



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

APR 23 2013

CERTIFIED MAIL NO. 7004-2510-0003-9146-7162  
Return Receipt Requested

Mr. James D. Milovina, Trustee and  
Mr. Lyle P. Milovina, Trustee (dba Milovina Vineyards)  
P.O. Box 302  
Hopland, CA 95449

Dear Mr. James Milovina and Mr. Lyle Milovina:

ENFORCEMENT ACTION ENF00102 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND  
NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED DIVERSION  
OF WATER WITHIN THE RUSSIAN RIVER WATERSHED IN MENDOCINO COUNTY

By letter dated April 17, 2013, the State Water Resources Control Board, Division of Water Rights (Division) transmitted an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). The transmittal letter was intended to serve as notice to James D. Milovina, Trustee and Lyle P. Milovina, Trustee (dba Milovina Vineyards) of the intent of the Division to proceed with these enforcement actions. However, the ACL Complaint and draft CDO were inadvertently served via regular United States mail rather than certified mail. Therefore, the Division is sending you a duplicate copy, by certified mail, of the original transmittal letter, the ACL Complaint, and the draft CDO. This certified transmittal of these documents now serves as notice of the Division's intent to proceed with enforcement actions. All provisions of the original transmittal letter, the ACL Complaint, and the draft CDO remain in effect. However, the deadline to request a hearing on the ACL Complaint and/or the draft CDO must be made no later than 20 days from the date that you receive this certified letter. This matter requires your immediate attention.

If you have any questions concerning this matter please contact me at (916) 341-5422 or via e-mail at [Laura.Lavallee@waterboards.ca.gov](mailto:Laura.Lavallee@waterboards.ca.gov).

Sincerely,

Laura Lavallee, Supervisor  
Enforcement Unit 1  
Division of Water Rights

Enclosures: 1) Transmittal letter dated April 17, 2013  
2) Administrative Civil Liability Complaint  
3) Draft Cease and Desist Order

cc: Ms. Estelle P. Clifton  
c/o NCRM  
P. O. Box 435  
Calpella, CA 95418

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE OFFICER





EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

APR 17 2013

In Reply Refer to:  
RR:A030553,  
A030554, and A031988

Mr. James D. Milovina, Trustee and  
Mr. Lyle P. Milovina, Trustee (dba Milovina Vineyards)  
P.O. Box 302  
Hopland, CA 95449

Dear Mr. James Milovina and Mr. Lyle Milovina:

### ENFORCEMENT ACTION ENF00102 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED DIVERSION OF WATER WITHIN THE RUSSIAN RIVER WATERSHED IN MENDOCINO COUNTY

Enclosed are an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). This letter serves as notice to James D. Milovina, Trustee and Lyle P. Milovina, Trustee (dba Milovina Vineyards) 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.

On December 30, 2010, Division staff inspected your reservoir located on Mendocino County Assessor's Parcel Number (APN) 048-140-03 and determined that it was collecting seasonal storage from an unnamed stream tributary to Russian River without benefit of an appropriative water right permit or license. By letter dated February 13, 2012, the Division notified you that seasonal storage of water from a surface stream without an existing appropriative water right is considered an unauthorized diversion of water. Based on Division staff findings, you were 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. You were given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule. The State Water Board considers the February 13, 2012 letter as providing notification of potential violations for enforcement purposes.

Based on these findings, I signed the enclosed ACL Complaint against Milovina Vineyards proposing a liability of **\$33,800** to be imposed for unauthorized diversion and use of water for the last three years. Pursuant to the enclosed ACL Complaint, the \$33,800 is due and payable within 20 days of receipt of the ACL Complaint unless you request a hearing before the State Water Board in accordance with California Water Code section 1055, subdivision (b). To request a hearing, a **written** request for a hearing on the ACL Complaint must be delivered to or received by mail by the State Water Board within 20 days after receipt of the ACL Complaint. At any hearing, the State Water Board may reexamine and adjust the proposed ACL Complaint amount higher or lower, not to exceed the maximum allowed by statute.

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



Also enclosed is a draft CDO that requires you to cease and desist from diversion and use of water at the unauthorized reservoir and two other reservoirs listed under pending water right Applications 30553 and 30554 or take certain corrective actions within a specified time schedule. In addition, the draft CDO specifies that should the State Water Board not issue water right permits for these reservoirs, you must render the reservoirs incapable of storing water subject to the permitting authority of the State Water Board.

