

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2014-0015-EXEC

In the Matter of the Petition for Reconsideration of

BIRDIE C. VANDERFORD—TRUST B

Regarding Order WR 2013-0078-DWR
Imposing Administrative Civil Liability for Violation of a Cease and Desist Order

SOURCES: Reclamation District No. 833 Main Drain

COUNTY: Butte

ORDER DENYING PETITION FOR RECONSIDERATION OF ORDER WR 2013-0078-DWR

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

The Birdie C. Vanderford—Trust B (Vanderford Trust)², through its agent Jon Moss, petitions the State Water Resources Control Board (State Water Board or Board) for reconsideration of Order WR 2013-0078-DWR. Order WR 2013-0078-DWR imposes administrative civil liability upon the Vanderford Trust in the amount of \$5,000.00 for failure to comply with Order WR 2013-0035-DWR, which requires the Vanderford Trust to cease and desist its violation of the term in its water license requiring the Vanderford Trust to file an annual report of its water diversion and use. For the following reasons, I find that: 1) the Vanderford Trust's petition does not comply with the Board's regulations, 2) Order WR 2013-0078-DWR was appropriate and proper, and 3)

¹ State Water Resources Control Board (State Water Board or Board) Resolution 2012-0061 delegates to the Executive Director the authority to conduct and supervise the activities of the Board. Unless a petition for reconsideration raises matters that the Board wishes to address or requires an evidentiary hearing before the Board, the Executive Director's consideration of a petition for reconsideration of an order imposing administrative civil liability falls within the scope of the authority the Board delegated in Resolution 2012-0061. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order for which reconsideration is sought, or take other appropriate action. (See Cal. Code Regs., tit. 23, § 770, subd. (a).)

² Documents submitted to the State Water Board on the Vanderford Trust's behalf name Thelma Mills, formerly known as Thelma Jensen, as trustee.

the Vanderford Trust's petition fails to raise substantial issues related to the causes for reconsideration set forth in the Board's regulations. I therefore deny the Vanderford Trust's petition for reconsideration.

2.0 LEGAL, FACTUAL, AND PROCEDURAL BACKGROUND

The Vanderford Trust holds License 2996 authorizing it to divert water from the Reclamation District No. 833 (R D 833) Main Drain in Butte County. A term of its license requires the Vanderford Trust to file an electronic report of water diversion and use for the prior calendar year (annual use report) on or before June 30th of each year. (Cal. Code Regs., tit. 23, § 929.) In January 2013, the Division of Water Rights (Division) mailed a notice to the Vanderford Trust reminding it of the requirement that the Vanderford Trust file an annual use report for 2012 on or before June 30, 2013. The Vanderford Trust did not file an annual use report on or before June 30, 2013.

Division staff then prepared and transmitted to the Vanderford Trust a draft cease and desist order (Draft CDO) directing it to cease and desist its violation of the term of its license requiring the Vanderford Trust to file its 2012 annual use report on or before June 30, 2013. (Wat. Code, § 1831, subs. (a), (d)(2).) The Draft CDO directed the Vanderford Trust to file its annual use report or request a hearing before the State Water Board within twenty days of its receipt of the Draft CDO. (Wat. Code, § 1834, subd. (a).) The Vanderford Trust received the Draft CDO via certified United States mail on August 26, 2013. (*Ibid.*) The Vanderford Trust neither filed its annual use report nor requested a hearing within twenty days of its receipt of the Draft CDO.

On October 7, 2013, James W. Kassel, Assistant Deputy Director of the Division's Permitting and Enforcement Branch (Assistant Deputy Director), issued Order WR 2013-0036-DWR, directing the Vanderford Trust to cease and desist its violation of the term of its license requiring the Vanderford Trust to file its 2012 annual use report on or before June 30, 2013.³ (Wat. Code, § 1834, subd. (b).) Order WR-2013-0036-DWR became effective upon its issuance. (Wat. Code, § 1832.)

³ In Resolution 2012-0029, the State Water Board delegated the authority to issue cease and desist orders pursuant to Water Code section 1834, subdivision (b) to the Deputy Director for Water Rights (Deputy Director) and empowered the Deputy Director to redelegate this authority to the Assistant Deputy Directors. On July 6, 2012, the Deputy Director redelegated this authority to the Assistant Deputy Director of the Permitting and Enforcement Branch.

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

On reconsideration, the State Water Board may:

- “(1) Refuse to reconsider the decision or order if the petition fails to raise substantial issues related to the causes for reconsideration set out in [California Code of Regulations, title 23, section 768]; or
- (2) After review of the record, including any hearing transcript and any material submitted in support of the petition:
 - (A) Deny the petition upon a finding that the decision or order was appropriate and proper; or
 - (B) Set aside or modify the decision or order; or
 - (C) Take other appropriate action.”

(Cal. Code Regs., tit. 23, § 770, subd. (a).)

4.0 DISCUSSION

The Vanderford Trust’s petition for reconsideration of Order WR 2013-0078-DWR (Order) is set forth below in its entirety:

“This RECONSIDERATION letter is in regards of our family farm water right, lic#2996, Birdie C. Vanderford. My Great grandfather Otis H. Vanderford established this water right in 1948. As the great grandson , I have now the duty of keeping it up to date, which I did not do as to some hard times I incountered last year. I explained the situation and Mr. Kassel was kind enough to review my letter. I recieved what I believed to be the settlement of \$1,000.00, which is 3 times the normal amount. I sent the check and was told by Mr. O’Hagan that it was supposed to be \$5,000.00. I was suprised to hear this.

