

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

**DELTA WATERMASTER**

**ORDER WR 2012 - 0001- DWM**

---

**CEASE AND DESIST ORDER**

In the Matter of Violation of Annual Reporting Requirements by

**Lamb Gianelli Family LP**

---

SOURCE: South Fork Mokelumne River  
Beaver Slough

COUNTY: San Joaquin

---

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Lamb Gianelli Family LP (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your license, and/or an unauthorized diversion or use of water.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052 and/or license terms for which section 1831 (d) provides, in part:

The State Water Board is authorized to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following

- (1) The prohibition set forth in Section 1052 against unauthorized diversion or use of water subject to this division.
- (2) Any term or condition of a permit, license, certification, or registration issued under this division.

On October 16, 2012, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board Delta Watermaster provided notice of the CDO against Licensee for the violation of the terms and conditions of your license, and/or Title 23, Division 3, Chapter 2, Article 20, section 847 of the California Code of Regulations, and the unauthorized diversion or use of water. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to provide enforcement of license and permit terms and conditions. Pursuant to State Water Board Resolution 2012-0048, the Delta Watermaster is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq.

**FACTUAL BASIS FOR ISSUING THE CDO**

The facts and information upon which this CDO is based are as follows:

1. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use

under licenses, and developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.

2. In March 2012, the Division of Water Rights (Division) mailed out an initial notice (Exhibit A) to the Licensee notifying them of: the recent annual use reporting change, instructions on how to access the RMS system and submit, at a minimum, their 2011 use report online. The Licensee was also notified that if they had any questions on the new reporting process, they could contact the Division by phone or email. The deadline to submit their 2011 use report online was June 30, 2012.
3. On August 15, 2012, the Office of Delta Watermaster mailed out delinquency letters, which also included a copy of the March 2012 letter, to all the licensees who had not submitted their 2011 use report by July 1, 2012 (Exhibit B). The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and granted licensee 30 days to file the 2011 use report. The letter gave notice that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
4. On August 9, 2012, Office of Delta Watermaster staff attempted to contact Licensee but no one picked up the phone line and there was no voice mail. On September 19, 2012, staff made second attempt to contact Licensee regarding delinquent water use report for A005092. On October 2, 2012 third attempt was made to contact Licensee. On this occasion, a message informed staff that the phone number had changed. Staff tried the second phone number, which disconnected automatically after several rings with no opportunity for staff to leave a message. On October 4, 2012, Office of Delta Watermaster staff made another attempt to contact Licensee. This time, staff spoke with Licensee and informed Licensee that Licensee had failed to submit the required water use report.
5. As of October 16, 2012, the State Water Board has not received Licensee's 2011 annual use report for A005092.
6. On October 16, 2012, the Delta Watermaster sent to Licensee, by certified mail, a Notice of CDO and letter instructing Licensee to submit the delinquent water use report or request a hearing on the draft CDO, within 20 days from the date Licensee received the Notice of CDO. The United States Postal Office confirms the draft CDO was delivered on October 17, 2012 at 8:06 am (Certified Mail # 70042510000391503136). As of November 16, 2012, the State Water Board has not received Licensee's 2011 annual use report for A005092 or a request for hearing.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Licensee shall immediately come into compliance with the terms of the License by submitting their report of 2011 annual use by accessing the Report Management System at [www.waterboards.ca.gov/RMS](http://www.waterboards.ca.gov/RMS) using the User ID and Password shown on User Information Sheet accompanying this CDO.

Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact the staff noted on the letter accompanying this CDO.

#### **Consequences of Non-Compliance**

In the event Licensee fails to comply with the requirements of this Order, Licensee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845 (b)(1) of up to \$1,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

**Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.**

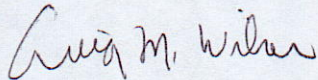
**Reservation of Enforcement Authority and Discretion**

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Licensee for unauthorized diversion of water in accordance with Water Code section 1052.

**Regulatory Changes**

Nothing in this Order shall excuse Licensee from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD



*Craig M. Wilson*  
*Delta Watermaster*

Dated: **NOV 16 2012**

---

This page intentionally left blank.