

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2003-0018**

---

---

In the Matter of Permits 17877A, 17877B, 17878A and 17878B  
(Applications 25887A, 25887B, 25888A and 25888B)

of  
**MIDDLERIDGE VINEYARDS**  
and  
Two Reservoirs Operated  
by  
**M/R VINEYARDS**

---

SOURCES: Unnamed Streams and Coleman Creek within the Russian River watershed

COUNTY: Mendocino

---

**ORDER APPROVING A SETTLEMENT AGREEMENT BETWEEN  
DIVISION OF WATER RIGHTS, MIDDLERIDGE VINEYARDS, AND  
M/R VINEYARDS**

**BY THE EXECUTIVE DIRECTOR**

**1.0 INTRODUCTION**

By this Order, the Executive Director of the State Water Resources Control Board (SWRCB) approves the attached settlement agreement between Middleridge Vineyards (Middleridge), M/R Vineyards (M/R) (hereinafter collectively referred to as the "Diverters"), and the SWRCB's Division of Water Rights (Division). The Division and the Diverters have agreed to settle the issues related to the Diverters' unauthorized diversions of water and violations of permit terms and conditions in lieu of the Division taking enforcement action pursuant to Water Code sections 1052 and 1831. Government Code section 11415.60 authorizes the issuance of an order or decision pursuant to a settlement agreement.

**2.0 BACKGROUND**

Water Code section 1052, subdivision (a), provides that the diversion or use of water, other than as authorized, is considered a trespass. The SWRCB may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, subd. (b)) The SWRCB also may issue a cease and desist order in response to a trespass or a violation of a permit or license term or condition. (Wat. Code, § 1831, subds. (a), (d))

Middleridge and M/R are both owned by partnerships with Mr. Wendell Nicolaus as the managing partner. Middleridge diverts water from Unnamed Streams to frost protect and irrigate approximately 181.5 acres of vineyard in Mendocino County and has permits to divert water from Coleman Creek. Middleridge holds Permits 17877A, 17877B, 17878A, and 17878B (Applications 25887A, 25887B, 25888A, and 25888B), and seeks the right to divert water under Application 29783. M/R diverts water from Dooley Creek and, as a member of the East Sanel Irrigation Company (ESIC), diverts water from the Russian River to frost protect

and irrigate approximately 179 acres. M/R seeks the right to divert water under Applications 30015 and 31296. ESIC holds License 11727 (Application 25596) and seeks the right to divert water under Applications 31179 and 31261.

On April 24, 2002, Division staff conducted a compliance inspection of the projects authorized by Permits 17877A, 17877B, 17878A, 17878B, and License 11727 and determined that Middleridge operates one reservoir without an appropriative water right permit or license authorizing the storage of water for consumptive use, and that Middleridge has changed its place of use in violation of its permit terms. The Division also determined that M/R operates two reservoirs without an appropriative water right permit or license authorizing the storage of water for consumptive use.

The Division and the Diverters have agreed to settle this matter in lieu of the Division taking enforcement action pursuant to Water Code sections 1052 and 1831. The Diverters agree to remit one total payment of \$3,500 to the SWRCB and acknowledge that Middleridge diverted water without authorization and violated the place of use term in its permits. The Division agrees not to take formal enforcement action for the trespasses and permit violations identified in the settlement agreement. The attached settlement agreement also identifies corrective actions that the Diverters agree to and must take to end unauthorized diversions and threat thereof, and to end permit violations.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The attached Settlement Agreement between the Division and the Diverters is approved as a decision by settlement pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.
2. Approval of the Settlement Agreement between the Division and the Diverters shall not limit the authority of the Executive Director or the Chief of the Division of Water Rights, as delegated, to initiate any enforcement actions for any future unauthorized diversions, violations of terms and conditions of the permits, or violations of the terms of the Settlement Agreement.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY HMS for

