been accepted are valid and were filed within the appropriate timeframe.

The issue of whether or not coho salmon and or steelhead are present and will be affected by this application will be determined during the California Environmental Quality Act (CEQA) process. Since these protests, along with the Department of Fish and Game and California Sportfishing Protection Alliance, will not be resolved until the environmental document and water availability analysis have been completed, I have referred this application to our Environmental Section to determine what environmental documentation will be required to comply with the CEQA. It is my understanding that it may be some time before you receive a notification from the Division of Water Rights since there are many pending applications tributary to the Russian River that were filed prior to this application.

If you have questions regarding this matter, please telephone me at (916) 341-5354.

Sincerely

ORIGINAL SIGNED BY

Patricia J Meroney
Engineering Associate
Application Unit No. 1

cc: Trout Unlimited of California
c/o Stanley Griffin
8281 San Pablo Avenue, Suite 208
Albany, CA 94706

California Sportfishing Protection Alliance
c/o Jerry Mensch
2553 Stonehaven Drive
Sacramento, CA 95827

National Marine Fisheries Service
c/o James R. Bybee, Habitat Manager
Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

California Department of Fish and Game
c/o Robert W. Floerke, Regional Manager
Central Coast Region
P.O. Box 47
Yountville, CA 94599

Exhibit # 27



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • www.waterrights.ca.gov



Gray Davis
Governor

MEMORANDUM

FISH & GAME
JUL 10 2003
YOUNTVILLE

TO: Robert W. Floerke, Regional Manager
Central Coast Region 3
DEPARTMENT OF FISH AND GAME

FROM: *Edward C. Anton*
for Edward C. Anton
Division Chief
DIVISION OF WATER RIGHTS

DATE: JUL 07 2003

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 262.5-31
MCNAB CREEK IN MENDOCINO COUNTY

Your memorandum dated May 28, 2003 comments on the enforcement action initiated by the Division of Water Rights (Division) against Omnium Estates. You state that the Department of Fish and Game (DFG) chose not to participate in the hearing scheduled before the State Water Resources Control Board (SWRCB) for this case, but you wanted to express your support of the enforcement action and present the following comments:

1. Future enforcement by the SWRCB should include stronger disincentives to illegal water use in order to ensure that the resource impacts of water projects are eventually mitigated by appropriate and effective permit conditions.
2. Omnium Estates probably operated its reservoir for nearly 10 years without authorization. DFG questions the economic deterrent value of the \$3,000 penalty imposed in the complaint since it results in an amount of approximately \$7.50 per day for each day of trespass. DFG also believes the amount imposed sends a message to other unauthorized diverters that illegal water use is an acceptable and economic alternative to the more costly and restrictive lawful permitting process.
3. After paying the administrative civil liability (ACL) amount and submitting the required water right application, Omnium Estates is tacitly being allowed to continue diversions without penalty until the completion of the required California Environmental Quality Act (CEQA) review and permit issuance. Therefore, the ACL as a disincentive to unauthorized diversions is further eroded.

California Environmental Protection Agency

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."

JUL 07 2003

4. The already profligate unauthorized diversions now occurring in Mendocino County will continue to flourish unless there is active SWRCB enforcement. DFG believes the situation requires immediate attention.
5. Allowing projects to proceed for significant periods of time without adequate and appropriate CEQA review forces deficient assessments of project impacts due to the setting of the environmental baseline. DFG believes it is inappropriate to establish the CEQA baseline on unauthorized diversions occurring at the project site.

We appreciate and consider all comments on the Division's enforcement actions. We also invite your staff to participate in the future in any SWRCB hearing required as a result of a Division's enforcement action in your Region. DFG's participation at hearings to provide expert testimony on adverse impacts to fish and wildlife resources specific to an unauthorized diversion could provide support for the Division's enforcement cases. You should also note that an order imposing the administrative civil liability penalty against Omnium Estates was mailed June 13, 2003. Omnium Estates currently has an opportunity to request reconsideration of the order. If reconsideration is requested, we welcome any comments that DFG might have on the matter; however, until the matter is totally resolved, our response to your comments must be general in nature.