If you disagree with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, you must make a written request for a CDO hearing before the State Water Board no later than 20 days from the date of receipt of this letter. A **written** request for hearing regarding the draft CDO signed by or on behalf of Milovina Vineyards must be hand delivered to or received by mail by the State Water Board within 20 days after receipt of this letter, or 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 may be made by mailing the request to the State Water Resources Control Board at the following address:

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

A written request for hearing may also be hand delivered to:

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 should take immediate action to:

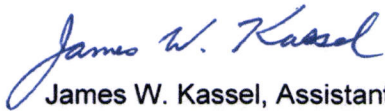
- Remit payment of the ACL Complaint or submit a written request for a hearing with regard to the ACL Complaint; and
- Begin complying with the provisions of the draft CDO within 30 days or submit a written request for a hearing with regard to the draft CDO within 20 days. To begin complying with the CDO, you should diligently pursue permits, pursuant to your water right applications, and retain a qualified person to complete the study consistent with the schedule of 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. Furthermore, the State Water Board may consider additional enforcement of those Orders without further notice.

If you have any questions concerning this matter or there are facts or circumstances that you would like to discuss, please contact one of the following: Mr. John O'Hagan, Manager of the Enforcement Section, at (961) 341-5368 or via e-mail at [John.O'Hagan@waterboards.ca.gov](mailto:John.O'Hagan@waterboards.ca.gov), or Ms. Mayumi Okamoto, Staff Counsel, Office of Enforcement, at (916) 341-5674 or via e-mail at [Mayumi.Okamoto@waterboards.ca.gov](mailto:Mayumi.Okamoto@waterboards.ca.gov).

Sincerely,



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

Enclosures: 1) Administrative Civil Liability Complaint  
2) Draft Cease and Desist Order

cc: Ms. Estelle P. Clifton  
c/o NCRM  
P. O. Box 435  
Calpella, CA 95418

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

Ms. Yvonne West, 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**

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**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

In the Matter of Unauthorized Diversion

**James D. and Lyle P. Milovina Trust; James D. Milovina (Trustee);  
Lyle P. Milovina (Trustee); and Milovina Vineyards**

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SOURCE: Unnamed Stream tributary to Russian River

COUNTY: Mendocino

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. James D. Milovina and Lyle P. Milovina (Trustees, dba Milovina Vineyards, referred to collectively as Milovina Vineyards) is alleged to have violated California Water Code section 1052(a), which states:  
  
*The diversion or use of water subject to [division 2 of the 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(a) provides that the Executive Director for the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under California Water Code section 1055(a). 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.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

#### ALLEGATIONS

4. On April 7, 2010, the Division sent letters to all existing diverters with pending water right applications before the State Water Board. The letters notified the water right applicants of recent changes to the statutory requirements under California Water Code section 5100 et seq. regarding the filing of Statements of Water Diversion and Use (Statement) with the State Water Board. The letters stated that the changes eliminated the exemption for water right applicants and stated that failure to file Statements for (unauthorized) diversions that occurred after January 1, 2009 may result in monetary penalties. Milovina Vineyards received letters pursuant to pending applications A030553 and A030554.
5. On June 29, 2010, the Division received six initial Statements filed by Milovina Vineyards for diversions made under a riparian claim of right during 2009. The points of diversion for the Statements were all located on tributaries to the Russian River and included the two reservoirs under A030553 and A030554 and one unauthorized reservoir (Reservoir 2) that was not yet the subject of a pending water right application. The Division accepted the Statement for Reservoir 2 on June 29, 2010 and assigned it S021397.
6. On December 30, 2010, Division staff, accompanied by James D. Milovina, conducted an on-site inspection of Milovina's property located at 12350 Hewlitt-Sturtevant Road in Hopland. This property contains Reservoir 2 and 41 acres of vineyards, which is the place of use for the water stored in this reservoir. Based on direct observations, statements made by Mr. Milovina during the inspection, as-built drawings of the reservoir prepared by Franz Engineering, and a review of aerial satellite imagery, Division staff determined the following:
  - a. Reservoir 2 fills early in the rainy season from the Unnamed Stream tributary to Russian River on which it is located (inspection photos taken by Division staff show the pond full in December 2010). The water collected in the reservoir is held in seasonal storage until it is later used in late spring or summer.
  - b. The Unnamed Stream on which Reservoir 2 is located does not flow during the summer months.
  - c. Reservoir 2 was built in 1999.
  - d. Milovina uses water from Reservoir 2 to frost protect and irrigate up to 41 acres of surrounding vineyards during the spring and summer.
  - e. Reservoir 2, when full, is estimated to have a surface area of 1.4 acres, a maximum depth of 26 feet, and a capacity of 22 acre-feet.
7. By letter dated February 13, 2012, the Division transmitted to James D. Milovina and Lyle P. Milovina a copy of staff's report of the December 30, 2010 inspection and notified them that seasonal storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on Division staff findings, Milovina Vineyards was required to either: (1) provide evidence satisfactory to the State Water Board that demonstrates Reservoir 2 does not store water or can be operated without storing water subject to the State Water Board's permitting authority; or (2) remove Reservoir 2 or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. Milovina Vineyards was given 45 days to submit a response indicating the intended course of action and an implementation plan along with a schedule. The letter and inspection report incorrectly informed Milovina Vineyards that the Division did not have a record of a Statement on file for Reservoir 2 and advised them to immediately file an initial Statement.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