*Celeste Cantú*  
*Executive Director*

Dated: NOV 14 2003

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Middleridge Vineyards (Middleridge), M/R Vineyards (M/R) (hereinafter collectively referred to as "Diverters") through their authorized representative, Wagner and Bonsignore, Consulting Civil Engineers, A Corporation, and the State Water Resources Control Board (SWRCB), through Harry M. Schueller, Chief Deputy Director of the SWRCB. The parties enter into this Settlement Agreement because it is their collective desire to settle the issues related to the Diverters' unauthorized diversions of water, and continued threat thereof; and to the violations of permit terms and conditions in lieu of the Division taking enforcement action pursuant to Water Code sections 1052 and 1831. This Settlement Agreement will be submitted to the Executive Director of the SWRCB for approval pursuant to Government Code section 11415.60 and will become effective when the Executive Director issues an order approving the Settlement Agreement.

### BACKGROUND

The Division of Water Rights and the Diverters stipulate to the following facts:

1. Pursuant to Water Code section 1052, subdivision (a), the "diversion or use of water subject to this division other than as authorized in this division is a trespass." Subdivision (b) provides that the SWRCB may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. The SWRCB also may issue a cease and desist order in response to a trespass and threat thereof, or a violation of a permit or license term or condition. (Wat. Code, § 1831, subds. (a), (d).)
2. Middleridge diverts water from Unnamed Streams to frost protect and irrigate approximately 181.5 acres of existing vineyard in Mendocino County and has permits to divert water from Coleman Creek. Middleridge owns and operates seven reservoirs for frost protection and irrigation of its vineyard. Middleridge holds Permits 17877A, 17877B, 17878A, and 17878B (Applications 25887A, 25887B, 25888A, and 25888B) and seeks the right to divert water under Application 29783. Permits 17877A and 17877B authorize the diversion of water from Unnamed Streams to onstream storage at Reservoirs A, B, C, and D and for direct diversion. Permits 17878A and 17878B authorize the diversion of water from Coleman Creek to offstream storage at Reservoirs A, B, C, and D and for direct diversion. No water has been documented as having been placed to beneficial use from Coleman Creek under Permits 17878A and 17878B.
3. M/R diverts water from Dooley Creek, and, as a member of the East Sanel Irrigation Company (ESIC), from the Russian River to frost protect and irrigate approximately 179 acres of vineyard in Mendocino County. M/R owns and operates five reservoirs, without water right permit or license, for frost protection and irrigation of its vineyard. M/R seeks the right to divert water under Application 30015 and 31296. ESIC holds License 11727 (Application 25596), which authorizes direct diversion of water from the Russian River, and seeks the right to divert water under Applications 31179 and 31261

4. Permits 17877A and 17877B (Applications 25887A and 25887B) required Middleridge to complete beneficial use of water in 1994 and 1995, respectively, and complete construction in 1987. On August 9, 1995, Division staff conducted a license inspection of the projects authorized under these permits and recommended final licensing. On April 2, 1996, Middleridge's agent signed the Request for License offers for Permits 17877A and 17877B.
5. On April 24, 2002, Division staff conducted a compliance inspection of the projects authorized by Permits 17877A, 17877B, 17878A, 17878B, and License 11727 (Applications 25887A, 25887B, 25888A, 25888B, and 25596) and made the following findings:
  - (a) Middleridge operates one reservoir (Reservoir G) and M/R operates two reservoirs (pit reservoir and the reservoir covered by Stockpond Certificate No. 5160) all lacking appropriate water right permit or license authorizing the storage of water for consumptive use. M/R claims that water pumped from the Russian River to the pit reservoir is regulated and not stored, and that percolating groundwater is pumped into the pit reservoir. No records were provided supporting the claim that water pumped from the Russian River is regulated through the pit reservoir without storage. The diversion of water to storage at these reservoirs is unauthorized, or constitutes a threat of unauthorized diversion due to the lack of sufficient monitoring to demonstrate regulatory operation.
  - (b) Since the 1995 inspection, Middleridge planted 13.5 acres of vineyard. The 13.5 acres are outside the place of use identified in the offers for licensing of Permits 17877A and 17877B that were accepted by Middleridge. Eight of the 13.5 acres are also outside the place of use covered by Permits 17878A and 17878B.
  - (c) Since the 1995 inspection, Middleridge increased the effective dam height at Reservoirs A, B, and D by either placing sandbags and/or debris in spillway pipelines or placing additional flashboards in the spillway. These alterations were made after the offers for licensing of Permits 17877A and 17877B were accepted by Middleridge and allow storage of water in Reservoirs A, B, and D in excess of the amounts previously accepted for licensing.
  - (d) Middleridge has installed sandbags and/or debris in the spillway pipeline at Reservoir F, named in unpermitted Application 29783.