In determining the amount of civil liability, Water Code section 1055.3 requires the SWRCB to 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 taken by the violator. In this case, although the reservoir may have existed for over 10 years, Omnium Estates did not construct the reservoir or own it for that entire period of time. Further, we concluded it was highly unlikely that Omnium Estates diverted water from the unnamed stream or McNab Creek to storage for 400 consecutive days as your comments suggest. Because the SWRCB can only impose an ACL for each day of unauthorized diversion, the Division estimated the number of days of unauthorized diversions from the capacities of the reservoir and diversion works and the crop water duty. The Division also recognized that Omnium Estates appeared to have a legitimate claim to a riparian right for direct diversion of water from McNab Creek to irrigate and frost protect its vineyard.

When considering the extent of harm caused by the diversion, the Division reviews whether there are past complaints against a diverter. We have no record of complaints against Omnium Estates from water right holders or public trust agencies or environmental groups. The Division also does not have any information regarding harm caused specifically by the Omnium Estates project. Division staff previously contacted your staff regarding diversions from McNab Creek, but obtained no information regarding a stream alteration agreement or fishery impacts specific to the Omnium Estates project. Consequently, we consider our recommendation against Omnium Estates appropriate and defensible. Nevertheless, if the matter goes to hearing, the SWRCB can adopt, reject or modify either up or down, the ACL recommended in the Division Chief's complaint based on the evidence presented at the hearing.

We disagree that the amount of the liability assessed against Omnium Estates sends a message to other unauthorized diverters that illegal water use is an acceptable and economic alternative to the more costly and restrictive lawful permitting process and that the ACL does not provide an adequate disincentive to unauthorized diversions. Each ACL action, regardless of the amount assessed in penalty, sends the message that the Division is actively taking enforcement actions against unauthorized diversions. After paying an ACL amount, the diverter must still bear the burden of paying the normal fees for application, environmental review, and permitting; thus there is no incentive to continue illegal diversions. Rather, there is an incentive to file the application because priority of a right, and limited availability of water becomes more and more of a problem. Further, the filing of an application does not preclude the assessment of additional civil liability if the Division determines that additional fees are warranted.

We acknowledge your concern about allowing an unauthorized diverter to continue to take water during the water right application and CEQA review process. To minimize the application processing time in the future, the Division has been levying annual application fees. The Division has also recently begun to initiate cease and desist actions under authority granted by the Legislature in January 2003 when an applicant does not diligently pursue a permit. As you know, regulatory agencies have discretion to prioritize their enforcement work, and we believe that our limited enforcement resources are most effectively applied to dealing with newly discovered violators, who are not yet in the system, provided that those violators who have filed an application to legalize their projects proceed with diligence. Therefore, unless we have substantial evidence, which shows that an applicant's diversion causes specific harm, the Division may allow the diversion to continue.

DFG has independent authority to enforce Fish and Game Code sections 1600, 1601 and 5937. We assume that Region 3 would initiate action to enforce these sections against those project operators DFG believes pose an immediate threat to the environment. We have no information to indicate that DFG has filed action against Omnium Estates. If DFG has concerns about other specific projects, it may file a complaint with the Division. The Division investigates every complaint it receives and will take enforcement action under its own authority if warranted. Additionally, we request that DFG identify the profligate unauthorized diversions in Mendocino County as mentioned in your letter to assist the Division in our continued enforcement investigations.

