

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2014—0090—EXEC

In the Matter of Unauthorized Diversion and Violation of Emergency Regulations for Curtailment
of Diversions Due to Insufficient Flow for Specific Fisheries by

STANFORD VINA RANCH IRRIGATION COMPANY

SOURCES: Deer Creek, tributary to the Sacramento River

COUNTY: Tehama

ORDER APPROVING STIPULATION AND CEASE AND DESIST ORDER

BY THE EXECUTIVE DIRECTOR:¹

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 draft cease and desist order (draft CDO) to Stanford Vina Ranch Irrigation Company (Stanford Vina). Per the terms of the attached stipulation, the State Water Board's Division of Water Rights Prosecution Team (Prosecution Team) and Stanford Vina have agreed to settle this matter in lieu of proceeding to a hearing.

2.0 LEGAL, FACTUAL, AND PROCEDURAL BACKGROUND

The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60, subdivision (a), which further provides: "no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement

¹ State Water Resources Control Board (State Water Board or Board) Resolution 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties, pursuant to Government Code section 11415.60, subdivision (c).

negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code.”

On May 21, 2014, the State Water Board adopted emergency regulations on the curtailment of diversions based on insufficient flow to meet all needs (Emergency Regulations). (Cal. Code Regs., tit. 23, §§ 877-879.2.) The Emergency Regulations went into effect on June 2, 2014 and establish minimum flow requirements for the protection of specific anadromous fish in Mill Creek, Deer Creek, and Antelope Creek. The Emergency Regulations provide that diversions from Mill Creek, Deer Creek, or Antelope Creek are wasteful and unreasonable if those diversions will cause flows to drop below the minimum flows specified in the Emergency Regulations. The Emergency Regulations empower the Deputy Director for the Division of Water Rights (Deputy Director) to issue curtailment orders directing diverters to cease or reduce their diversions as necessary to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The Emergency Regulations will expire on February 27, 2015, but the State Water Board may renew the Emergency Regulations, if the Board determines that the conditions for their issuance are still in effect. (Wat. Code, § 1058.5, subd. (c).)

On June 5, 2014, the Deputy Director issued Order WR 2014-0022-DWR (June Curtailment Order). The June Curtailment Order took effect on June 6, 2014 and required all water rights holders in the Deer Creek watershed to immediately cease or reduce their diversions from Deer Creek to ensure the minimum flows specified in the Emergency Regulations were satisfied through June 30, 2014.

On June 12, 2014, the Assistant Deputy Director of the Division of Water Rights (Assistant Deputy Director) issued a draft cease and desist order (draft CDO) against Stanford Vina for failure to comply with the Emergency Regulations and for engaging in the unauthorized diversion of water. By letter dated July 2, 2014, Stanford Vina, through its attorney Dustin Cooper, timely requested a hearing on the draft CDO. A hearing was scheduled for December 8, 2014.

On October 14, 2014, the Deputy Director issued Order WR 2014-0029-DWR (October Curtailment Order). The October Curtailment Order took effect on October 15, 2014 and requires all water rights holders in the Deer Creek watershed to ensure the minimum flows

specified in the Emergency Regulations are satisfied through February 27, 2015 or until the Deputy Director suspends the October Curtailment Order.

On November 20, 2014, the Prosecution Team and Stanford Vina entered into the attached stipulation.

3.0 STIPULATION

The stipulation sets forth that Stanford Vina will comply with the October Curtailment Order for the duration of its effectiveness and that Stanford Vina will comply with the Emergency Regulations for the duration of their effectiveness. The stipulation further sets forth that Stanford Vina will maintain a daily record of all of its diversions from Deer Creek and of the flows registered at the Department of Water Resources gaging station below Stanford Vina's points of diversion through February 28, 2015 and will make such records available to the State Water Board no later than March 15, 2015.