8. On May 17, 2012, the Division received a letter from Estelle P. Clifton from North Coast Resource Management, Inc. (NCRM) indicating that Milovina Vineyards would submit an initial Statement<sup>1</sup> for Reservoir 2 before May 31, 2012 and an application for an appropriative water right for Reservoir 2 by June 30, 2012.
9. On May 31, 2012, the Division received a second initial Statement filed by Milovina Vineyards for Reservoir 2 for diversions made under a claim of pending appropriative application during 2011. The Statement was accepted and assigned S021080. (Note that at the time S021080 was filed, no appropriative application had been submitted for Reservoir 2.)
10. On November 19, 2012, Milovina Vineyards submitted an application to appropriate water by permit for its diversion of water from an Unnamed Stream tributary to Russian River to seasonal storage in Reservoir 2. The proposed beneficial uses are frost protection and heat protection of 41 acres of vineyards. The Division accepted the application on January 22, 2013 and assigned it A031988.
11. Division records show that in addition to the recently filed A031988, Milovina Vineyards is listed as the owner of water right Licenses 5408B, 3923, 9851A, 11060A, 12367, 13168, and 13388, authorizing diversion and use of water for irrigation and frost protection purposes in Mendocino County; indicating that Milovina Vineyards is familiar with the California water rights system.

#### PROPOSED CIVIL LIABILITY

12. The basis of this complaint is the unauthorized diversion, storage, and use of water by Milovina Vineyards since 1999. The unauthorized diversion and use of water constitutes a trespass subject to liability under California Water Code section 1052.
13. 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. Evidence demonstrates that Reservoir 2, under the ownership of Milovina Vineyards, has been in existence and collecting water to seasonal storage from the Unnamed Stream tributary to Russian River since at least 1999, or 14 years. Therefore, a maximum civil liability of \$2,555,000 could be considered (\$500 per day for 5,110 days) for the trespass in this case.
14. 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.

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<sup>1</sup> Milovina Vineyards was unaware that an initial Statement had previously been filed for Reservoir 2.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

15. In this case, Milovina Vineyards has collected and seasonally 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 Central California Coast Steelhead Trout, Central California Coast Coho Salmon, California Coastal Chinook Salmon fisheries, and other riparian habitat. While the adverse impacts of unauthorized water diversions on prior right holders and on Steelhead Trout, Coho Salmon, and Chinook Salmon fisheries 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, Coho Salmon, and Chinook Salmon. On May 6, 1997, the National Marine Fisheries Service (NMFS) listed the Central California Coast Coho Salmon as a threatened species under the Federal Endangered Species Act (threatened status was reaffirmed on June 28, 2005). On August 18, 1997, NMFS listed the Central California Coast Steelhead Trout as a threatened species (reaffirmed on January 5, 2006). On September 16, 1999, NMFS listed the California Coastal Chinook Salmon as a threatened species (reaffirmed on June 28, 2005).
16. Milovina Vineyards 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.
  - a. Typical demand for drip irrigation of vineyards in the Russian River watershed is 0.6 acre-feet per acre per year. Typical demand for frost protection of vineyards in the Russian River watershed is 0.25 acre-feet per acre per year. Average evaporation losses in the Russian River watershed for a reservoir the size of Reservoir 2 are estimated at 4 acre-feet per year.
  - b. Based on the above demand assumptions, it is estimated that the total demand for Milovina Vineyards' 41-acre place of use is 37 acre-feet per year. Therefore, most if not all 22.3 acre-feet of storage in Reservoir 2 would have been used to satisfy the consumptive use demand and average evaporation losses.<sup>2</sup>
  - c. 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 for production of wine grapes and olive oil from 2009 through 2011 all indicate the typical cost of pumping groundwater from a 120 foot deep well with a 10 horsepower motor is approximately \$198 per acre-foot.
  - d. In the past three years, Milovina Vineyards avoided paying an estimated \$13,246 of direct pumping costs.
  - e. In just three years Milovina has avoided paying an estimated \$1,100 in annual fees associated with having a water right permit or license for its unauthorized storage of water in Reservoir 2.
17. The Division estimates that its staff cost to review the existing project and develop the enforcement documents to be \$ 5,136.

