



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**State Water Resources Control Board**

**MAR 08 2013**

CERTIFIED MAIL NO. 7004-2510-0003-9146-6929  
Return Receipt Requested

Flocchini Estate, LLC  
Mr. Andrew Flocchini  
7078 Lakeville Highway  
Petaluma, CA 94954

Dear Flocchini Estate, LLC, and Mr. Andrew Flocchini:

**ENFORCEMENT ACTION ENF00179 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND  
NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED  
DIVERSION OF WATER WITHIN SONOMA COUNTY**

Enclosed are an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). This letter serves as notice to Flocchini Estate, LLC, and Andrew Flocchini (collectively Flocchini) of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with these enforcement actions. Therefore, **this matter requires your immediate attention.**

By letter dated September 20, 2011, the Division notified you that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, you were required to either: (1) Provide evidence satisfactory to the State Water Board that demonstrates the reservoir on the property located at 7078 Lakeville Highway, Petaluma, California, does not store water, or can be operated without storing water subject to the State Water Board's permitting authority; (2) remove the reservoir or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. You were given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule. The letter also described the potential administrative civil liability from the State Water Board associated with the continued unauthorized storage of water in the reservoir and failure to comply with reporting requirements.

To date, the State Water Board's records indicate that you filed an initial Statement of Water Diversion and Use (Statement), which was accepted on November 13, 2012, but you have not provided a basis of right to store water. Please note, a Statement identifies a diversion of water, but does not by itself establish a right to store water. In order to store water in the reservoir, you must obtain an appropriate permit, license, or registration, or you must establish a pre-1914 right based on evidence of historical use. Your Statement filing indicates a pending appropriate application as the type of claim for your diversion, but we have not received an application as of the date of this letter. Until you obtain an appropriate permit, license, or registration, or provide supporting evidence of a pre-1914 right, any storage of surface water is an unauthorized diversion and subject to State Water Board enforcement action.

Based on these findings, I signed the enclosed ACL Complaint against you, proposing a liability of **\$42,000**. As described in the Complaint and below, you have 20 days from your receipt of the Complaint to either pay the \$42,000 or submit a **written** request for a hearing. At any hearing, the State Water Board may reexamine and adjust the proposed ACL amount higher or lower, not to exceed the maximum allowed by statute.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

MAR 08 2013

Also enclosed is a draft CDO that requires you to cease and desist from diversion and use of water at the reservoir, or take certain corrective actions within a specified time schedule. The corrective action required is filing for an appropriative water right that would authorize the diversion and use of water at the reservoir. In addition, the draft CDO specifies that should the State Water Board not issue a water right permit, you must render the reservoir incapable of storing water subject to the permitting authority of the State Water Board.

As described in the draft CDO and below, you have 20 days from your receipt of the draft CDO to submit a **written** request for a hearing, should you desire a hearing. The written request must be signed by you or on your behalf, and hand delivered or mailed to the State Water Board. If you do not submit a timely written request for a hearing, the State Water Board may adopt the CDO with the statement of facts and information set forth in the enclosed draft CDO without a hearing. (California Water Code, § 1834.)

If you request a hearing concerning the ACL Complaint and/or the draft CDO, then a hearing before the State Water Board, or before a hearing officer of the State Water Board, will be scheduled and you will be notified of the hearing date. Prior to the hearing you will be required to submit any written testimony and other evidence you would like the State Water Board to consider.

A request for an ACL hearing and/or a CDO hearing **must be made in writing and must state whether you are requesting a hearing on the ACL Complaint, on the draft CDO, or both.**

You may mail the request(s) to the following address:

State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

You may hand deliver the hearing request(s) to the following address:

State Water Resources Control Board  
Division of Water Rights  
Records Unit  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

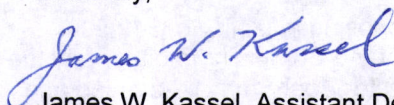
**In summary, you have 20 days from the receipt of this letter to:**

- (1) Pay the ACL liability amount, or submit a **written** request for a hearing on the ACL Complaint; and
- (2) Begin complying with the provisions of the draft CDO, or submit a **written** request for a hearing on the draft CDO.

**Failure to respond to this letter and the issuance of the enclosed ACL Complaint and draft CDO in the time period provided will result in the State Water Board issuing a final ACL Order and CDO. The State Water Board may consider additional enforcement of those Orders without further notice.**

If you have any questions concerning this matter or if there are facts or circumstances that you would like to discuss, then please contact Mr. John O'Hagan, Manager of the Enforcement Section, at (916) 341-5368 or [John.O'Hagan@waterboards.ca.gov](mailto:John.O'Hagan@waterboards.ca.gov); or Mr. Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement at (916) 341-5445 or [Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov).

