

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0050-DWR

In the Matter of Unauthorized Diversion and Use of Water by

Minnie A. Corda, LLP, and Testamentary Trust of Ernest H. Corda

SOURCE: Unnamed Stream

COUNTY: Marin

CEASE AND DESIST ORDER

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS¹

1.0 INTRODUCTION

This matter comes about following the issuance of a Notice of Proposed Cease and Desist Order (CDO) to Minnie A. Corda, LLP and Testamentary Trust of Ernest H. Corda (Corda) by the State Water Resource Control Board's (State Water Board) Assistant Deputy Director for Water Rights on January 30, 2008. Because Corda failed to submit a Notice of Intent to Appear by the June 10, 2009 deadline, the State Water Board deemed Corda's request for a hearing to be withdrawn and, as stipulated in the public notice, can impose the CDO without further notice. This order requires Corda to adhere to the schedule for cease and desist included herein.

2.0 BACKGROUND

The Marin County Assessor's Office shows that Corda is the current owner of Marin County Assessor's Parcel Number 125-040-04, located at 833 Chileno Valley Road. Aerial photographs show that four reservoirs are located on this property. One of these reservoirs is covered by License 7165 (Application 18859) that authorizes Corda to collect 23 acre-feet per annum (afa) to storage at its Upper Reservoir for stockwatering, recreation and fish culture purposes. On March 21, 2000, Corda filed Application 31036 with the State Water Board's

¹ 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 or deemed waived by the notified party. The State Water Board has delegated to the Deputy Director for Water Rights the authority to issue a cease and desist order when no hearing has been requested. (State Water Board Resolution 2007-0057, ¶¶ 4.9.1, 4.9.2.)

Division of Water Rights (Division) to divert 298 afa of water to storage in four reservoirs for the purpose of vineyard irrigation and frost protection on over 500 acres of vineyard. Application 31036 proposed to: 1) increase the storage capacity of the Upper Reservoir covered by License 7165 and to cover the additional irrigation use from the reservoir, 2) cover the storage in the existing Lower Reservoir including expansion of its existing capacity, and 3) develop and construct two additional large reservoirs.

On October 25, 2006, Division staff conducted a compliance inspection of the four reservoirs on Corda's property. Division staff found that the upper reservoir covered by License 7165 had a capacity of approximately 34 acre-feet (af) and had been used to irrigate 43 acres of vineyard. License 7165 only authorizes 23 acre-feet of storage to be used for stockwatering, recreation and fish culture purposes. Therefore, the stored water had been used consumptively for vineyard irrigation, which is not authorized by the license. Application 31036 was filed to increase the storage capacity of the reservoir and cover the additional uses from the reservoir. Two other reservoirs found on the property had estimated capacities of less than 10 acre-feet each². The fourth reservoir found on the Corda property, designated as the Lower Reservoir, also having an estimated capacity of about 10 acre-feet was stated to be used for stockwatering, recreation, fire protection, wildlife enhancement, and sediment and flood control. Application 31036 was filed to increase the capacity of the Lower Reservoir to 49 acre-feet and allow use of the water for vineyard irrigation and frost protection purposes in addition to the existing uses. The construction of the two other large reservoirs proposed under Application 31036 had not proceeded and there was no evidence of construction at the reservoir sites.

By letter dated November 14, 2006, the Division notified Corda that Application 31036 had been cancelled. The Order Canceling the Application indicated that the cancellation was the result of Corda's lack of due diligence in pursuing actions required within the Memorandum of Understanding for preparation of environmental documents. On November 29, 2006, Mr. Henry Corda contacted the Division requesting reconsideration of the Cancellation Order but on February 23, 2007, State Water Board Order WR 2007-0006-EXEC denied the petition for reconsideration.

² Division staff confirmed that the Department of Fish and Game (DFG) received applications to appropriate water by Livestock Stockpond Registration from Corda. However, these applications have not been filed with the State Water Board as of the date of this order.

Therefore, on January 30, 2008, the Assistant Deputy Director for Water Rights issued a Notice of Cease and Desist Order against Corda for the collection of water in excess of the amounts authorized by License 7165 and the use of water for irrigation of a vineyard at the Upper Reservoir, and the unauthorized diversion of water at the Lower Reservoir.

3.0 HEARING SCHEDULED BEFORE THE STATE WATER BOARD

On May 29, 2009, in response to Corda's request for a hearing, the State Water Board sent out a Notice of Public Hearing for July 21, 2009. The Hearing Notice states that "If Corda fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem their request for a hearing regarding the CDO to be withdrawn, and the CDO may be imposed without further notice." The Hearing Notice specified a deadline for filing a Notice of Intent To Appear of 12 noon, Wednesday June 10, 2009. Corda failed to submit a Notice of Intent to Appear by the June 10, 2009 deadline specified in the Notice. 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. Corda failed to submit a Notice of Intent to Appear by the deadline specified in this notice, and the State Water Board deemed Corda's request for a hearing regarding the CDO to be withdrawn. The State Water Board may therefore impose terms for cease and desist based on the statement of facts and information set forth in the Notice of a Proposed Cease and Desist order without further notice.

ORDER

IT IS HEREBY ORDERED, pursuant to section 1831 through 1836 of the Water Code, Corda shall cease and desist from unauthorized diversion and use of water in excess of Corda's legal rights and shall pursue the following corrective actions and time schedules outlined herein:

1. ACTIONS ASSOCIATED WITH LICENSE 7165 AND THE UPPER RESERVOIR

- a) Within **90 days** of the date of this Order, Corda shall have a registered civil engineer perform a survey of the Upper Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gage that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the

reservoir at varying water levels in the reservoir. This will allow Corda to ensure that water collected to storage in any single year does not exceed the 23 afa authorized by License 7165.

- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gage has been installed.
- c) Following the installation of the staff gage, Corda shall maintain a record of the monthly staff gage readings at Upper Reservoir along with the reservoir's maximum and minimum water level of each year and the dates that these levels occurred. Additionally the record shall identify the amount of storage collected during each year. The readings shall be supplied to the State Water Board when requested and with the Reports of Licensee required for License 7165.
- d) Corda shall release all water that flows into the Upper Reservoir in excess of the 23 afa amount allowed under License 7165 using the existing outlet works, or any other means, to prevent unauthorized water from being collected to storage.
- e) If Corda exercises a riparian right to irrigate or frost protect the vineyard with water from the Upper Reservoir during a period of time when steamflow is entering the reservoir, a staff gage reading shall be made and recorded prior to commencement of irrigation and daily reading shall be made and recorded thereafter until diversions are completed. This record is in addition to the monthly records required by condition 1.c) above, and shall be submitted along with the information in condition 1.c), above.
- f) No later than **120 days** from the date of this order, Corda shall either: (1) file a Petition for Change in Place of Use and Purpose of Use for License 7165, or (2) discontinue use of the upper reservoir for uses other than stockwatering, as follows:
 - 1) If a Petition for Change in Place of Use and Purpose of Use for License 7165 is filed, the petition shall request the addition of irrigation use and frost protection use (if applicable) to the existing licensed purposes of use and shall request that those portions of the existing 43 acres of vineyard that are outside of the existing place of use be added to the existing licensed place of use. If this alternative is

selected, Corda shall demonstrate, using the monthly staff gage readings, that no more than 23 acre-feet of water is collected to storage or applied to the vineyard in any one year. If frost protection is intended to be a use of water, Corda must additionally provide evidence that the 23 acre-feet of water available under License 7165 is sufficient to provide for both the irrigation and frost protection demands of the vineyard. If a petition is filed, Corda shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, for approval of the petition in accordance with California Code of Regulations, Title 23, Article 15.

- 2) In lieu of filing the Petition for Change, Corda shall permanently discontinue use of the upper reservoir for irrigation and frost protection purposes and shall, **prior to October 1, 2009**, submit photographic evidence that any pump facilities or pipelines currently used to supply water for other than stockwatering purposes have been dismantled and removed from the reservoir site.

2. ACTIONS ASSOCIATED WITH THE LOWER RESERVOIR

- a) Within **90 days** of the date of this Order, Corda shall have a registered civil engineer perform a survey of the Lower Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gage that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir.
- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gage has been installed.
- c) Following the installation of the staff gage and until a valid basis of right is approved by the Division for the Lower Reservoir, Corda shall maintain a monthly record of the staff gage readings of the Lower Reservoir. The readings shall be supplied to the State Water Board on May 1 of each year.
- d) Until such time as a basis of right is approved by the Division, Corda shall release any water that has been collected above the previous month's staff gage reading using existing outlet works, or any other means (pumping or siphoning), to prevent

water not authorized to be collected to storage from being stored in the Lower Reservoir.

e) Within **150 days** of the date of this Order, Corda shall: (1) file the appropriate Water Right Application with the Division of Water Rights and pursue securing a legitimate basis of right, or (2) render the Lower Reservoir incapable of storing water, as follows:

- 1) If the results of the survey for the Lower Reservoir identify that its capacity is 10 acre-feet or less, and the reservoir will be used for stockwatering purposes, Corda shall file an application to appropriate water by Livestock Stockpond Registration. Corda shall initially submit the application to the DFG and provide notice to the Division of that filing. Upon receipt of DFG's response to the application and any associated conditions, Corda shall submit the application along with DFG's conditions and the required filing fee to the Division.
- 2) If the reservoir capacity is greater than 10 acre-feet and Corda does not wish to lower the spillway to make the capacity less than 10 acre-feet to proceed with the steps in item e)1) above, then Corda shall file an Application to Appropriate Water by Permit along with all necessary filing fees and supplemental forms and information, and shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, in accordance with California Code of Regulations, Title 23, Chapter 2; or
- 3) In lieu of filing an Application to Appropriate Water for the Lower Reservoir, Corda shall render the Lower Reservoir incapable of storing water. This shall be accomplished as follows:
 - a) Corda shall submit a plan and time schedule for the approval of the Division, DFG, and the Regional Water Quality Control Board that identifies how and when the Lower Reservoir, not covered by a legitimate basis of right, will be rendered incapable of storing water.
 - b) Corda shall secure all necessary permits required by DFG and the Regional Water Quality Control Board for alteration of the Lower Reservoir and shall comply with all requirements from these agencies when rendering the reservoir incapable of storing water.

- c) Corda shall submit quarterly progress reports to the Division on the status of work, until such time as the reservoir has been altered sufficiently that it will not store water. Photographs of the completed work, showing no water storage at the location of the existing reservoir shall be submitted to substantiate completion of the work.

3. ACTIONS ASSOCIATED WITH REGISTRATION OF LIVESTOCK STOCKPOND APPROPRIATIONS FOR TWO OTHER RESERVOIRS

- a) Within 30 days of the receipt of the conditions specified by DFG for Corda's application to appropriate water by Livestock Stockpond Registration, Corda shall submit the application forms with accompanying DFG conditions and the appropriate filing fees to the Division.

In the event that Corda fail to comply with the above requirements, Corda shall be in violation of this CDO and subject to monetary penalties and further enforcement actions as described below:

Failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter may subject that person to further enforcement action, including assessment of civil liability of up to one thousand dollars a day and referral to the Attorney General for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney
Deputy Director for Water Rights*

Dated: July 2, 2009