**AGREEMENT**

The Division and the Diverters agree to settle this matter based on the following terms:

1. The Division shall issue licenses pursuant to Permits 17877A and 17877B (Applications 25887A and 25887B) for the amounts, seasons, purposes of use, and places of use shown on the attached draft licenses, upon Middleridge's acceptance of the settlement terms stated herein and the Executive Director's issuance of an order approving this Settlement Agreement.
2. Within 20 days of the effective date of this Settlement Agreement, the Diverters shall remit a total payment of \$3,500 to the SWRCB. By submittal of this payment, the Diverters acknowledge that water has been diverted without authorization and Middleridge has violated permit terms governing the place of use. The Diverters shall not divert water at the reservoirs identified herein without complying with the terms of this Settlement Agreement, any permits and licenses, and any applicable provision of law.
3. Within 20 days of the effective date of this Settlement Agreement, Middleridge shall remove all flashboards and other debris from the spillway of Reservoir D. Middleridge agrees not to increase the water surface elevation of Reservoir D above the concrete spillway invert. On completion, Middleridge shall submit to the Division photographs verifying that Middleridge has removed all flashboards and other debris from the spillway.
4. Within 20 days of the effective date of this Settlement Agreement, Middleridge shall remove flashboards from the spillway of Reservoir A such that the elevation is reduced by five-tenths of a foot. After removal, the remaining total height of the flashboards shall not exceed one and five-tenths feet above the concrete spillway invert. Middleridge agrees not to alter the water surface elevation of Reservoir A above this level. On completion, Middleridge shall submit to the Division photographs verifying that Middleridge has reduced the height of the flashboards in the spillway.
5. Within 20 days of the effective date of this Settlement Agreement, Middleridge shall remove all sandbags and other debris used to raise the water surface elevations of Reservoirs B and F above the invert of the spillway pipelines. After removal, Middleridge agrees not to alter the water surface elevations of Reservoirs B and F above the invert of the spillway pipelines. On completion, Middleridge shall submit to the Division photographs verifying that Middleridge has removed all sandbags and other debris from the spillway pipelines.
6. Within 45 days of the effective date of this Settlement Agreement, Middleridge shall:
  - (a) either (1) file an application to appropriate water for storage at Reservoir G, and thereafter, diligently pursue issuance of a permit for the application by timely submitting all necessary fees and documents requested by the Division; (2) render the reservoir incapable of storing water subject to the permitting authority of the SWRCB;

or (3) submit a monitoring plan that ensures water is not collected to storage from one season to the next. The monitoring plan shall describe all measuring devices to be installed, monitoring frequency, outline of the record-keeping report, and timeline to complete all installations.

- (b) either (1) file petitions for Permits 17878A and 17878B (Applications 25888A and 25888B), revise pending Application 29783, and notify ESIC to revise the place of use for its pending change petition for License 11727 (Application 25596) and its Applications 31179 and 31261; such that these existing permits, license, and application include the 13.5 acres of new vineyard planted within the SE $\frac{1}{4}$  of Section 22 and NW $\frac{1}{4}$  of Section 26, both in Township 13 North, Range 11 West, Mount Diablo Base and Meridian; or (2) submit a plan with timeline describing how Middleridge will cease diversion of water to serve this 13.5 acres.

