

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

ORDER WR 2009-0030-EXEC

In the Matter of the Diversion and Use of Water by
Manchester Ridge, LLC

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a notice of proposed Cease and Desist Order (CDO) and an Administrative Civil Liability (ACL) complaint to Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri, Kathleen Stornetta (Piper, et al.) and Manchester Ridge, LLC (Manchester). In accordance with the attached Stipulation and Settlement Agreement, the State Water Board's Division of Water Rights (Division) prosecution team (Prosecution Team) and Manchester have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

Piper, et al. are the current owners of Mendocino County Assessor's Parcel Number 132-260-03 located at 39000 Crispin Road (property). Manchester leases this property and has constructed and operates Pond No. 1 (also referred to as Reservoir No. 1) as a water storage facility on the property for the irrigation of a vineyard and orchard. Pond No. 1 has a capacity of approximately 30 acre-feet and is located within the NE¼ of the NE¼ of Section 16, T13N, R16W, MDB&M. Manchester constructed the facility without a water right permit from the State

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

Water Board. Upon request by Manchester, Division staff conducted a field inspection to determine whether its facility was subject to the State Water Board's water right permitting authority. Division staff informed Manchester that Pond No. 1 was subject to the State Water Board's water right permitting authority and that Manchester should file an application to appropriate water by permit or render Pond No. 1 incapable of storing water. Manchester did not timely file an application or render Pond No. 1 incapable of storing water. Therefore, on July 10, 2008 the Division issued an ACL Complaint and a draft CDO against Piper, et al. and Manchester. On July 24, 2008, Manchester timely requested a hearing on the ACL complaint and draft CDO before the State Water Board. However, Piper, et al. did not timely request a hearing to contest the ACL or draft CDO.

3.0 SETTLEMENT AGREEMENT

Manchester and the Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Stipulation and Settlement Agreement that is attached hereto. The general terms of the settlement are that Manchester (1) revokes its request for hearing on the ACL and CDO, (2) agrees to file an application to appropriate water and diligently pursue securing a permit, or render its Pond No. 1 incapable of storing water subject to the State Water Board's water right permitting authority, (3) remit payment of \$7,948 in three consecutive monthly payments of \$2,650, \$2,650 and \$2,648, respectively, (4) remit annual payments of \$1,275 until a permit is issued, or until Pond No. 1 is rendered incapable of storing water subject to the State Water Board's water right permitting authority, and (5) comply with all other terms of the Settlement Agreement. The Division's Prosecution Team agrees that a water right permit is not required for the sediment detention basin located within the NE¼ of the SW¼ of Section 15, T13N R16W, MDB&M, provided that the capacity of the facility is not expanded and water detained in the basin is not diverted and used for any beneficial purpose except to capture sediment.

4.0 PIPER, ET AL.

Pursuant to Water Code section 1834, subdivision (b), the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in a notice of a proposed cease and desist order, without a hearing, when a hearing is not timely requested by the notified party. Similarly, the State Water Board may issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested. The State Water Board has delegated to the Assistant Deputy Director for Water Rights the authority to

issue a cease and desist order or order imposing administrative civil liability when no hearing has been requested. (State Water Board Resolution 2007-0057, ¶¶ 4.9.1, 4.9.2; Mem. from Victoria A. Whitney, Chief of the Division of Water Rights, to All Water Rights Staff (Oct. 4, 2007), ¶¶ 4.9.1, 4.9.2.) Because Piper, et al. did not submit a timely request for hearing after proper notice of the ACL complaint and draft CDO, the Assistant Deputy Director may, at his discretion, issue a separate order against Piper, et al.

ORDER

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

Dated: 5-01-09



Dorothy Rice
Executive Director

Attachment

1 STATE OF CALIFORNIA

2 STATE WATER RESOURCES CONTROL BOARD

3
4 In the matter of unauthorized diversion by:
5 Harriet Jean Piper, William Piper, Matthew
6 Piper, Carole Canaveri, Kathleen Stornetta and
Manchester Ridge LLC, Enforcement Action
No. 67

**STIPULATION AND
SETTLEMENT AGREEMENT**

7 and

8 Draft Cease and Desist Order WR 2008-00XX-
9 DWR.

10 This Joint Stipulation and Settlement Agreement ("Agreement") is entered into by and
11 between the Prosecution Team of the State Water Resources Control Board (State Water Board),
12 Division of Water Rights ("Division") and Manchester Ridge, LLC ("Manchester") effective this
13 9th day of April, 2009.

14 **RECITALS**

15 WHEREAS, on July 10, 2008 the Division issued the Administrative Civil Liability
16 Complaint, "In the matter of unauthorized diversion by: Harriet Jean Piper, William Piper,
17 Matthew Piper, Carole Canaveri, Kathleen Stornetta (Piper, et al.) and Manchester Ridge LLC,
18 (Manchester) Enforcement Action No. 67" ("Complaint") and the Draft Cease and Desist Order
19 WR 2008-00XX-DWR ("draft CDO"), against Piper, et al. and Manchester.

