

WR-13



State Water Resources Control Board

SEP 20, 2011

Flocchini Estate, LLC
7078 Lakeville Highway
Petaluma, CA 94954

Dear Flocchini Estates LLC:

FIELD INSPECTION FINDINGS FOR EXISTING RESERVOIR AND NOTICE OF A REQUIREMENT TO FILE A STATEMENT

On February 7, 2011, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) staff conducted an inspection of the reservoir identified on your property (Sonoma Assessor's parcel number 068-110-007). The purpose of the inspection was to identify the source of water for your reservoir and to determine whether your diversion to storage is authorized under an existing water right. During the inspection, Division staff found that your reservoir is located on a surface stream channel that collects runoff during the wet season and holds it in storage during all or part of the dry season. A search of the Division's database could not identify an existing water right to authorize this storage. Based on these findings, Division staff concludes that you are appropriating water subject to the State Water Board's permitting authority without benefit of a water right. Attached is a copy of the inspection map and report.

Storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, you are 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; (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.

The Division is responsible for the administration of appropriative water rights in California initiated after 1914; commonly referred to as "post-1914 appropriative water rights." There are three types of applications that can be filed: (1) a "standard application" to appropriate water by permit; (2) an application for Livestock Stockpond Registration; and (3) an application for Small Domestic Registration. The forms for filing each type of application with necessary information regarding their applicability are available upon request or from our website at: <http://www.waterboards.ca.gov/waterrights/>. Booklets that provide a brief discussion of the various types of water rights that exist in California and the associated procedures for either obtaining a water right or documenting that a water right already exists are also available at the website, or can be provided upon request.

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

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Please be aware that your reservoir is located within an area defined in Assembly Bill 2121, which makes it subject to the State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy), adopted May 4, 2010. This Policy states that within one year of adoption of the Policy, the State Water Board will not approve water right applications for reservoirs built with an onstream dam on streams designated as a class I or class II stream. This means that if your reservoir is on a class I or class II stream, you will not have the option of filing for an appropriative water right through the State Water Board, but will instead be required to remove the reservoir or render it incapable of storing water. Water right applications may still be filed at this time for reservoirs built on class III streams.

Class I streams are streams where fish are always or seasonally present. Class II streams are streams where fish are not present, but aquatic non-fish vertebrates (frogs, salamanders, etc.) and/or aquatic benthic macro-invertebrates (insects) exist. Class III streams do not support aquatic life. Additional information regarding the Policy can be found at http://www.waterboards.ca.gov/plans_policies/.

A geographic information system (GIS) layer produced as part of the development of the Policy indicates your reservoir may have been built on a class III stream. This is only an estimation of the stream class. It is strongly recommended that you consider working with an environmental consultant to verify the stream class on which your reservoir is built.

Any unauthorized diversion of water constitutes a trespass against the State and the State Water Board may impose a civil liability in an amount not to exceed \$500 for each day that a trespass occurs (Water Code § 1052, et seq.). Therefore, it is important that you diligently follow-up on this matter and take the necessary actions to either document an existing water right, establish a new water right, or render the reservoir incapable of storing water subject to the State Water Board's permitting authority.

In addition, Water Code § 5101 requires, with minor exceptions, that a person who diverts water from a surface stream, spring or subterranean stream must report this diversion by filing an initial Statement of Water Diversion and Use (Statement) with the State Water Board, followed thereafter by triennial Supplemental Statements, unless the diversion is covered by a permit, license or registration issued by the Division or the diversion is included in other approved reporting documents submitted to the State Water Board. Information regarding the Statement program and a link to obtaining the necessary form can be found at http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/.

The State Water Board may administratively impose a civil liability in the amount of \$1,000 for the failure to file a Statement for diversions that have occurred since 2009, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. (Water Code § 5107, subd. (c) (1)). Therefore, if you are diverting water that must be reported by Statement of Water Diversion and Use, you should immediately file this form with the Division.

In summary, because the Division has no record of any known water rights authorizing the storage of water in your reservoir, an unauthorized diversion of water may exist. The Division also does not have a record of a Statement on file for your diversion of water. Since violations to the Water Code apparently exist, the State Water Board may initiate enforcement action without further notice. Therefore, this matter requires your immediate attention and continued diligence. Within 45 days of the date of this letter, you should submit a response indicating any course of action you intend to take and include an implementation plan with a schedule.

If you have any questions, please contact me at (707) 576-2703 or by email at CGehrt@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Cheri Gehrt, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

A handwritten signature in black ink that reads "Cheri Gehrt". The signature is written in a cursive, flowing style.

Cheri Gehrt, Chief
Enforcement Unit 2

Enclosures (Report and Map)