7. Within 45 days of the effective date of this Settlement Agreement, M/R shall:

- (a) either (1) file application(s) to appropriate water for storage at the pit reservoir and the reservoir covered by Stockpond Certificate No. 5160, and thereafter, diligently pursue issuance of a permit for the application(s) by timely submitting all necessary fees and documents requested by the Division; (2) render the reservoir(s) incapable of storing water subject to the permitting authority of the SWRCB; (3) provide adequate evidence that an alternate water supply not subject to the SWRCB's permitting authority is being used and held in storage; or (4) submit a monitoring plan that ensures water subject to the SWRCB's permitting authority is not collected to storage from one season to the next. The monitoring plan shall describe all measuring devices to be installed, monitoring frequency, outline of the record-keeping report, and timeline to complete all installations.

- (b) revise pending Applications 30015 and 31296 to include the 13.5 acres of new vineyard planted within the SE $\frac{1}{4}$  of Section 22 and NW $\frac{1}{4}$  of Section 26, both in Township 13 North, Range 11 West, Mount Diablo Base and Meridian.

8. The Diverters agree to allow Division staff reasonable access (with reasonable notice) to the facilities described herein for routine water right inspections and to verify compliance with the conditions of this Settlement Agreement. The Division agrees that the Diverters' acceptance and compliance with the terms of this settlement are sufficient to remedy the past unauthorized diversions and Middleridge's violation of permit terms and conditions. The Division will not take enforcement action for the trespasses at the three reservoirs (Reservoir G, pit reservoir, and the reservoir covered by Stockpond Certificate No. 5160) and violations, or threat thereof, identified herein. In its discretion, however, the Division may make future findings, or initiate enforcement proceedings, for any violation of the terms of this Agreement or Middleridge's permits, or as otherwise allowed by law. The Diverters agree that, for purposes of any SWRCB enforcement action for violation of the terms of this agreement, the violation shall have the same force and effect as a violation of a cease and desist order.

9. The Diverters acknowledge that this Settlement Agreement or the Division's acceptance of monitoring plans or identification of alternate supplies of water does not constitute a finding by the SWRCB on the issue of the legal classification of groundwater (i.e., whether the Diverters are diverting and using groundwater flowing in a subterranean stream or percolating groundwater), and the SWRCB is not precluded from making such a determination in the future.

10. Miscellaneous:

A. *Independent Judgment.* Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.

B. *Additional Documents.* Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.

C. *Entire Agreement.* This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises, or representations, made by the other party other than those contained in this Settlement Agreement.

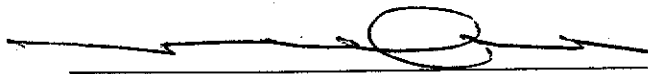
D. *Mutual Agreement.* The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

E. *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

F. *Reasonableness of Settlement.* The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.

G. *Section Headings.* The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.

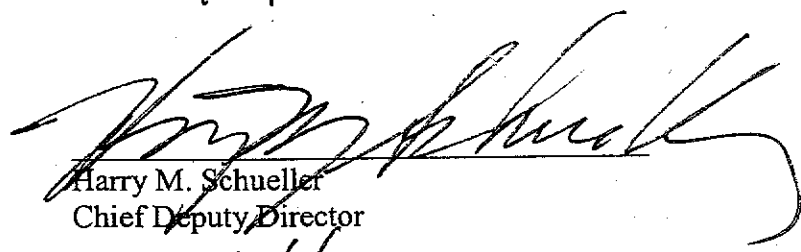
- H. *Effective Date.* This Settlement Agreement shall become effective immediately on adoption of the SWRCB's Executive Director's order approving the Settlement Agreement.
- I. *Choice of Law.* This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- J. *Authorization.* Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

 for Middleridge Vineyards

Date: 9/18/03

 for M/R Vineyards

Date: 9/18/03



Harry M. Schueller  
Chief Deputy Director

Date: 10/14/03

Attachments: Draft licenses for Permits 17877A and 17877B