Sincerely,



James W. Kassel, Assistant Deputy Director  
Division of Water Rights

Enclosures:

- Administrative Civil Liability Complaint
- Draft Cease and Desist Order

cc and ec: Please see next page.

MAR 08 2013

cc: Mr. Ken Waterman  
Agent for Service of Process for Flocchini Estate, LLC  
589 First Street West  
Sonoma, CA 95476  
(with enclosures)

ec: Mr. Andy Sawyer, Assistant Chief Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
(with enclosures)

Mr. Andrew Tauriainen, Senior Staff Counsel  
State Water Resources Control Board  
Office of Enforcement  
(with enclosures)

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

**DIVISION OF WATER RIGHTS**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

---

In the Matter of Unauthorized Diversion by

**Flocchini Estate, LLC and Andrew J. Flocchini**

---

SOURCE: Unnamed Stream tributary to the Petaluma River

COUNTY: Sonoma

---

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Flocchini Estate, LLC and Andrew J. Flocchini (collectively Flocchini) are alleged to have violated California Water Code section 1052(a), which states:

*The diversion or use of water subject to [division 2 of the California Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass.*

2. California Water Code section 1052(b) provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. California Water Code section 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a complaint to any person or entity to whom administrative civil liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. State Water Board Resolution 2012-0029 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.

**ALLEGATIONS**

4. In December 2007 the State Water Board produced a draft Substitute Environmental Document (SED) as part of its development of the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy). Appendix E of the SED contains the report Potential Indirect Environmental Impacts of Modification or Removal of Existing Unauthorized Dams produced by Stetson Engineers in December 2007. In order to complete this report, Stetson Engineers produced a Geographic Information System (GIS) layer which identified the locations of the existing potential unauthorized dams. In July of 2011, a review of the GIS layer, aerial photographs, and USGS topographic maps of Sonoma County was undertaken by State Water Board's Division of Water Rights (Division) staff. The review provided evidence that Sonoma County Assessor's Parcel Number 068-110-007 contained a reservoir that appears to collect

surface flow from an Unnamed Stream and is subject to the permitting authority of the State Water Board. A review of Division records showed that a water right authorizing the diversion of water to storage at the identified reservoir did not exist. According to Sonoma County Assessor's Office, "Flocchini Estate, LLC" is the current owner of parcel 068-110-007.

5. On February 7, 2011, Division staff conducted an on-site inspection of the Flocchini property, accompanied by Andrew and Nicholas Flocchini, located at 7078 Lakeville Highway in Petaluma. During the inspection, Division staff found the reservoir storing water with both an upstream and downstream channel present. The owners disclosed that they do have a nearby groundwater well but that water is used for pasture irrigation and stockwatering. The owners then stated the well water is not used to irrigate the vineyard due to high levels of undesirable minerals such as Boron and Manganese. No other sources of water were available for irrigating the 26 acres of vineyard. Based on measurements taken during the inspection, aerial photographs and the owner's statement; the reservoir surface area is approximately 3.4 acres. Using an owner-supplied maximum depth of 12 feet, the reservoir is estimated to have a capacity of 29 acre-feet using a 0.7 sloping factor. Division staff also notified Flocchini of the requirement to file a Statement of Water Diversion and Use (Statement) and of the potential penalties for failure to file a Statement.
6. By letter dated September 20, 2011, the Division notified Flocchini that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, Flocchini was required to either: (1) Provide evidence satisfactory to the State Water Board that demonstrates the reservoir does not store water, or can be operated without storing water subject to the State Water Board's permitting authority; or (2) remove the reservoir or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. Flocchini was given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule. As of the date of this complaint, Flocchini has not complied with any of the three directives noted above.
7. The water being collected to storage in the reservoir is subject to appropriation under the State Water Board's permitting authority. Andrew J. Flocchini signed and submitted an Initial Statement regarding the reservoir on behalf of Flocchini Estate, LLC, dated September 29, 2011. The Division accepted the Initial Statement on November 13, 2012. However, the Division has no record of a water right authorizing the storage of water in the reservoir, and Flocchini has not provided evidence supporting an existing basis of right. Flocchini has collected water to storage and used stored water without a basis of right since at least 2002, the year Sonoma County Assessor's records indicate Flocchini obtained the property.
8. As of the date of this complaint, Division records show that Flocchini has not filed an application to appropriate water.

