

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

**DELTA WATERMASTER**

**ORDER WR 2013-0003-DWM**

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**CEASE AND DESIST ORDER**

In the Matter of Violation of Annual Reporting Requirements by

**Lamb Gianelli Family LP**  
**License 2639 (Application A005092)**

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SOURCE: Beaver Slough, South Fork Mokelumne River

COUNTY: San Joaquin

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The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Lamb Gianelli Family LP (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your license, and/or an unauthorized diversion or use of water.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052, which provides:

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

- (1) The prohibition set forth in Section 1052 against unauthorized diversion or use of water subject to this division.
- (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.

On August 29, 2013, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board Delta Watermaster provided notice of the CDO against Licensee for the violation of the terms and conditions of your license, unauthorized diversion or use of water and/or Title 23, Division 3, Chapter 2, Article 20, section 847 of the California Code of Regulations. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to provide enforcement of license and permit terms and conditions. Pursuant to State Water Board Resolution 2012-0048, the Delta Watermaster is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq.

**FACTUAL BASIS FOR ISSUING THE CDO**

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

1. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the

State Water Board has adopted regulations requiring annual reporting of water diversion and use under licenses, and developed an online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.

2. In January 2013, the Division of Water Rights (Division) mailed out an initial notice to the Licensee notifying them of: the annual use reporting instructions on how to access the RMS system and submit their 2012 use report online. The Licensee was also notified that if they had any questions on the reporting process, they could contact the Division by phone or email. The deadline to submit their 2012 use report online was June 30, 2013.
3. On July 26, 2013, the Office of Delta Watermaster mailed out delinquency letters, which also included a copy of the January 2013 letter, to all the licensees who had not submitted their 2012 use report by July 1, 2013 (Exhibit A). The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and granted licensee 20 days to file the 2012 use report. The letter gave notice that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
4. As of August 27, 2013, the State Water Board has not received Licensee's 2012 annual use report for License 2639 (A005092).
5. On August 29, 2013, the Delta Watermaster sent to Licensee, by certified mail, a Notice of CDO and letter instructing Licensee to submit the delinquent water use report or request a hearing on the draft CDO, within 20 days from the date that Licensee received the Notice of CDO. The United States Postal Office confirms the draft CDO was delivered on August 30, 2013, at 8:15 am (Certified Mail # 70042510000391471084).
6. On October 4, 2013, Delta Watermaster staff made additional attempts to contacted Licensee or its representative. After attaining representative individual contact information, staff phoned representative of Licensee who verbally confirmed to staff that representative individual (hereafter Licensee Representative) was the correct person to contact regarding water right reports for Licensee, which includes the water right license, the subject of the call. Staff informed Licensee Representative that the annual use report for 2012 was delinquent, pending enforcement and that Licensee had been sent a draft order regarding the delinquent report. No reports had been filed by or for Licensee since the last report filed in 1999 by a now deceased family member of Licensee. Staff informed Licensee Representative that the annual use report was delinquent, and stated that, if Licensee filed the 2012 report prior to October 9, 2013, the enforcement action would be cancelled and no penalties would be assessed. Licensee Representative informed staff that Licensee Representative would not be able to file the report by the October 9, 2013 deadline. Staff advised Licensee Representative to contact the Delta Watermaster to discuss the situation. After confirming Licensee Representative's email address, staff sent information which included the User ID, Password, a copy of the last use report filed for Licensee, copy of the draft order, and a copy of the certified mail receipt for delivery of the draft order. Staff received an electronic automatic confirmation that staff's email had been sent to the email address provided to staff by Licensee Representative, but did not receive a response back from Licensee Representative.
7. As of October 11, 2013, Licensee Representative has not contacted the Delta Watermaster or staff regarding A005092. The report of licensee for 2012 has not been filed for A005092.
8. As of October 17, 2013, the report of licensee for 2012 has not been filed for A005092.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Licensee shall immediately come into compliance with the terms of the License by submitting their report of 2012 annual use by accessing the Report Management System at [www.waterboards.ca.gov/RMS](http://www.waterboards.ca.gov/RMS) using the User ID and Password shown on the User Information Sheet accompanying this CDO.

Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact the staff noted on the letter accompanying this CDO.

### **Consequences of Non-Compliance**

In the event Licensee fails to comply with the requirements of this Order, Licensee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845 (b)(1) of up to \$1,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

**Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the 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.**

### **Reservation of Enforcement Authority and Discretion**

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Licensee for unauthorized diversion of water in accordance with Water Code section 1052.

### **Regulatory Changes**

Nothing in this Order shall excuse Licensee from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD



Craig M. Wilson  
Delta Watermaster

Dated: **OCT 17 2013**

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