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<sup>2</sup> In fact, the combined capacities of Reservoir 2 and Reservoir A under pending water right A030553 (22.3 acre-feet and 21 acre-feet respectively) are needed to satisfy the irrigation and frost protection demand of the 41 acres of vineyards.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

18. Having taken into consideration the factors described above, and the enforcement goal of deterrence, and Milovina's corrective action taken to date, the Assistant Deputy Director for Water Rights recommends an ACL for the past three years of violation in the amount of \$33,800<sup>3</sup>. This liability 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. It is estimated that if this this matter goes to hearing, additional staff costs incurred to for the prosecution staff would be approximately \$10,000.

#### RIGHT TO HEARING

19. Milovina Vineyards 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, § 1055, subd. (b).)
20. If Milovina Vineyards requests a hearing, Milovina Vineyards 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 10 days before the hearing date.
21. If Milovina Vineyards 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.
22. If Milovina Vineyards does not wish to request a hearing within 20 days of the date of this complaint, Milovina Vineyards shall waive its 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 18 above to:

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

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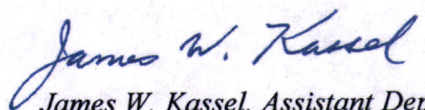
<sup>3</sup> After taking into consideration California Code of Civil Procedure section 338(i), though not binding on administrative proceedings, (see *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4<sup>th</sup> 29, 48) staff is calculating the proposed administrative civil liability based on a three year time period.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

23. If Milovina Vineyards 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: **APR 17 2013**



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

DIVISION OF WATER RIGHTS

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**CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion by

James D. and Lyle P. Milovina Trust; James D. Milovina (Trustee);  
Lyle P. Milovina (Trustee); and Milovina Vineyards

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SOURCE: Unnamed Stream tributary to Russian River

COUNTY: Mendocino

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The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring James D. Milovina and Lyle P. Milovina (Trustees dba Milovina Vineyards) to cease and/or abate a threatened, unauthorized diversion, storage, and use of water in violation of California Water Code section 1052.

Milovina Vineyards 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 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 Milovina Vineyards for the violation and threatened violation of the prohibition against unauthorized diversions, storage, and 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. The James D. and Lyle P. Milovina Trust own properties in Hopland, California which are commercially cultivated under the business name of Milovina Vineyards. Between 1968 and 1993, Milovina Vineyards constructed three dams across two Unnamed Streams tributary to the Russian River on said properties. The dams created reservoirs that collect the flow of the streams and hold the water in storage during the season in which the streams cease flowing (i.e., seasonally store the water). The seasonally stored water has been used for the purposes of irrigation and frost protection of the commercial vineyards.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

