

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

DIVISION OF WATER RIGHTS

ORDER WR 2010 – 00XX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion by

Peter A. Lang and Nancy Lang (dba Safari West)

SOURCE: 2 unnamed streams tributary to Porter Creek thence Mark West Creek thence Russian River

COUNTY: Sonoma

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Peter Lang and Nancy Lang (Langs) to cease their unauthorized diversion, storage, and use of water in violation of California Water Code section 1831.

The Langs are alleged to have violated or are threatening to violate California Water Code section 1831, which provides:

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 the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.*
- (2) *Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.*
- (3) *Any decision or order of the Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.*

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against the Langs for the violation and threatened violation of the prohibition against unauthorized diversion, storage, and use of water. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a Cease and Desist Order in accordance with California Water Code section 1831, et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

FACTS AND INFORMATION

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

1. Records of the Sonoma County Assessor's Office show the Langs are the current owners of Sonoma County Assessor's Parcel numbers 079-020-048 and 079-020-049.
2. The Langs operate a business on the property known as "Safari West," and according to their website, an estimated 60,000 people visit each year. The website has videos and blogs that highlight the reservoirs as important components of the Safari West experience.
3. By letter dated July 5, 2005, the Division sent a letter to property owners within the Russian River watershed in Sonoma County whose properties contained reservoirs for which, according to Division records, there was no water right authorizing the storage of water. The letter included a questionnaire seeking information about the existing reservoir, source of water, current water usage, and any existing basis of water right, where applicable. Each party receiving the questionnaire was requested to complete and return the form to the Division. The letter informed recipients of the State Water Board's authority to initiate enforcement action for any unauthorized diversion and therefore, the importance of taking necessary corrective action. The letter also discussed the potential need to file a Statement of Water Diversion and Use. The Langs were among the contacted property owners. There is no record in the Division's files of the Langs responding to the July 5, 2005 letter.
4. On September 2, 2010, Division staff conducted an inspection of the Lang property located at 3115 Porter Creek Road in Santa Rosa. Division staff inspected the reservoir known as Catfish Pond and estimated its surface area at 1.8 acres and its capacity at 24 acre-feet. During the inspection, Division staff was informed that the reservoir is filled annually during the rainy season with water from two ephemeral drainages that form the unnamed stream and discharge to the reservoir. Mrs. Lang stated the reservoir was constructed in 1995 with county permits and approval.
5. Division staff obtained a copy of a reservoir plan and area capacity curve dated February 10, 1992, certified by Leonard D. Marr, a California Registered Civil Engineer. This plan was submitted by Mr. Lang to Sonoma County Planning Department for a Grading Permit. This certified document shows the designed reservoir area was 1.85 acres and the capacity was 19.5 acre-feet.
6. The water being diverted to storage in Catfish Pond is subject to the State Water Board's permitting authority. The Division has no record of a water right authorizing storage of water from the unnamed stream tributary to Porter Creek, and the Langs did not provide evidence supporting an existing basis of right. The Langs have diverted water to storage and used the stored water without a basis of right, which constitutes an unauthorized diversion and use of water.
7. The visit to the Lang property also included an inspection of the reservoir known as Watusi Lake which is covered by License 7349 (Application 18192). License 7349 is owned by the Langs and authorizes the collection of 30 acre-feet from October 1 of each year to May 31 of the succeeding year for recreational use. Division staff found that the dam creating the reservoir had been altered to allow the installation of 7 flashboards in the spillway. With all 7 flashboards installed, Division staff estimates the storage capacity of Watusi Lake to be 65 acre-feet, 35 acre-feet greater than the licensed amount. In addition, Division staff was informed that the reservoir is used for stockwatering of approximately 25 head of Watusi cattle in addition to the licensed recreational use. At the time of inspection, more than 30 acre-feet of water was being held in storage at Watusi Lake. Six of the seven flashboards were installed and the measured drawdown was 2 feet from the spillway invert (high water line with seven flashboards installed) to the existing water level.

8. Because License 7349 authorizes the collection of 30 acre-feet per annum, and Watusi Lake has been modified to potentially hold more than twice that amount of water, there exists the threat of unauthorized diversion and use of water at "Watusi Lake." If the reservoir is ever drained for any reason, including maintenance and repairs, potentially as much as 35 acre-feet could be collected to storage without a basis of right.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, the Langs shall cease the unauthorized diversion of water from the unnamed streams tributary to Porter Creek, and shall pursue one of the following corrective action options and satisfy the appropriate time schedules outlined herein:

Option 1:

1. Within 60 days of the date of this order, the Langs shall file an appropriate water right application with the Division for Catfish Pond and the excess capacity in Watusi Lake, and diligently pursue securing a permit by satisfying all Division requests for information, environmental documents, maps, and fees within the designated time frames, or any extension of time granted by the Division; and
2. Within 150 days of the date of this order, the Langs shall submit a reservoir operation plan for approval by the Assistant Deputy Director for Water Rights that demonstrates how Catfish Pond will be operated without storing additional water subject to the State Water Board's permitting authority, or how it will be operated in compliance with the State Water Board's Instream Flow Policy. The operation plan shall also demonstrate how Watusi Lake will be operated to ensure no more than 30 acre-feet of water is collected to storage in any one year as authorized by License 7349. The reservoir operation plan shall include measurement, monitoring and reporting of all water diverted into and out of the two reservoirs. No additional water shall be collected to storage in Catfish Pond or in excess of 30 acre-feet in Watusi Lake from the unnamed streams unless consistent with reservoir operation plans approved by the Assistant Deputy Director for Water Rights, if and until a permit is issued pursuant to the Langs' application described in paragraph 1.
3. If the State Water Board does not issue a permit, the Langs shall take all necessary action to permanently render Catfish Pond incapable of storing water subject to the permitting authority of the State Water Board and ensure Watusi Lake does not collect more than 30 acre-feet of water to storage, using best management practices, and in compliance with any other federal, state, and local agency requirements.
4. An application filed pursuant to paragraph 1 should include stockwatering use if the Langs intend to continue this use at Watusi Lake.

Or,

Option 2:

Within 60 days of the date of this order, the Langs shall inform the State Water Board that they will not pursue a water right permit to authorize the collection of water to storage from the unnamed streams. Thereafter, within 150 days of the date of this order, the Langs shall submit a plan for approval by the Assistant Deputy Director for Water Rights to permanently render Catfish Pond incapable of storing water subject to the State Water Board's permitting authority, and to permanently prevent more than 30 acre-feet of water from the unnamed stream to be collected or stored in Watusi Lake. The plan shall include a time schedule not to exceed 2 years for completion of the proposed alteration and the identification of any permits or agreements necessary from other federal, state and local agencies to complete the work. Upon approval of the plan by the Assistant Deputy Director, the Langs shall diligently comply with all provisions and time schedules of the plan. If the Langs are unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, the Langs shall immediately alert the Assistant Deputy Director for Water Rights of the reason for delay and any problems with fully complying with the provisions of the plan and diligently work to overcome any such obstacles.

Whichever option that is taken, the Langs shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding the unauthorized diversion and storage of water in the reservoirs until such time as the State Water Board issues a water right permit or the reservoirs are rendered incapable of storing water subject to State Water Board's permitting authority, and in excess of the amount authorized pursuant to License 7349.

In the event the Langs fail to comply with these requirements, they shall be in violation of this CDO and subject to administrative civil liability and further enforcement actions as described in California Water Code section 1845(a):

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.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
Assistant Deputy Director for Water Rights

Dated:

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