Your final comment addresses the baseline conditions established by the SWRCB for environmental documents prepared pursuant to the CEQA. You argue that the baseline conditions should not include an illegal diversion. The CEQA guidelines require that an Environmental Impact Report specify the environmental setting, which "normally constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant." The physical environmental setting is to be described as it exists at the time the environmental analysis is commenced. (Cal. Code Regs., tit. 14, §15125.) For other projects, the baseline is normally set as the conditions at the time that CEQA is applied. However, the courts have recognized that the date for establishing the baseline for the purposes of CEQA is not rigid and have held that the lead agency has discretion to determine baseline conditions as long

as it does not abuse its discretion. The SWRCB, as lead agency, carefully reviews the facts associated with each project prior to establishing the baseline and has stated that in general, the baseline conditions for previously constructed projects should be pre-project or pre-CEQA conditions, whichever occurred latest. (See SWRCB Decision 1642 and Order WR 2001-07.) Nevertheless, the SWRCB may set the baseline at some other point in time, if conditions warrant. The Division describes each project, including pre-existing projects, in its environmental documents. Where appropriate, the Division will also discuss the baseline conditions for the project, and the rationale for its determination, in its notice of determination and/or initial study. We welcome the opportunity to discuss with your staff during our consultation with responsible agencies any cases that may concern DFG. Regardless of the baseline condition, the SWRCB is required to provide protection of public trust resources in the planning and allocation of water resources whenever feasible. In the case of Omnium Estates, the SWRCB has not yet determined the baseline or conditions necessary to protect public trust resources.

Exhibit # 28

Alan,

Sorry we missed each other on the telephone the other day. By way of an update, I sent a letter dated August 7, 2003 to the Walter Stornetta Ranch (Ranch) asking them to respond to your organization's complaint. Your organization is listed as a cc; and you should be receiving a copy of the letter shortly.

As I understand the complaint, the Coast Action Group is alleging that the Ranch is violating California water law in the following manner:

- 1) if water is being diverted under License 6470 (Application 16700), this water is being used outside of the place of use authorized under the license which constitutes a violation of the terms and conditions of the license; and
- 2) if water is being used under a riparian claim of right, some of the water diverted by the Ranch is being utilized outside of the Garcia River watershed which cannot be authorized by a riparian claim of right and thereby constitutes a trespass against the State of California.

The Division of Water Rights (Division) certainly has the authority to take actions to limit the Ranch's diversions to either the authorized place of use under License 6470 or to parcels which appear to be riparian to the Garcia River and I expect we will take whatever actions are necessary to ensure that this occurs. However, even if the Ranch limits diversions to those allowed under License 6470 or to that sufficient to serve riparian lands, I suspect that the Ranch's diversions could consume most, if not all, of the flows in the river during periods of minimum flow. I understand that this is exactly what your organization would like to prevent and is one of the main reasons for filing the complaint.

Apparently, your organization would like the State Water Resources Control Board (SWRCB) to establish minimum flows that cannot be diverted under any basis of right including post-1914 appropriations (i.e., permits or licenses issued by the SWRCB), pre-1914 appropriations (i.e., appropriations initiated prior to 1914 and maintained in a diligent fashion thereafter), or riparian rights. In theory, the SWRCB does have the authority to establish such flows pursuant to the reasonableness provisions of California water law. However, to do so would amount to an exercise of the State's police powers to limit diversions under valid rights. In order for such an action to withstand an almost certain legal challenge, a significant amount of evidence must be available to justify preventing a valid right holder from exercising their legitimate rights.

The Division has historically requested that evidence be available to support allegations that the water diverted:

1. has been, or is likely to be, wasted, diverted for non-beneficial or unreasonable uses, or diverted by an unreasonable method, or;
2. has caused, or is likely to cause, an unreasonable adverse impact

to the public trust, i.e. the public's right to use the State's waters for instream purposes such as recreation, navigation, and fish and wildlife. In order to make this finding, evidence should be available to demonstrate that:

- a. public trust resources exist in the stream;
- b. these resources are being adversely impacted due to the diversions from the stream by the water right holders and not by normal variances in the water supply or other factors that are beyond the control of the water right holder, such as land use development, discharge of pollutants, etc. by other parties;
- c. the impacts on public trust resources are significant, considering both the magnitude of the impact and the sensitivity and significance of the public trust resources affected; and
- d. the protection of public trust resources is feasible, considering any reduction or cessation of diversions that may be necessary to protect the public trust and whether the public interest in those diversions may outweigh the adverse impacts on the public trust.