#### **PROPOSED CIVIL LIABILITY**

9. The basis of this complaint is the unauthorized diversion, storage, and use of water by Flocchini since at least 2002. The unauthorized diversion and use of water constitutes a trespass subject to liability under California Water Code section 1052.
10. The maximum civil liability that can be imposed by the State Water Board in the matter of the unauthorized diversion and use of the water is \$500 for each day in which the trespass occurred. Flocchini has owned the property for the past three years and has collected water from the Unnamed Stream and continuously held some water in storage for three years. Therefore, a maximum civil liability of \$547,500 could be considered (\$500 per day for 1,095 days) for the trespass in this case.

11. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
12. In this case, Flocchini has collected and stored water from the Unnamed Stream. These diversions have annually reduced the amount of water available for legitimate downstream water right holders and for the Northern California Coastal steelhead trout fishery and other riparian habitat. While the adverse impacts of unauthorized water diversions on prior right holders and the steelhead trout fishery have not been quantified for this case, unauthorized diversions of water have been shown to contribute to the cumulative impact of reducing water supplies for legitimate water right holders and the reduction of useable habitat for steelhead trout. The State of California lists the Northern California Coastal steelhead as a species of special concern, and on February 6, 2006, the National Marine Fisheries Service listed the steelhead trout as threatened under the Federal Endangered Species Act. As of this date, Flocchini has filed an initial Statement documenting a diversion but failed to prevent storage of surface water prior to an appropriative permit, license or registration being issued. To date, the Division has not received an application from Flocchini.
13. Flocchini received an economic advantage over other legitimate water diverters in the area by foregoing the costs of buying the water or pumping groundwater from a well, forgoing the cost of acquiring an appropriative water right, and forgoing the cost of annual water right fees. Flocchini's property contains a reservoir with an estimated capacity of 29 acre-feet. The University of California Cooperative Extension has produced cost studies for various crops and commodities for different regions of California. Studies produced for the North Coast region indicate the typical cost of pumping groundwater from a 120 foot deep well with a 10 horsepower motor is approximately \$198 per acre-foot. Flocchini has owned the property for the past three years. Evaporation losses for the North Coast are estimated at 3 feet per acre per year. For the 3.4 acres of surface area on the reservoir, evaporation losses are estimated at 7 acre-feet per year (taking into account reduced surface area exposure while drawing down the reservoir during irrigation).
14. Irrigated water use for 26 acres of vineyard is estimated to be 13 acre-feet annually or 39 acre-feet for the past three years. Evaporation losses for three years at 7 acre-feet per year resulted in Flocchini saving 21 acre-feet of pumping costs. For the last three years Flocchini has avoided pumping 60 acre-feet, which amounts to an estimated \$11,963.

Additionally, the Division estimates that its staff cost to review the existing project and develop the enforcement documents to be \$ 5,186. If this matter goes to hearing, it is estimated that the additional staff cost to prosecute this case would be \$10,000. The water right filing fee for 29 acre-feet of water would be \$1,190, and the annual water right fees since fiscal year 2009-10 would be \$452.85.

15. Having taken into consideration the factors described above and the enforcement goal of deterrence, the Assistant Deputy Director for Water Rights recommends an ACL for the past three years of violation in the amount of \$42,000. This liability amount is the minimum liability recommended by the Division Prosecution Team in order to recover staff costs incurred and to impose a disincentive for continued unauthorized diversions. Should the matter go to hearing, the State Water Board may consider a different liability, including additional staff costs incurred, up to the maximum amount provided by law.

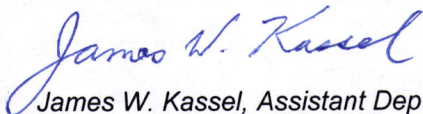
**RIGHT TO HEARING**

16. Flocchini may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code sec. 1055, subd. (b).)
17. If Flocchini requests a hearing, Flocchini will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, a separate notice setting the time and place for the hearing will be mailed no later than ten days before the hearing date.
18. If Flocchini requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
19. If Flocchini does not wish to request a hearing within 20 days of the date of this complaint, Flocchini shall waive his rights to a hearing and reconsideration of this matter, and remit a cashier's check or money order for the amount of the ACL set forth in paragraph 22 above to:

State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

20. If Flocchini does not request a hearing and does not remit the ACL, the State Water Board will issue a final ACL Order and seek recovery of the full amount of the ACL as authorized by California Water Code section 1055.4

STATE WATER RESOURCES CONTROL BOARD



James W. Kassel, Assistant Deputy Director  
Division of Water Rights

Dated: **MAR 08 2013**

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

DIVISION OF WATER RIGHTS

ORDER WR 2013-00XX-DWR

---

**CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion by

**Flocchini Estate, LLC and Andrew J. Flocchini**

---

SOURCE: Unnamed Stream tributary to the Petaluma 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 Flocchini Estate, LLC and Andrew J. Flocchini (collectively Flocchini) to cease and/or abate a threatened, unauthorized diversion, storage, and use of water in violation of California Water Code section 1052.