The stipulation further sets forth that any order approving the stipulation shall be treated as a final cease and desist order issued by the State Water Board and that violation of the stipulation and the order approving it shall be subject to further enforcement. (Wat. Code, §§ 1831-36, 1845-46.) Per the stipulation's terms, Stanford Vina withdraws its request for a hearing upon the Executive Director's approval of the stipulation and waives its right to request reconsideration of the Executive Director's order approving the stipulation, provided no material modifications to the stipulation are made and no additional requirements beyond those in the stipulation are included in the order.

Issuance of this order shall not constitute an admission by the State Water Board of the factual basis or legal effect of the allegations set forth in the Verified Complaint and Petition filed by Stanford Vina in the Superior Court of California in and for the County of Sacramento (Case No. 34-2014-80001957) and referenced in the recitals, at paragraphs 16-20, of the stipulation.

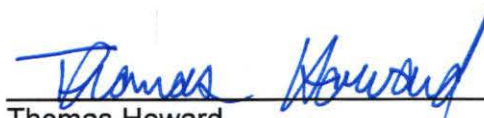
ORDER

IT IS HEREBY ORDERED that:

1. The settlement of this proceeding as provided by the attached stipulation between the Division of Water Rights Prosecution Team and the Stanford Vina Ranch Irrigation Company is approved.
2. The Stanford Vina Ranch Irrigation Company shall fully comply with Order WR 2014-0029-DWR until the earlier of February 28, 2015 or the repeal of Order WR 2014-0029-DWR.
3. The Stanford Vina Ranch Irrigation Company shall fully comply with the requirements of the State Water Resources Control Board's emergency regulations for the curtailment of diversions in certain tributaries of the Sacramento River when insufficient flows are available, set forth in California Code of Regulations, title 23, sections 877 through 879.2. The Stanford Vina Ranch Irrigation Company shall do so until the earlier of February 28, 2015 or the repeal of the emergency regulations.
4. Through February 28, 2015, the Stanford Vina Ranch Irrigation Company shall maintain a daily record of all of its diversions from Deer Creek and of the flows registered at the Department of Water Resources gaging station below the Stanford Vina Ranch Irrigation Company's points of diversion. The Stanford Vina Ranch Irrigation Company shall make such records available to the State Water Resources Control Board no later than March 15, 2015.
5. This order shall have the force and effect of a cease and desist order issued pursuant to Water Code section 1831 and shall be enforced as such.
6. The Stanford Vina Ranch Irrigation Company has withdrawn its request for a hearing on the draft cease and desist order issued against it on June 12, 2014 and waived its right to request reconsideration of this order.
7. The State Water Resources Control Board's right to take future enforcement action against the Stanford Vina Ranch Irrigation Company for any future violations is reserved.

Dated: _____

12/15/14



Thomas Howard
Executive Director

STIPULATION

This Stipulation and Proposed Order (“Stipulation”) is made by and between Stanford Vina Ranch Irrigation Company (“Stanford Vina”) and the State Water Resources Control Board (“State Water Board”) Division of Water Rights Prosecution Team (“Prosecution Team”) and is executed this 20th day of November, 2014.

RECITALS

1. On November 27, 1923 the Superior Court of Tehama County entered a judgment (Adjudication) allocating 100% of the flow in Deer Creek (as measured at USGS gauge 11383500) to the predecessors in interest of the Stanford Vina (approximately 65%) and Deer Creek Irrigation District (approximately 35%). The Adjudication designated that the average amount of water naturally flowing in Deer Creek during the irrigation season as 150 second feet or 6,000 miner’s inches and allocated 100% of that flow as previously provided. At times when the natural flow in Deer Creek is less than or more than 150 second feet or 6,000 miner’s inches, the Adjudication diminishes or augments the flow allocations proportionally. (Adjudication, Articles XI and XIII, pp. 10, 11.) Stanford Vina’s points of diversion are downstream of the point of diversion for Deer Creek Irrigation District. (Adjudication, Articles XI and XIII, pp. 10, 11.) The Adjudication was amended in 1926 to allocate approximately 66 percent of the Deer Creek flows below USGS gauge 11383500 to Stanford Vina, 33 percent to Deer Creek Irrigation District, and 1 percent to Sheep Camp Ditch for stock watering.
2. On February 27, 1926, the Division issued water rights License 485 pursuant to Application 1041 to Stanford Vina. License 485 authorizes the direct diversion of 15 cubic feet per second (cfs) from Deer Creek for agricultural use from May 1st to October 1st of each year. The points of diversion authorized by License 485 are the same points of diversion identified in the Adjudication.
3. On April 25, 2014, Governor Edmund G. Brown Jr. issued an Executive Order to strengthen the state’s ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015.
4. On May 27, 2014, the State Water Board issued a “Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento River Watershed with a Post-1914 Appropriative Right.” Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board determined the existing water supply in the Sacramento River watershed (including Deer Creek) is insufficient to meet the needs of all water