The burden of developing the evidence pursuant to #2 (a through d) above is not a simple task. We typically look to either the Department of Fish and Game or NOAA Fisheries (a.k.a. National Marine Fisheries Service or NMFS) to provide this type of evidence. However, very rarely have either of these entities been able to provide the requisite information.

I am not familiar with the amount of information currently available regarding public trust resources in the Garcia River. If the necessary evidence is not available, I doubt there is much we can do to establish and enforce minimum flow standards. We can require diverters to comply with the terms and conditions of their water right permits and/or licenses and we can take actions to prevent diversions that are made without any basis of right (such as diversion of water outside the watershed under a riparian claim). Any other actions will most likely have to wait until a sufficient body of evidence to justify the action becomes available.

If there are any questions or you would like to discuss this matter in more detail, please feel free to call me at the phone number listed below.

Charles Rich, Chief
Complaint Unit
(916) 341-5377
crich@waterrights.swrcb.ca.gov

Exhibit # 29

Alan,

Your request for curtailment of diversions seems to be based on two premises: 1) at least some of the diversions currently being made by the Walter Stornetta Ranch are illegal (i.e., without any basis of right) and 2) the diversions by the Walter Stornetta Ranch are causing harm to the fishery in the Garcia River.

Until I get a response back from the Ranch's legal counsel, I won't know the extent of the diversions nor the claimed basis of right. While your organization has alleged that water is being taken out of the watershed, I don't have any acknowledgement by the Ranch that this is occurring. I suspect that there is a strong likelihood that most, if not all, diversions to lands within the Garcia River watershed can be covered by either License 6470 or a riparian claim of right.

Also, I have no evidence that the fishery is being harmed at this point in time. If evidence of definitive harm could be produced, I assume that either the California Department of Fish and Game or the National Marine Fishery Service would have initiated action pursuant to either the State or Federal Endangered Species Acts for a "take".

Consequently, while a conservative approach (at least with regards to protecting fish) might be to request a reduction in diversions, I have no information AT THIS TIME that would justify a directive from this agency for such a reduction. The Ranch's legal counsel has indicated that a response will be forthcoming no later than September 24th. Therefore, unless I were to initiate my own investigation in the meantime to determine where water is being used (which would be difficult due to workload requirements and the fact that I don't know the area and have NO right to trespass on the Stornetta Ranch or any other private property), I don't know what else I can do but wait for the response as promised.

I hope to resolve the issue of UNAUTHORIZED diversion WELL before the start of the irrigation season next year. Determining if diversions made by the Ranch under a valid basis of right are adversely impacting the fishery will be a very difficult task; especially since I have little or no concrete evidence to suggest that low flows due exclusively to diversions on the Stornetta Ranch are a significant factor in the decline of the fishery populations. I believe the best course of action is to wait until September 24th for the response as promised.

Charles Rich, Chief
Complaint Unit
(916) 341-5377
crich@waterrights.swrcb.ca.gov

>>> Alan Levine <alevine@mcn.org> 09/05/03 08:25PM >>>
Chuck:

At first thought, I had no problem with the extension. Then, after thinking about it; it does not seem appropriate that during the critical period of low flow that such extension should be allowed without some reduction in pumping to protect fisheries. The extension will be used to by time for the diversion to continue to the end of season with no consideration to what impacts are occurring to the fishery during this period.

What is the river flowing at now? Looks low to me. Is it safe to continue pumping - full blast? Could not some curtailment of amounts diverted be reduced to protect beneficial uses?

It would cost little to get some interim protections. I would appreciate it, and so would the fish, if you were all thinking in these sort of terms when it comes to diversion violations and responsibility to protect beneficial uses.