2. All water diverted from a surface stream and held in seasonal storage 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.
3. Commencing in 1968, Milovina Vineyards has violated California Water Code section 1052 by diverting surface streamflow to seasonal storage in one or more of said reservoirs for later beneficial uses, without authorization of a water right permit or license or other known appropriate water right.
4. The reservoirs also present 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 July of 2010, a review of aerial photographs, and United States Geological Survey topographic maps of Mendocino County was undertaken by Division staff. The review provided evidence that:
  - a. Mendocino County Assessor's Parcel Numbers 048-120-03, 048-120-14, 047-350-07, and 048-140-03 are all owned by the James D. and Lyle P. Milovina Trust.
  - b. Mendocino County Assessor's Parcel Numbers 048-120-03 and 048-120-14 contain a reservoir, (Reservoir A) that appears located onstream to an Unnamed Stream tributary to the Russian River.
  - c. Mendocino County Assessor's Parcel Number 047-350-07 contains a reservoir (Reservoir B) that appears located onstream to an Unnamed Stream tributary to the Russian River.
  - d. Mendocino County Assessor's Parcel Number 048-140-03 contains a reservoir (Reservoir 2) that appears located onstream to the same Unnamed Stream tributary to the Russian River as Reservoir A.
  - e. Water appears to be collected to storage in the subject reservoirs.
2. Upon request, James D. Milovina granted Division staff access to the subject properties; and on December 30, 2010, he accompanied Division staff for an inspection of the reservoirs. Based on staff's review of interactive maps maintained by the Division (i.e., electronic water rights information management system GIS); water right records on file with the Division; aerial photographs; evidence collected during the inspection; and statements made by James D. Milovina; Division staff determined the following:
  - a. Built in 1968, Reservoir A collects surface flow from the Unnamed Stream on which it is located. Some of the streamflow is held in seasonal storage within the reservoir for later beneficial use. There is no water right permit, license, or registration on file with the State Water Board authorizing this seasonal storage of water in Reservoir A. This reservoir is the subject of pending water right application 30553 (A030553) under the ownership of Milovina Vineyards; which seeks a permit to seasonally store 40 acre-feet of water. At the time of the inspection, it was thought that there was no Statement of Water Diversion and Use (Statement) on file for the storage of water in Reservoir A. It was later determined that Statement 21396 (S021396) had been filed on June 29, 2010 by Milovina Vineyards for the storage of 18 acre-feet of water in Reservoir A. Staff estimated that when full, Reservoir A has a surface area of 1.2 acres and a capacity of 21 acre-feet.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

- b. Built in 1983, Reservoir B collects surface flow from the Unnamed Stream on which it is located. At least some of the streamflow collected in Reservoir B has been held in seasonal storage within the reservoir. There is no water right permit, license, or registration on file with the State Water Board for seasonal storage of water in Reservoir B. This reservoir is the subject of pending water right application 30554 (A030554) under the ownership of Milovina Vineyards; which seeks a permit to seasonally store 45 acre-feet of water. At the time of the inspection, it was thought that there was no Statement on file for the storage of water in Reservoir B. It was later determined that Statement 21395 (S021395) had been filed on June 29, 2010 by Milovina Vineyards for the storage of 25 acre-feet of water in Reservoir B. Staff estimated that when full, Reservoir B has a surface area of 3 acres and a capacity of 45 acre-feet.
  - c. Built in 1998, Reservoir 2 collects surface flow from the Unnamed Stream on which it is located. Some of the streamflow collected in Reservoir 2 is held in seasonal storage within the reservoir for later beneficial use. At the time of the inspection, there was no water right permit, license, or registration for seasonal storage of water in Reservoir 2 on file with the State Water Board, nor was Reservoir 2 the subject of a pending water right application. At the time of the inspection, it was thought that there was no Statement on file for the storage of water in Reservoir 2. It was later determined that Statement 21397 (S021397) had been filed on June 29, 2010 by Milovina Vineyards for the storage of 18 acre-feet of water in Reservoir 2. According to a professional survey of the reservoir (Franz Engineering) provided by James P. Milovina, Reservoir 2 has a surface area of 1.4 acres and a capacity of 22.3 acre-feet.
  - d. In addition to the collection of water from the Unnamed Streams to seasonal storage, the reservoirs may also collect Russian River water to seasonal storage without a basis of right and/or be used to regulate water directly diverted from the Russian River under water right Licenses 9851A, 11060A, and 13388 without the reservoirs being identified as licensed points of rediversion. Reservoir 2 and Reservoir A may also store and regulate water from a groundwater well located adjacent to APN 048-090-03.
3. By letter dated February 13, 2012 and addressed to James D. Milovina and Lyle P. Milovina, the Division notified Milovina Vineyards that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on Division staff findings, Milovina Vineyards was required to either: (1) provide evidence satisfactory to the State Water Board that demonstrates Reservoir 2 does not store water or can be operated without storing water subject to the State Water Board's permitting authority; or (2) remove Reservoir 2 or render it incapable of storing water; or (3) file an application with the State Water Board seeking permission to appropriate water. The letter incorrectly notified Milovina Vineyards that it needed to file a Statement with the Division to report the storage of water in Reservoir 2. Milovina Vineyards was given 45 days to submit a response indicating the intended course of action and an implementation plan with a schedule.
4. On May 4, 2011, Division staff received an e-mail from James D. Milovina requesting an extension so he could retain some help with these matters.
5. On May 6, 2011, James D. Milovina called to speak with Division staff and follow-up on his e-mail from two days prior. He stated he did not understand how to file an application to appropriate water for his reservoir. Division staff reminded Mr. Milovina of the two pending applications (i.e., A030553 and A030554) Milovina Vineyards had submitted to the Division on July 1, 1996 for the storage in Reservoirs A and B. Mr. Milovina stated he was not aware of these applications (although his signature is on the applications). Division staff recommended that he review his previously submitted applications or hire a consultant to help.