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rights holders. With the notice, the State Water Board notified all holders of post-1914 appropriative water rights within the Sacramento River watershed of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The condition of curtailment will continue until water conditions improve. Approximately 2,648 junior water-right holders in the Sacramento River watershed received curtailment notices. The right holders who received curtailment notice in the Sacramento River watershed included creeks and rivers draining to the Sacramento River and the North Delta, including the Pit, McCloud, Feather, Yuba, and American Rivers.

5. On May 21, 2014, the State Water Board adopted the Emergency Regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (California Code of Regulations, title 23, sections 877 through 879.2¹) (“Emergency Regulations”). The Emergency Regulations were reviewed by the Office of Administrative Law and went into effect on June 2, 2014. The Emergency Regulations establish drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek and Antelope Creek. The Emergency Regulations provide that diversions from Mill, Deer and Antelope creeks under any basis of right are unreasonable if those diversions will cause flows to drop below the specified minimum flows. Under the Emergency Regulations, diversions are curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The Emergency Regulations will expire on February 28, 2015, pursuant to subdivision (c) of Water Code section 1058.5.
6. Stanford Vina submitted written and verbal comments as part of the State Water Board process for considering and approving the Emergency Regulations applicable to Mill Creek, Deer Creek and Antelope Creek, alleging several procedural and substantive defects and violations of law.
7. On June 5, 2014, the Deputy Director for the Division of Water Rights issued a Curtailment Order for Deer Creek, WR 2014-0022-DWR (“June Curtailment Order”) under the Emergency Regulations. The June Curtailment Order took effect on June 6, 2014 and required all water rights holders in the Deer Creek watershed to immediately cease or reduce their diversions from Deer Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied through June 30, 2014 or until the Deputy Director suspended the June Curtailment Order under section 877, subdivision (c)(2)(E).
8. Section 879.2 provides that diversion or use in violation of an order issued under the Emergency Regulations constitutes an unauthorized diversion and use of water

¹ All further section references are to California Code of Regulations, title 23, unless otherwise indicated.

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subject to further enforcement and any applicable penalties pursuant to Water Code sections 1052, 1831, 1845 and 1846.

9. On June 12, 2014, the Prosecution Team issued a draft Cease and Desist Order WR 2014-00XX-DWR (“Draft CDO”) against Stanford Vina, alleging, among other things, that from June 6 through June 11, Stanford Vina failed to reduce diversions sufficiently to bypass the minimum flows required under the June Curtailment Order and the Emergency Regulations.
10. On June 12, 2014, Stanford Vina submitted a Response to State Water Resources Control Board Regarding Emergency Regulations for Curtailment-Deer Creek, responding to Paragraph 5 of the June Curtailment Order. Among other subjects addressed in this Response, Stanford Vina reiterated its earlier objections to the Emergency Regulations, and raised additional objections specific to the June Curtailment Order.
11. On June 24, 2014, the Deputy Director issued a Notice of Immediate Suspension of the June Curtailment Order.
12. On July 2, 2014, Stanford Vina timely requested hearing on the Draft CDO. At the time of this Stipulation, the State Water Board has scheduled hearing for the Draft CDO commencing on December 8, 2014.
13. Also on July 2, 2014, Stanford Vina submitted a Petition for Reconsideration Related to Emergency Regulations Curtailing Diversions on Deer Creek and Related Orders.
14. On September 23, 2014, the State Water Board issued Order WR 2014-0028, denying Stanford Vina’s Petition for Reconsideration.
15. On October 14, 2014, the Deputy Director for the Division of Water Rights issued a Curtailment Order for Deer Creek, WR 2014-0029-DWR (“October Curtailment Order”) under the Emergency Regulations. The October Curtailment Order took effect on October 15, 2014 and requires all water rights holders in the Deer Creek watershed to immediately cease or reduce their diversions from Deer Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied through February 28, 2015, or until the Deputy Director suspends the October Curtailment Order under section 877, subdivision (c)(2)(E).
16. On October 22, 2014, Stanford Vina filed a Verified Complaint and Petition for (1) Inverse Condemnation, (2) Declaratory Relief Judgment, (3) Writ of Mandate, (4) Writ of Mandate, and (5) Injunction or Writ of Mandate, in Sacramento Superior Court (Case No. 34-2014-80001957), alleging various claims challenging the Emergency Regulations and the curtailment orders issued thereunder.
17. Stanford Vina reserves and asserts all of its defenses and claims regarding these events and their legal effect, including without excluding others, (1) the legal or