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

*The State Water Board is authorized to issue a Cease and Desist Order 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 California Water Code other than as authorized by division 2.*

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 Flocchini for the unauthorized diversion or use of water. Pursuant to State Water Board Resolution 2012-0029, 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 CDO in accordance with California Water Code section 1831 et seq. State Water Board Resolution 2012-0029 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.

The State Water Board or its delegee, the Assistant Deputy Director for Water Rights, finds that:

1. Flocchini owns property that includes a reservoir on an Unnamed Stream tributary to Petaluma River. Any water diverted to storage in the reservoir from the Unnamed Stream is subject to the State Water Board's permitting and licensing authority as detailed in division 2 (commencing with section 1000) of the California Water Code.
2. Flocchini does not have a water right permit or license to store surface water in said reservoir.



3. Flocchini has violated California Water Code section 1052 in the past by diverting surface water from the Unnamed Stream to storage in the reservoir for later use without a basis of right.
4. The reservoir also presents a threat of future unauthorized diversion and use of water in violation of California Water Code section 1052.

### **FACTUAL BASIS FOR ISSUING A CDO**

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

1. In December 2007 the State Water Board produced a draft Substitute Environmental Document (SED) as part of its development of the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy). Appendix E of the SED contains the report Potential Indirect Environmental Impacts of Modification or Removal of Existing Unauthorized Dams, produced by Stetson Engineers in December 2007. In order to complete this report, Stetson Engineers produced a Geographic Information System (GIS) layer which identified the locations of the existing potential unauthorized dams. In July of 2011 a review of the GIS layer, aerial photographs, and USGS topographic maps of Sonoma County was undertaken by State Water Board's Division of Water Rights (Division) staff. The review provided evidence that Sonoma County Assessor's Parcel Number 068-110-007 contained a reservoir that appears to collect surface flow from an Unnamed Stream and is subject to the permitting authority of the State Water Board. A review of Division records showed that a water right authorizing the diversion of water to storage at the identified reservoir did not exist. According to Sonoma County Assessor's Office, "Flocchini Estate, LLC" is the current owner of parcel 068-110-007.
2. On February 7, 2011, Division staff conducted an on-site inspection of the Flocchini property, accompanied by Andrew and Nicholas Flocchini, located at 7078 Lakeville Highway in Petaluma. During the inspection, Division staff found the reservoir storing water with both an upstream and downstream channel present. The owners disclosed that they do have a nearby groundwater well but that water is used for pasture irrigation and stockwatering. The owners then stated the well water is not used to irrigate the vineyard due to high levels of undesirable minerals such as boron and manganese. No other sources of water were available for irrigating the 26 acres of vineyard. Based on measurements taken during the inspection, aerial photographs, and the owner's statement; the reservoir surface area is approximately 3.4 acres. Using an owner-supplied maximum depth of 12 feet, the reservoir is estimated to have a capacity of 29 acre-feet using a 0.7 sloping factor. Division staff also notified Flocchini of the requirement to file a Statement and of the potential penalties for failure to file a Statement.
3. By letter dated September 20, 2011, the Division notified Flocchini that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, Flocchini was required to either: (1) provide evidence satisfactory to the State Water Board that demonstrates the reservoir does not store water or can be operated without storing water subject to the State Water Board's permitting authority; or (2) remove the reservoir or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. Flocchini was given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule. As of the date of this CDO, Flocchini has submitted an initial Statement of Water Diversion and Use (Statement) but has not complied with one of the three directives noted above.
4. The water being collected to storage in the reservoir is subject to appropriation under the State Water Board's permitting authority. The Division has no record of a water right authorizing the storage of water in the reservoir, and Flocchini has not provided evidence supporting an existing basis of right. Flocchini has collected water to storage and used stored water without a basis of right since at least 2002; the year Sonoma County Assessor's records indicate Flocchini obtained the property.