This water right was probably a great thing to have back in my Great grandfather’s day, but now it is a useless piece of paper that our water district does not observe. I have consulted with our family water lawyer and have concluded this is extortion to charge

such penalties. Please Accept the \$1,000.00 to renew our water right. We will not go to court other than to retrieve the \$1,000.00 if our request is denied and not refunded. I have filled out the 2012 reporting license online. THREE TIMES the normal fee is fair, not 15 times. That is pure extortion and unreasonable. A simple acceptance of this letter will assure years of on time reporting and normal fees for the board to collect long term.” (Errors and capitalization in original.)

The Vanderford Trust’s petition for reconsideration does not include: 1) the date on which the order or decision was made by the board, 2) a statement that copies of the petition and any accompanying materials have been sent to all interested parties, or 3) a statement of points and authorities in support of legal issues raised in the petition, as required by the Board’s regulations. (Cal. Code Regs., tit. 23, § 769, subs. (a), (c).) Because the Vanderford Trust has failed to comply with the requirements for filing a petition for reconsideration set forth in the Board’s regulations, its petition should be dismissed. (Cal. Code Regs., tit. 23, § 770, subd. (a)(2)(C).)

The Vanderford Trust’s assertion that the administrative civil liability amount is excessive may constitute an argument that the Assistant Deputy Director abused his discretion in imposing \$5,000.00 upon the Vanderford Trust. Water Code section 1845, subdivision (b)(1) provides that a person who violates a cease and desist order may be liable for a sum not to exceed \$1,000.00 for each day in which the violation occurs. The Order was issued on October 7, 2013 and the complaint was issued eighteen (18) days later, on October 25, 2013. The Vanderford Trust does not dispute these facts. Consequently, the Assistant Deputy Director was legally authorized to impose administrative civil liability in the amount of \$18,000.00, but instead imposed a lesser amount of \$5,000.00. The Vanderford Trust did not file the annual use report until over five months after it was due, despite having been notified in advance of the requirement. Further, the Vanderford Trust only filed the annual use report after receiving a notice of proposed cease and desist order, a cease and desist order, an administrative civil liability complaint, and an administrative civil liability order. The persistence of the violation in spite of these administrative actions could have justified a penalty far higher than the \$5,000.00 imposed. The cost of this effort to bring the Vanderford Trust into compliance could also have justified a higher penalty. Considering all relevant circumstances, the Assistant Deputy Director did not abuse his discretion in imposing administrative civil liability. I find that the order was appropriate and proper. (Cal. Code Regs., tit. 23, § 770, subd. (a)(2)(A).)

To the extent that the Vanderford Trust's petition asserts any other reasons that the Order should be reconsidered, I find that its petition fails to raise substantial issues related to the causes for reconsideration set forth in the Board's regulations. (Cal. Code Regs., tit. 23, § 770, subd. (a)(1).)

Finally, I note that the Vanderford Trust asserts that its water license offers limited utility. Water Code section 1675, subdivision (b) empowers the State Water Board to revoke the Vanderford Trust's license upon its request. Should the Vanderford Trust find that compliance with the terms of its license is burdensome given the limited utility it receives from the license, the Vanderford Trust may find it desirable to voluntarily request that the State Water Board revoke its license. Of course, if the Vanderford Trust's license were revoked, it would also have to cease any diversions that are not authorized without the license.

5.0 CONCLUSION

For the foregoing reasons, I find that: 1) the Vanderford Trust's petition does not comply with the Board's regulations, 2) Order WR 2013-0078-DWR was appropriate and proper, and 3) the Vanderford Trust's petition fails to raise substantial issues related to the causes for reconsideration set forth in the Board's regulations. I therefore deny the Vanderford Trust's petition for reconsideration.

I further find that the Assistant Deputy Director considered all relevant circumstances in determining the amount of civil liability imposed upon the Vanderford Trust, as required by Water Code sections 1055.3 and 1845, subdivision (c). I therefore affirm the imposition of administrative civil liability in the amount of \$5,000.00.

ORDER

IT IS HEREBY ORDERED that:


1. Order WR 2013-0078-DWR is affirmed and the Vanderford Trust's petition for reconsideration is denied for the foregoing reasons.
2. Having already tendered payment in the amount of \$1,000.00 towards the outstanding administrative civil liability amount, the Vanderford Trust shall remit, within thirty (30) days of the date of this Order, a cashier's check or money order in the amount of \$4,000.00 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

3. If the Vanderford Trust fails to remit the outstanding penalty imposed by this order within thirty (30) days of the date of this order, the Assistant Deputy Director is directed to seek recovery of the outstanding liability, pursuant to Water Code section 1055.4.
4. Pursuant to Water Code section 1123, this order shall have the same force and effect as Order WR 2013-0078-DWR.
5. The State Water Resources Control Board's right to take future enforcement action against the Vanderford Trust for any future violations is reserved.

Dated: _____

3/24/14



Thomas Howard
Executive Director