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factual effect of the actions of the California Department of Fish and Wildlife purporting to change or supersede the curtailment quantity in and through a memorandum with Deer Creek Irrigation District without action of the State Water Board and/or the Deputy Director for the Division of Water Rights, and (2) whether the issuance of a Curtailment Order is a substitute for effective service upon Stanford Vina through personal service or constructive notice through certified mail under principles of constitutional due process and the requirements of section 877(d)1 which requires initial curtailment orders to be mailed but provides no presumption that constructive notice occurs upon mailing or that service of notice is effective immediately upon delivery of the mail.

18. In its lawsuit, Stanford Vina contends that the actions and emergency regulations are unconstitutional, are an unconstitutional taking of property, are a violation of constitutional and statutory requirements of due process, and are procedurally and substantially ineffective and unenforceable. Stanford Vina has filed a Superior Court action to determine those issues.
19. In its lawsuit, Stanford Vina contends that the California Department of Fish and Wildlife had purported to end the State Water Board's curtailment order on Deer Creek on approximately June 20, 2014.
20. In its lawsuit, Stanford Vina contends that State Water Board and the California Department of Fish and Wildlife have unlawfully altered the Emergency Regulations to remove the 50 cfs base flow requirement on Deer Creek. Stanford Vina reserves and reasserts all of its contentions regarding unconstitutional taking and other unlawful substantive and procedural acts.
21. Joining in this Stipulation shall not constitute an admission by Stanford Vina of the statements or the legal effect of the facts claimed in Paragraphs 7 and 15 above.
22. Stanford Vina denies violating the June Curtailment Order, and asserts that while reserving and maintaining all of its claims, defenses and rights and acting under protest, it is and shall remain in compliance with the October Curtailment Order and with the Emergency Regulations.
23. In lieu of hearings, Stanford Vina and the Prosecution Team agree to settle the matters identified in the Draft CDO through this Stipulation.
24. This Stipulation will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and becomes effective only if and when the State Water Board's Executive Director issues an order approving the Stipulation.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Stipulation, Stanford Vina and the Prosecution Team do hereby agree:

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1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Stipulation Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Stipulation, this Stipulation is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Stipulation is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Cease and Desist Order.** Stanford Vina and the Prosecution Team agree to settle the Draft CDO as follows:
 - a. Stanford Vina shall comply with the October Curtailment Order and with the Emergency Regulations for the duration of the October Curtailment Order and Emergency Regulations. Stanford Vina's promise to comply with the October Curtailment Order and with the Emergency Regulations under this Stipulation shall not extend to renewals of either the October Curtailment Order or the Emergency Regulations or any equivalent extension having the approximate same effect that would extend beyond February 28, 2015.
 - b. Stanford Vina will maintain a daily record of all of its diversions from Deer Creek, and of the flows registered at the Department of Water Resources gaging station below Stanford Vina's points of diversion through February 28, 2015, and will make such records available to the State Water Board no later than March 15, 2015.
4. **Enforcement of this Stipulation.** The terms and conditions of the Stipulation and the implementing order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Stipulation and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
5. **Hearing.** Upon execution of this Stipulation by both parties, Stanford Vina and the Prosecution Team shall request that the hearing in this matter and date for submission of testimony and exhibits be indefinitely postponed pending approval of this Stipulation by the Executive Director. Upon approval of this Stipulation by the State Water Board's Executive Director, Stanford Vina's request for hearing on the Draft CDO is withdrawn and deemed satisfied by this Stipulation.
6. **Additional Enforcement.** Stanford Vina acknowledges that the State Water Board may seek additional enforcement against Stanford Vina for any alleged violations of the Emergency Regulations or any order issued thereunder, or for any alleged unlawful diversion of water, based on the allegations contained in the Draft CDO or for any other violations. Potential enforcement includes, but is not limited to, seeking