20 WHEREAS, on July 24, 2008, Manchester timely requested a hearing on the Complaint
21 and draft CDO before the State Water Board.

22 WHEREAS, Piper, et al. did not request a hearing on or respond to Complaint and draft
23 CDO.

24 WHEREAS, the Division's Prosecution Team and Manchester disagree whether
25 Manchester's ponds involve diversion of water from a natural watercourse subject to the State
26 Water Board's water right permitting authority.

27 WHEREAS, the Division's Prosecution Team and Manchester enter into this Settlement
28

1 Agreement because it is their collective desire to settle the Complaint and draft CDO regarding
2 the unauthorized diversion and use of water by Manchester in lieu of a hearing.

3 WHEREAS, this Settlement Agreement will be submitted to the Executive Director of
4 the State Water Board for approval and adoption pursuant to Government Code section 11415.60
5 as a decision by settlement and will become effective when the Executive Director of the State
6 Water Board issues an order.

7 JOINT STIPULATION

8 The parties jointly stipulate to the following:

- 9 1. Piper et al. are the current owners of Mendocino County Assessor's Parcel
10 Number 132-260-03 located at 39000 Crispin Road ("property"). Piper et al. have owned the
11 property since at least July 1, 1996.
- 12 2. Manchester leases the property from Piper et al.
- 13 3. Manchester constructed and operates various water storage facilities on the
14 property for the irrigation of a vineyard and orchard.
- 15 4. Pond No. 1, which has a capacity of approximately 30 acre-feet (AF), is located
16 within the NE1/4 of the NE1/4 of Section 16, T13N, R16W, MDB&M.
- 17 5. The Division's Prosecution Team and Manchester disagree whether Pond No. 1 is
18 located on a natural watercourse and whether Pond No. 1 involves a diversion of surface water
19 subject to the State Water Board's water right permitting authority.
- 20 6. The site of proposed Pond No. 3 is located within the NE1/4 of the SW1/4 of
21 Section 15, T13N1 R16W, MDB&M. An existing sediment basin is located within the footprint
22 of proposed Pond No. 3.
- 23 7. Manchester does not intend to develop proposed Pond No. 3. Pond No. 3 would
24 be subject to the permitting authority of the State Water Board if it is constructed for water
25 storage purposes.
- 26 8. The sediment basin in the footprint of proposed Pond No. 3 was constructed and
27 is currently operated solely to capture sediment.
- 28 9. The sediment basin shall not be deemed to collect water to storage for subsequent

1 beneficial use; and shall not be subject to the water right permitting authority of the State Water
2 Board, provided that the capacity of the facility is not expanded, and water detained in the basin
3 is not diverted and used for any beneficial purpose except to capture sediment.

4 **SETTLEMENT AGREEMENT**

5 NOW, THEREFORE, in consideration of the mutual covenants contained herein and
6 other good and valuable consideration, the receipt and sufficiency of which are hereby
7 acknowledged, the Division's Prosecution Team and Manchester hereby agree to settle the
8 Complaint and draft CDO on the following terms:

9 1. Manchester agrees to pay a total of seven thousand nine hundred forty-eight
10 dollars (\$7,948.00) in three payments as the complete settlement and satisfaction of the civil
11 liability for past unauthorized diversion of water at Pond No. 1. The first payment of \$2650.00 is
12 due within twenty (20) days of approval of this Agreement by the Executive Director, the second
13 payment of \$2650.00 is due within 50 days of approval of this Agreement by the Executive
14 Director, and the third and final payment of \$2648.00 is due within 80 days of approval of this
15 Agreement.

16 2. Regarding Pond 1, Manchester will do the following:

17 (a) Within 90 days of approval of this Agreement by the Executive Director,
18 survey the reservoir and install staff gauge.

19 (b) Within 120 days of approval of this Agreement by the Executive Director,
20 submit capacity survey, depth vs. capacity relationship curves, and evidence of staff gauge
21 installation.

22 (c) Starting on October 1, 2009, Manchester will maintain a record of
23 monthly staff gauge readings for Pond No. 1 and supply the readings to the State Water Board on
24 May 1 of each year. The records shall also identify the amount of water collected to, and
25 withdrawn from, the pond and the separate sources for that water.

26 (d) Within 120 days of approval of this Agreement by the Executive Director,
27 do one of the following:
28

1 i. File the appropriate Water Right Application with the Division of
2 Water Rights for Pond No. 1; or

3 ii. Submit a plan that will render the reservoir incapable of storing
4 surface waters subject to the State Water Boards permitting authority. Any such plan will
5 include specific dates or time frames for prompt and diligent implementation subject to approval
6 of the Deputy Director for Water Rights.