James D. and Lyle P. Milovina Trust,  
James D. Milovina (Trustee),  
Lyle P. Milovina (Trustee), and  
Milovina Vineyards

6. On May 17, 2012, the Division received a letter from Estelle P. Clifton from North Coast Resource Management (NCRM), indicating that Milovina Vineyards hired NCRM to assist in filing a Statement and to prepare a water rights application for Reservoir 2.
7. On May 31, 2012, the Division received a second Statement from Milovina Vineyards for the storage of 24 acre-feet of water in Reservoir 2. The Division assigned the Statement S021080.
8. On November 19, 2012, the Division received a new application to appropriate water by permit from Milovina Vineyards. The application, which the Division assigned A031988, was for the seasonal storage of 31 acre-feet of water in Reservoir 2 for the beneficial uses of heat protection, frost protection, irrigation, and stockwatering. The Division accepted A031988 on January 22, 2013.
9. Division records also show that Milovina Vineyards is listed as the primary owner of water rights Licenses 5408B, 3923, 9851A, 11060A, 12367, 13168, and 13388, authorizing diversion and use of water for irrigation and frost protection purposes in Mendocino County; indicating that Milovina Vineyards is familiar with the California water rights system.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the California Water Code, that Milovina Vineyards shall cease the unauthorized diversion of water from the Unnamed Streams tributary to Russian River, or shall pursue the following corrective actions and satisfy the appropriate time schedules outlined herein:

1. Diligently pursue securing a permit pursuant to Applications A030553, A030554, and A031988 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. Milovina may continue to divert water to storage while the appropriate water right applications for permit are pending, if within 90 days of the date of this Order Milovina submits a Diversion Analysis Study (Study) that is completed by a qualified person or entity for review and accepted by the Assistant Deputy Director for Water Rights. This Study applies to the three subject reservoirs (i.e., Reservoir A, Reservoir B, and Reservoir 2) and shall include: 1) a stream classification determination for the points of diversion and any downstream tributaries, 2) a determination of the upstream limit of anadromy in relation to the points of diversion, and 3) a cumulative diversion analysis to evaluate the effects of the unauthorized diversions in combination with all senior diverters of record and 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, Milovina shall file an Interim Reservoir Operation Plan ("Operation Plan") for the three subject reservoirs. The Operation Plan shall demonstrate how Milovina will operate the reservoirs to comply with any conclusions reached in the Study regarding the seasons of diversion and minimum bypass flows and how Milovina 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 Milovina will cease the diversions of water to storage until either: (1) further studies are performed and permits are issued for the projects, or (2) permits are denied. The Operation Plan must include an implementation schedule. Once the Operation Plan has been approved by the Assistant Deputy Director for Water Rights, Milovina must implement and comply with the Operation Plan in accordance with the implementation schedule.



James D. and Lyle P. Milovina Trust,  
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Milovina Vineyards

4. If the State Water Board denies or cancels Milovina's water right applications, then within 150 days of the State Water Board issuing that decision Milovina shall submit a plan to the Assistant Deputy Director for Water Rights for permanently rendering the reservoirs incapable of storing water subject to the permitting authority of the State Water Board. 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 reservoirs incapable of being unauthorized diversions or threats of future diversions in violation of California Water Code section 1052, Milovina shall diligently comply with all provisions and time schedules of the plan. If Milovina is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, Milovina 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**

Milovina shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding the above corrective actions until such time as the State Water Board issues water right permits or the reservoirs are rendered incapable of storing water subject to State Water Board's permitting authority.

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

In the event Milovina 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 Milovina 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.



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**Regulatory Changes**

Nothing in this Order shall excuse Milovina 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  
Division of Water Rights*

Dated: **APR 17 2013**

DRAFT