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administrative civil liabilities. The Prosecution Team agrees to initiate any administrative civil liability proceedings, if at all, after the expiration of the October Curtailment Order and Emergency Regulations on February 28, 2015.

7. **Waiver of Reconsideration.** Stanford Vina waives its right to request reconsideration of the State Water Board Executive Director's order approving this Stipulation, provided no material modifications to this Stipulation or additional requirements beyond the requirements of this Stipulation are included in that order, and that waiver shall not bar or prevent Stanford Vina from having fully exhausted its administrative remedies in bringing its Superior Court action claims.
8. **Successors.** This Stipulation is binding on any successors or assigns of Stanford Vina and the State Water Board.
9. **Independent Judgment.** Each party represents and declares that in executing this Stipulation it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Stipulation by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
10. **No Precedent.** This Stipulation involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
11. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Stipulation.
12. **Entire Agreement.** This Stipulation reflects and represents the entire agreement between and among the parties and supersedes 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 Stipulation.
13. **Mutual Agreement.** The parties have agreed to the particular language in this Stipulation, and this Stipulation shall not be construed against the party that drafted this Stipulation or any portion of this Stipulation.
14. **Counterparts.** This Stipulation 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.
15. **Reasonableness of Stipulation.** The parties represent and warrant that this Stipulation is made in good faith and in full recognition of the implications of such agreement.

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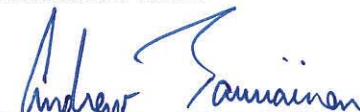
16. **Section Headings.** The parties intend that the paragraph headings of this Stipulation be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Stipulation.
17. **Effective Date.** This Stipulation shall become effective immediately upon the State Water Board Executive Director's Order Approving Stipulation.
18. **Choice of Law.** This Stipulation shall be interpreted and governed by the laws of the State of California.
19. **Authorization.** Each party warrants that the individual executing this Stipulation on behalf of such party is duly authorized to do so.
20. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Stanford Vina, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and the accompanying Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Stanford Vina's directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation. This provision shall not constitute a waiver of liability by Stanford Vina on its behalf or its landowners as those claims are reserved in Paragraph 21 hereafter.
21. **Reservation of Claims and Defenses.** In entering into this settlement agreement and Stipulation, Stanford Vina reserves all claims to damages, expenses, claims for payment of attorney fees and other claims related to the actions, omissions and undertakings of the State Water Board and other Departments of the State of California or of the United States working with or in conjunction with the State Water Board and its officers, employees or agents. The State Water Board reserves all of its defenses to those claims

Dated: 11/20/ 2014



John O'Hagan,
Assistant Deputy Director
State Water Board, Division of Water Rights
Prosecution Team

Approved as to form:



Andrew Tauriainen
Senior Staff Counsel
State Water Board, Office of Enforcement
Counsel for the Prosecution Team

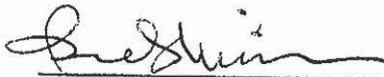
Stanford Vina CDO Stipulation

Dated: November 20, 2014



Michael Wallace
President, Board of Directors
Stanford Vina Ranch Irrigation Company

Approved as to form:



Paul Minasian
Dustin Cooper
Peter Harman
Counsel for Stanford Vina