7 (e) Until a permit is issued for Pond No. 1, or Pond No. 1 is rendered
8 incapable of storing water subject to the State Water Board's water right permitting authority,
9 Manchester shall adhere to one of the following options of its choosing:

10 i. By October 1 of each year, commencing October 1, 2009, and
11 continuing October 1 of each subsequent year until either a permit is issued for Pond No. 1, or
12 Pond No. 1 is rendered incapable of storing water subject to State Water Board's water right
13 permitting authority, Manchester shall remit a payment of one thousand two hundred seventy-
14 five dollars (\$1,275.00) to the State Water Board; or

15 ii. By October 1, 2009, Manchester shall provide photographic
16 evidence that Pond No. 1 has been rendered incapable of storing water subject to the State Water
17 Board's water right permitting authority. If other water is to be diverted into the pond under
18 valid basis of right, including but not limited to diversion of a riparian right or storage of
19 groundwater, Manchester shall identify the basis of right and how it will monitor and record the
20 quantity of water used under these rights. Manchester shall obtain approval of the monitoring
21 and basis of right from the Division and commence monitoring prior to October 1, 2009.

22 3. If Manchester files an application in accordance with 2(d)i, Manchester shall
23 diligently pursue securing a water right permit. Diligently pursuing a permit includes, but is not
24 limited to, prompt submittal of all necessary applications, documents, filing and annual fees,
25 maps, reservoir survey, reservoir stage/area/capacity curve, responses to protests, and
26 information necessary for environmental review under the California Environmental Quality Act
27 (CEQA). The Settlement Agreement does not obligate the State Water Board to issue a water
28 right permit on the application.

1 4. Manchester dismisses its request for hearing regarding the Complaint and draft
2 CDO on the effective date of this Settlement Agreement. Manchester also waives its right to
3 request reconsideration by the State Water Board of the Order Approving the Settlement
4 Agreement between the Division and Manchester provided no additional requirements are
5 included in that order beyond the requirements of this Settlement Agreement.

6 5. The Division agrees that Manchester's acceptance and compliance with the terms
7 of this Settlement Agreement are sufficient to satisfy its civil liability for alleged past
8 unauthorized diversions of water at Pond No. 1. In its discretion, the Division may make future
9 findings or initiate enforcement proceedings for any future violations of the Water Code, the
10 State Water Board's regulations, the terms of this order, or the terms of any permit or license
11 issued to Manchester, provided, however, the Division shall not initiate civil liability
12 proceedings for matters covered in this Settlement Agreement while Manchester is in compliance
13 with this Settlement Agreement.

14 6. For purposes of this settlement, Manchester's payments in accordance with
15 paragraphs 1 or 2(e)i of this Agreement and filing of an application in accordance with paragraph
16 2(d)i of this Agreement, shall be deemed an admission of liability by Manchester and waiver of
17 its legal position that Pond No. 1 is not located on a natural watercourse and that Manchester is
18 not diverting surface water to storage in Pond No. 1 subject to the State Water Board's water
19 rights permitting authority; provided, however, should the Board issue an order or decision
20 addressing the issue of whether a watercourse is subject to the Board's water rights permitting
21 authority, Manchester shall not be considered to have waived its right to assert its position that
22 Pond #1 is not subject to the Board's water rights permitting authority.

23
24 **Miscellaneous**

25 7. Successors. This Settlement Agreement shall be binding on successors and
26 assigns to Manchester's interest in the property.

27 8. Independent Judgment. Each party represents and declares that in executing this
28 settlement agreement it relies solely on its own judgment, belief, and knowledge concerning the

1 nature, extent, and duration of its rights and claims, and that it has not been influenced to any
2 extent whatsoever in executing this Settlement Agreement by any representations or statements
3 regarding any matters made by the other parties hereto or by any person representing them.

4 9. No Precedent. This Settlement Agreement involves unique facts and legal issues
5 and shall not be deemed a precedent decision of the State Water Resources Control Board.

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

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

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

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

19 14. Reasonableness of Settlement. The parties represent and warrant that this
20 Settlement Agreement is made in good faith and in full recognition of the implications of such
21 agreement.

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

25 16. Effective Date. This Settlement Agreement shall become effective immediately
26 on signature of the State Water Board Executive Director's Order Approving the Settlement
27 Agreement.

28 17. Choice of Law. This Settlement Agreement shall be interpreted and governed by

1 the laws of the State of California.

2 18. Authorization. Each party warrants that the individual executing this Settlement
3 Agreement on behalf of such party is duly authorized to do so.

4
5 Dated: 4/9/09

STATE WATER RESOURCES CONTROL
BOARD, DIVISION OF WATER RIGHTS

6
7 By: [Signature], for
8 James Kassel
Assistant Deputy Director

9
10 Dated: 4/8/09

MANCHESTER RIDGE, LLC

11
12 By: [Signature]
13 Marc Deprey
President

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