

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

DIVISION OF WATER RIGHTS

ORDER WR 2015-0038-DWR

ORDER FOR ADDITIONAL INFORMATION

In the Matter of Diversion of Water by

Steve and Nanci Kim

SOURCE: San Mateo Creek

COUNTY: San Mateo

BACKGROUND

1. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
2. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
3. On March 17, 2015, the State Water Board amended and re-adopted emergency regulations regarding Informational Order authority during drought (California Code of Regulations, title 23, amending section 879, subdivision (c)). The regulations were reviewed by the Office of Administrative Law and went into effect on March 27, 2015. The regulations establish requirements for water right holders to provide information in specific circumstances.
4. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (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 on-going severe drought conditions present urgent challenges across the state including water shortages for municipal 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 persist. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2014, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect.
5. The Executive Order, at Paragraph 10, provides in part that "[t]he Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water."

INVESTIGATION

6. Steve and Nanci Kim (collectively referred to as Kim) are the owners of San Mateo County Assessor Parcel Number (APN) 032-340-290 (Parcel), located at 320 Sierra Drive, Hillsborough,

- CA 94010 (Kim Property). The Kim Property is contiguous with San Mateo Creek downstream of the Lower Crystal Springs Reservoir.
7. On April 22, 2015 Division of Water Rights (Division) staff conducted a field investigation of San Mateo Creek together with California Department of Fish and Wildlife in response to a complaint.
 8. The inspection party located an electric pump and pressure tank installed on a terraced gravel pad adjacent to San Mateo Creek on the Kim Property and within an easement held by the San Francisco Public Utilities Commission (SFPUC). The diversion equipment includes an approximately 4" diameter black intake waterline, and a similarly sized conduit for delivery of collected water onto the Kim Property. The diversion pump and facilities were discovered at: Lat 37° 33' 26.57" Long -122° 20' 30.60". Inspection staff was unable to determine how this water was being used.
 9. Kim does not have an appropriative right to divert water from San Mateo Creek, and Kim does not have a Statement of Water Diversion and Use (Statement) on file with the Division for a riparian diversion to indicate the exercise of a riparian right on San Mateo Creek.
 10. Moreover, the City and County of San Francisco may have acquired riparian rights to San Mateo Creek on several parcels, including the Kim Property, through its purchase of the Spring Valley Water Works water transfer system in 1930.

LEGAL AUTHORITY

11. Water Code section 183 authorizes the State Water Board, among other things, to conduct any investigations in any part of the state necessary to carry out the Board's powers.
12. Water Code section 1051 authorizes the State Water Board, among other things, to investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water to determine whether water is being appropriated in accordance with the laws of the State.
13. Pursuant to California Code of Regulations, title 23, section 879, subdivision (c):
 - (1) *The Deputy Director may issue an informational order, as provided in paragraph (2), in any of the following circumstances:*
 - (A) *Upon receipt of a complaint that staff determines to merit investigation alleging interference with a water right by a water right holder, diverter or user;*
 - (B) *Where a water right holder, diverter or user asserts a right to divert under a pre-1914 or riparian right in response to an investigation, curtailment order or any notice of curtailment, and no Statement of Water Diversion and Use for such right was on file with the Board as of January 17, 2014;*
 - (C) *Where a water right holder, diverter or user responds to an investigation, curtailment order or any notice of curtailment by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record had been previously filed with the Board; or*
 - (D) *Upon receipt of information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.*
 - (2) *The Deputy Director may issue an order under this article requiring a water right holder, diverter or user to provide additional information related to a diversion or use described in (c)(1), including the claim of right; property patent date; the date of initial appropriation; diversions made or anticipated during the current drought year; basis of right and amount of a water transfer not subject to approval of the Board or*

Department of Water Resources; or any other information relevant to authenticating the right or forecasting use and supplies in the current drought year.

- (3) *Any party receiving an order under this subdivision shall provide the requested information within thirty (30) days. The Deputy Director may grant additional time for submission of information supporting the claim of right upon substantial compliance with the 30-day deadline and a showing of good cause.*
 - (4) *The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.*
 - (5) *Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version. The provisions of Article 12 of this Chapter (commencing with section 768) shall govern petitions for reconsideration of orders issued under this subdivision.*
14. Section 879, subdivision (c), and the Executive Order supplement the State Water Board's general investigatory authority under Water Code sections 183 and 1051.
 15. Section 879, subdivision (c)(1)(D) authorizes the Deputy Director to issue orders requiring additional information in various circumstances, including upon receipt of information that indicates actual or threatened unlawful diversions of water by any water right holder.
 16. As of October 16, 2015, the authority of the Deputy Director of the Division of Water Rights to issue an Informational Order as provided in Title 23, Division 3, Chapter 2, Article 24, Amended Section 879, subdivision (c) has been delegated to the Assistant Deputy Director of the Division of Water Rights.
 17. The circumstances described above indicate that Kim is diverting, or is threatening to divert, water from San Mateo Creek without a valid basis of right.
 18. To determine whether unauthorized diversions have occurred or are threatening to occur, the State Water Board needs additional information described below.
 19. Recipients of information orders issued pursuant to Section 879(c) may petition the State Water Board for reconsideration. (Water Code § 1122; 23 CCR §§ 768 et seq., 879(c)(5).).
 20. To determine whether unauthorized diversions have occurred or are threatening to occur, the State Water Board needs supporting documentation for a claimed riparian right or appropriative right, and additional information on the diversions made by Kim during 2014 and projected 2015.

IT IS HEREBY ORDERED:

1. This Order is effective on the date shown below. All submittal requirements are based on the date of this Order.
2. Steve and Nanci Kim are subject to this Order for additional information pursuant to section 879, subdivision (c) and shall provide the following information for water diversions that are conducted under a basis of right no later than 30 days from the effective date below:
 - (A) The monthly amounts of water diverted and the basis of right allowing for the diversions for each month in 2014 and January through October 2015, and the anticipated monthly amount of water to be diverted and the basis of right for each month in 2015 beginning with November 2015. For direct diversion, the diversion information shall include the total amount of water diverted in the month and the maximum rate of diversion for each month. For storage, the diversion information shall include the quantity collected to storage each month. For all methods of diversion, you are

requested to identify the method used to determine the amounts reported (Wat. Code § 5103(e)) and the primary use of water. This information shall be filed electronically at:
http://water24a/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo.shtml.

- (B) Identification and location of the point of diversion and place of use for water right being claimed for each point of diversion, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed, and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water. This information is an attachment to the report filed in (A) and must be filed electronically and mailed to:

SWRCB-2014informational-order@waterboards.ca.govmailto:SWRCB-2014informational-order@waterboards.ca.gov.

- (C) The monthly diversion amount for each month starting with November 2015 shall be submitted by the Fifth (5th) of each succeeding month until the drought proclamations and orders described in Paragraph 1 above are rescinded. This information shall be filed electronically at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo_actual.php.

3. All water users or water right claimants receiving this Order are required to submit the information requested. Failure to comply with this Order subjects the party to enforcement action including, but not limited to, civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.
4. 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 diverters for unauthorized diversion or use in violation of Water Code section 1052.

STATE WATER RESOURCES CONTROL BOARD



John O'Hagan, Assistant Deputy Director
Division of Water Rights

Dated:

OCT 23 2015