As of the date of this complaint, Division records show that Flocchini has not filed an application to appropriate water.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the California Water Code, that Flocchini shall cease the unauthorized diversion of water from the Unnamed Stream tributary to Petaluma River, and shall pursue one the following corrective action options and satisfy the appropriate time schedules outlined herein:

**Corrective Action Options**

**Option 1:**

1. If the reservoir in question qualifies for a Small Domestic Use, Livestock Stockpond, or Small Irrigation Use Registration (Registration) in accordance with California Water Code sections 1228 and forward, then within 30 days of the date of this Order, Flocchini shall complete and submit the appropriate Registration form and comply with all instructions on said form. If a Registration is issued, Flocchini will comply with all conditions of the Registration, including those provided by the California Department of Fish and Wildlife;
2. If the reservoir in question does not qualify for a Registration, or if Flocchini's Registration is rejected by the State Water Board, then within 30 days of the date of this Order or within 30 days of being notified of the rejection, if applicable, Flocchini shall: (1) file an appropriate water right application with the Division and comply with Option 2 below; or (2) inform the State Water Board that he/she will not pursue a water right permit and will comply with Option 3 below.

**Option 2:**

1. Within 30 days of the date of this Order or notification of denial of a Registration, Flocchini shall file an appropriate water right application with the Division for storage and use of water, 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. Flocchini may continue to divert water to storage while the appropriate water right application for permit is pending, if within 90 days of the date of this Order Flocchini submits a Diversion Analysis Study (Study) that is completed by a qualified person or entity for review and acceptance by the Assistant Deputy Director for Water Rights. This Study shall include: 1) a stream classification determination for the point of diversion and any downstream tributaries, 2) a determination of the upstream limit of anadromy in relation to the point of diversion, and 3) a cumulative diversion analysis to evaluate the effects of the unauthorized diversion in combination with all senior diverters of record, on instream flows needed for fishery resources protection. The Study shall be conducted consistent with the guidelines established in the former or current State Water Board Policy for Maintaining Instream Flows in Northern California Coastal Streams; and
3. Within 90 days of receiving notice of the Assistant Deputy Director's acceptance of the Study, Flocchini shall file an Interim Reservoir Operation Plan ("Operation Plan"). The Operation Plan shall demonstrate how Flocchini will operate the reservoir to comply with any conclusions reached in the Study regarding the season of diversion and a minimum bypass flow and how Flocchini will measure and monitor project operations for compliance. If the Assistant Deputy Director determines, based on the studies, that the project cannot continue to divert and provide instream flows needed for fishery resources protection, then the Operation Plan shall demonstrate how Flocchini will cease the diversion of water to storage until either: (1) further studies are performed and a permit is issued for the project; or (2) a permit is denied. The Operation Plan must include an implementation schedule. Once the Operation Plan has been approved by the Assistant Deputy Director for Water Rights, Flocchini must implement and comply with the Operation Plan in accordance with the implementation schedule.

4. If the State Water Board denies or cancels Flocchini's water right application, then within 150 days of the State Water Board issuing that decision, Flocchini shall submit a plan to the Assistant Deputy Director for Water Rights for permanently rendering the reservoir incapable of storing water subject to the permitting authority of the State Water Board. The plan must satisfy the same requirements and is subject to the same acceptance criteria that are detailed below in Option 3.

Or,

**Option 3:**

Within 30 days of the date of this Order, Flocchini 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 Stream. Thereafter, within 150 days of the date of this Order, Flocchini shall submit a plan to the Assistant Deputy Director for Water Rights to permanently render the reservoir incapable of storing water subject to the State Water Board's permitting authority. The plan shall include a time schedule not to exceed two 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 acceptance of the plan by the Assistant Deputy Director as sufficient to render the reservoir incapable of being an unauthorized diversion or threat of future diversion in violation of California Water Code section 1052, Flocchini shall diligently comply with all provisions and time schedules of the plan. If Flocchini is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, Flocchini 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 such obstacles.

**Compliance with Future Directives of Division**

Whichever corrective action option is taken, Flocchini shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding that corrective action option until such time as the State Water Board issues a water right permit or the reservoir is rendered incapable of storing water subject to State Water Board's permitting authority.

**Consequences of Non-Compliance**

In the event Flocchini fails to comply with the requirements of this Order, they shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability, pursuant to California 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):

**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.**

**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 Flocchini for unauthorized diversion or use in violation of California Water Code section 1052 regardless of their compliance with a corrective action plan accepted in accordance with a corrective action option described above.

**Regulatory Changes**

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

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel,*  
*Assistant Deputy Director for Water Rights*

Dated: **MAR 08 2013**

DRAFT