Exhibit # 30

Parducci Wine Cellars
501 Parducci Road
Ukiah, California 95482

tel. 707.463.5350
fax. 707.462.7260
www.parducci.com

PARDUCCI

— Established 1932 —

April 11, 2002

David LaBrie
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Re: 363:DL:262.0(23-01-09)

Dear Mr. LaBrie:

Answer to Complaint of Rosalind Peterson

I have summarized below responses to Ms. Peterson's specific allegations in her complaint filed with your agency. I would like to note that she did not contact Parducci Wine Estates about any of these issues. Nor did she send Parducci Wine Estates a copy of the complaint as required in your process. This is the first notice we have had of the allegations. Furthermore all three of these ponds are located on private property with no public access, to gather the pictures and information Ms. Peterson says she submitted she or her agents would have needed to enter and trespass. Ms. Peterson may have gotten the erroneous idea that we were being supplied water from the adjacent Mondavi property due to the fact that we applied for and were granted an interim Water supply contract from the Russian River Flood Control and Water Conservation Improvement District. In this agreement we stated that one source would be by using Mondavi's existing water system to deliver water from the Russian River. To do this would require both a new physical connection be built to their existing system, none has been constructed or at this point is planned and a contract with Mondavi for the use of their water delivery system, no contract has been either written, negotiated or signed. All of the interim agreements granted by the Russian River Flood Control and Water Conservation Improvement District have been put on an indefinite hold by the district, pending the resolution of related litigation. No water has ever been delivered to Parducci Wine Estates through Mondavi's system, and the required additions to their system to make it possible are not in place.



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501 Parducci Road
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PARDUCCI

— Established 1932 —

1. **Winery Wastewater and Irrigation pond located adjacent to York Creek.**
This pond has two sources of water, waste and storm water from winery operations, and from an appropriative water right on the adjacent York Creek, granted by the California State Water Resources Control Board. Operation of the pond and the regulation of its use for irrigation and frost control are done in accordance with the requirements of a use permit granted by the North Coast Regional Water Quality Control Board. Prior to use for irrigation or frost protection the pond water is sampled and taken to an independent licensed lab for analysis to insure water quality is within the parameters of the permit.
2. **Older Pond above Parducci Winery.**
This pond is used primarily for frost protection, or if water is remaining after frost season for an early season irrigation on the adjacent 15 acres of vineyard. It's current water source is from sheet water that flows into the pond, and from water pumped into it from the other new reservoir located on the same parcel. In the past it was filled from a sump fed by subsurface French drain tiles in addition to the sheet water, this water now flows to the new reservoir. It has never been filled from the adjacent reservoir owned by Mondavi or from the Millview County Water District as alleged in the complaint.
3. **New Pond above Parducci Winery.**
This pond is being filled by both sheet water, and from subsurface French drain tiles during the winter and spring rainy season. This pond is to be used for both frost protection and irrigation, other than recharge from drain tiles there is no ability at this time to recharge the pond from any other sources during the non-rainy season.

We would welcome a timely follow up from your agency so that these erroneous complaints can be dealt with and put to bed.

Sincerely,



Robert Swain
Winemaker

cc. Rosalind Peterson
Mike Beyer



Exhibit # 31



State of California - The Resources Agency

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

GRAY DAVIS, Governor



May 2, 2001

Rosalind Peterson
Post Office Box 499
Redwood Valley, CA 95470

Dear Ms. Peterson:

Thank you for your telephone call on April 18 regarding potential Fish and Game Code violations allegedly committed by Parducci Winery, within the York Creek drainage, in Mendocino County.

This is to confirm that Department law enforcement staff from the Central Coast Region will conduct an investigation to ensure compliance with applicable State laws. The results of the investigation will be forwarded to the Mendocino County District Attorney's Office. Upon receipt of the investigation report, the District Attorney will review the matter and determine what, if any, action should be taken.

If you have any further questions regarding this matter, you may contact Captain Mike Wade at (707) 575-6076 or me at (707) 944-5543.

Sincerely,

Tom Pedersen
Regional Patrol Chief
Central Coast Region

cc: Norm Vroman, Mendocino County District Attorney

Robert W. Floerke, Regional Manager
Mike Wade, Patrol Captain
Carl Wilcox, Habitat Conservation Manager
Department of Fish and Game
Central Coast Region

Conserving California's Wildlife Since 1870