

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 99-06

In the Matter of Administrative Civil Liability
Complaint No. 262.5- 11

KENDALL-JACKSON WINERY LTD.

SOURCES: Unnamed Streams tributary to Bidwell Creek thence Franz Creek thence Maacama Creek

COUNTY: Sonoma

**ORDER IMPOSING REDUCED ADMINISTRATIVE CIVIL LIABILITY
PURSUANT TO
SETTLEMENT AGREEMENT**

1.0 INTRODUCTION

By this order, the Executive Director of the State Water Resources Control Board (SWRCB) imposes administrative civil liability on the Kendall-Jackson Winery Ltd. pursuant to a settlement agreement. Under the settlement agreement, the Kendall-Jackson Winery Ltd. agreed to file a complete application to appropriate water, and to pay civil liability in a lesser amount than proposed in Administrative Civil Liability (ACL) Complaint No. 262.511. The issuance of an order or decision pursuant to a settlement agreement-is authorized by Government Code section 11415.60.

2.0 BACKGROUND

Pursuant to Water Code section 1052, subdivision (b), the Executive Director issued ACL Complaint No. 262.5-11 against the Kendall-Jackson Winery Ltd. The ACL alleged that the Kendall-Jackson Winery Ltd. owns seven reservoirs located in the Sonoma County Assessor's Parcel Numbers (APN) 120-040-007, 120-040-008, and 132-080-027. The ACL alleged that the Kendall-Jackson Winery Ltd.'s diversion to storage at these reservoirs without a water right permit or license constituted an unauthorized diversion of water in violation of Water Code section 1052, subdivision (a). The ACL further alleged that the Kendall-Jackson Winery Ltd. failed to take appropriate actions to correct this unauthorized diversion of water despite ample time provided by the Division of Water Rights (Division) to file a water right application.

The liability proposed by the Executive Director in ACL Complaint No. 262.5-11 was \$5,000. However, Item 8 of the ACL warned that failure to file an application for the unauthorized storage, including all fees and the proposed civil liability within 20 days could result in the imposition of additional civil liability.

Item 9 of the ACL provided that a hearing could be requested before the SWRCB. Item 10 of the ACL provided that after a hearing the amount of the civil liability could be adjusted either up or down. Kendall-Jackson Winery, Ltd. did not request a hearing to contest the allegations contained in the ACL within the 20 days provided by Water Code, section 1055, subd. (b)

3.0 SETTLEMENT AGREEMENT

The Kendall-Jackson Winery Ltd and the Division agreed to settle this matter on the following terms:

- (1) The Division agreed to recommend that the amount of the civil liability proposed in ACL Complaint No. 262.5-11 be reduced to \$500, upon condition that the Kendall-Jackson Winery Ltd. comply with all terms of the settlement agreement.
- (2) The Kendall-Jackson Winery Ltd. agreed to submit the reduced liability of \$500 to the Division within 20 days of its receipt of the ACL.
- (3) The Kendall-Jackson Winery Ltd. also agreed to file with the Division complete applications to appropriate water by permits, including all necessary forms and filing fees, within 20 days of its receipt of the ACL.
- (4) In accordance with the settlement agreement, the Kendall-Jackson Winery Ltd. submitted complete applications for six of the reservoirs, located on APNs 120-040-007 and 120-040-008, identified in the complaint, with all necessary fees, and the reduced civil liability, within 20 days of its receipt of the ACL. The Division agreed that the reservoir identified in ACL Complaint No. 262.5-1 1 as being located on APN 132-080-027 did not constitute an unauthorized storage of water and was covered by Kendall-Jackson
- (5) Winery Ltd. License 5368 (Application 14735). The Division and Kendall-Jackson Winery Ltd. agreed that the remaining six reservoirs identified in the complaint are the six reservoirs located on APNs 120-040-007 and 120-040-008 for which Kendall-Jackson Winery Ltd. filed applications.

- (6) With respect to each **reservoir** identified in ACL Complaint No. 262.5-11, except for the reservoir located **on** APN 132-080-027, Kendall-Jackson Winery Ltd. agreed to either exercise diligence in attaining a permit that authorizes the storage of water in the reservoir or to provide by August 15, 1999, evidence acceptable to the Division Chief of a pre-1914 appropriative right that authorizes the storage. Diligence includes the submittal, upon request by the Division, of all necessary fees, maps and documentation required by the California Environmental Quality Act (CEQA).

ORDER

IT IS **HEREBY** ORDERED THAT:

1. The settlement agreement between the Division of Water Rights and the Kendall-Jackson Winery Ltd. is approved.
2. Administrative civil liability in the amount of \$5,000 is imposed on the Kendall-Jackson Winery Ltd.; provided that all but \$500 of the liability is suspended upon condition that with respect to each reservoir that is identified in ACL Complaint No. 262.5-1 1, except for the reservoir located on APN 132-080-027, Kendall-Jackson Winery Ltd. either exercises diligence in attaining a water right permit that **authorizes** the storage of water in the reservoir or provides by August 15, 1999, evidence acceptable to the Division Chief of a pre-1914 appropriative water right that authorizes the storage.
3. Upon a **finding** by the Chief of the Division of Water Rights that Kendall-Jackson Winery Ltd. has, with respect to **any** reservoir identified in ACL Complaint No. 262.5-1 1,

except for the reservoir located on APN 132-080-027, either failed to exercise due diligence in attaining a water right permit that authorizes the storage of water in the reservoir, or failed to provide by August 15, 1999, evidence acceptable to the Division Chief of a pre-1914 appropriative water right that authorizes the storage, the \$4,500 in suspended liability shall become due and payable, provided that the Kendall-Jackson Winery Ltd. may request a hearing on any disputed issue of fact material to the issue of due diligence or the adequacy of the evidence timely submitted in support of a claim of pre-1914 appropriative water rights, in which case the \$4,500 in suspended liability shall not become due unless and until the SWRCB, after a hearing, issues an order upholding the Division Chief's determination.

4. This order is intended to resolve only the financial liability imposed pursuant to ACL Complaint No. 262.5- 11. Nothing in this order and no determination that is made in any hearing conducted pursuant to this order shall be construed as a conclusive and final determination concerning the validity of Kendall-Jackson Winery Ltd.'s claimed pre-1914 rights.
5. The imposition of previously suspended liability as provided for in paragraph three, above, shall not limit the authority of the Executive Director to issue a new complaint for administrative civil liability for any unauthorized diversions that occur after the issuance of this Order.

Walt Pettit
 Walt Pettit, Executive Director
 State Water Resources Control Board

1/13/99
 Date

