

## State Water Resources Control Board

JUN 14 2012

CERTIFIED MAIL NO.7004-2510-0003-9146-0620  
Return Receipt Requested

Robert Mann (Individual and Trustee) and  
The Robert C. Mann 1999 Trust  
29876 King Ridge Road  
Cazadero, CA 95421

Dear Mr. Mann:

### ENFORCEMENT ACTION ENF00158 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND NOTICE OF PROPOSED CEASE AND DESIST ORDER REGARDING UNAUTHORIZED DIVERSION OF WATER WITHIN THE GUALALA WATERSHED IN SONOMA COUNTY

Enclosed are an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). This letter serves as notice to Robert Mann (individual and trustee) and Robert C. Mann 1999 Trust (referred to collectively as Mann) 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 October 28, 2011, the Division notified you that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water, and that your reservoir is subject to the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Instream Flow Policy). 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.

On November 29, 2011, the Division received a brief letter from Mann providing additional information about the reservoir. The letter, however, failed to indicate an intended course of action or provide an implementation plan and schedule.

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

The State Water Board considers the October 28, 2011 letter as providing notification of potential violations for enforcement purposes. To date, the State Water Board's records indicate that you have not submitted a response indicating the intended course of action and an implementation plan with a schedule.

Based on these findings, I signed the enclosed ACL Complaint against Mann proposing a liability of **\$66,000** be imposed for unauthorized diversion and use of water for the last three years. Pursuant to the enclosed ACL Complaint, the \$66,000 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.

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 and diligently pursuing an appropriate water right permit that would authorize the diversion and use of water at the reservoir; and submitting an interim operational plan that demonstrates how the reservoir will be operated in conformance with the requirements set forth in the Instream Flow Policy. 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.

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 Mann 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:

Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

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

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:

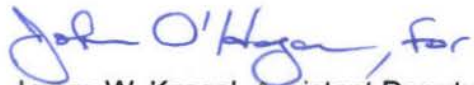
Remit payment of the ACL Complaint , or submit a written request for a hearing with regard to the ACL Complaint; and

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 submit one of the following (in accordance with the provisions of the draft CDO): (a) an appropriate water right application; or (b) a letter of intent not to pursue a water right permit and committing to develop and submit a plan to render the reservoir incapable of storing water subject to the State Water Board's authority.

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, then please contact one of the following: John O'Hagan, Manager of the Enforcement Section, at (961) 341-5368 or via e-mail at [johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov); or Yvonne West, Senior Staff Counsel, Office of Enforcement, at (916) 322-3626 or via e-mail at [ywest@waterboards.ca.gov](mailto:ywest@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

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

Yvonne West, 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**

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In the Matter of Unauthorized Diversion and  
Failure to File a Statement of Water Diversion and Use by

**Robert Mann (Individual and Trustee) and  
Robert C. Mann 1999 Trust**

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SOURCE: Unnamed Stream tributary to Pepperwood Creek thence House Creek thence Wheatfield  
Fork Gualala thence South Fork Gualala thence Gualala River

COUNTY: Sonoma

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Robert Mann (Individual and Trustee ) and Robert C. Mann 1999 Trust (referred to collectively as Mann) 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 sections 5100-5107 establish a program requiring persons (with some exceptions not relevant to you) who divert water from a surface stream to file a Statement of Water Diversion and Use (Statement).
4. Mann is alleged to have violated California Water Code section 5101, which states, in part:  
*Each person who, after December 31, 1965 diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use . . .*
5. California Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability in the amount of \$1,000 for the failure to file a Statement, 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.

6. 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.

#### ALLEGATIONS

7. 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 United States Geological Survey 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 109-310-002 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, Robert C. Mann is the current owner of parcel 109-310-002. On August 18, 2011, Division staff spoke with Lucy Mann via the telephone and requested to conduct an inspection of the reservoir located on the property.
8. On September 9, 2011, Division staff conducted an on-site inspection of the Mann property, accompanied by Lucy Mann, located at 29670 King Ridge Road in Cazadero. During the inspection, Division staff found the reservoir stores water that is collected annually during the rainy season from an Unnamed Stream. Lucy Mann confirmed no other source of water is diverted to the reservoir. Based on measurements taken during the inspection and aerial photographs; the reservoir surface area when full is approximately 13.4 acres and the reservoir is estimated to have a capacity of 183 acre-feet. Lucy Mann stated the use of water is stockwatering. Division staff also notified Lucy Mann of the requirement to file a Statement and of the potential penalties for failure to file a Statement.
9. On October 19, 2011, the Division received a Statement filed by Mann. The Statement was deficient because the type of claim, the capacity of the reservoir, and the location of the point of diversion were not identified.
10. By letter dated October 28, 2011, the Division notified Mann that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on Division staff findings, Mann 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. Mann 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, Mann has not submitted the requested response or otherwise indicated an intended course of action.

11. On November 15, 2011, the Division sent a letter to the Department of Water Resources, Division of Safety of Dams (DOSOD) to notify DOSOD the Division had conducted an on-site inspection of a reservoir in Sonoma County which may be under DOSOD jurisdiction.
12. On November 29, 2011, the Division received a letter from Mann. The letter stated the reservoir was constructed in the 1950's for conservation of water for wildlife and livestock. The letter also stated that, "...water runs freely through the spillway except during the late summer and fall when flow in the drainage area is nonexistent." The letter failed to indicate the intended course of action and did not include an implementation plan with a schedule.
13. On January 10, 2012, DOSOD Area Engineer Lakhbir Singh inspected the dam on Mann's property. The Division received a copy of DOSOD's findings letter dated March 8, 2012. The letter states that the dam is approximately 65 feet high, stores over 100 acre-feet of water and is subject to DOSOD jurisdiction. The dam is currently being operated and maintained in violation of California Water Code section 6077.
14. 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 Mann has not provided evidence supporting an existing basis of right. Mann has collected water to storage and used stored water without a basis of right since at least 1992; the year Sonoma County Assessor's records indicate Mann obtained the property.
15. As of the date of this complaint, Division records show that Mann has not filed an application to appropriate water. Division records also show that Mann is listed as the primary owner of water rights License 444 authorizing the diversion and use of water for irrigation purposes on another property that he owns in Modoc County; indicating that Mann is familiar with the California water rights system.

#### PROPOSED CIVIL LIABILITY

16. The basis of this complaint is the unauthorized diversion, storage, and use of water by Mann since at least 1992, and the failure to file a Statement for the diversion of water at the reservoir. The unauthorized diversion and use of water constitutes a trespass subject to liability under California Water Code section 1052 and the failure to file a Statement constitutes a violation subject to liability in accordance with California Water Code section 5107.
17. 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 the reservoir has been in existence and continuously holding water since at least 1978. Mann has owned the property since at least 1992 and has collected water from the Unnamed Stream and continuously held some water in storage for over 19 years. Therefore, a maximum civil liability of \$3,467,000 could be considered (\$500 per day 6,935 days) for the trespass in this case.
18. In addition, Mann failed to file a Statement for his diversion and use of water from the Unnamed Stream for either 2009 or 2010 by the deadline of July 1 of either year. The California Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability pursuant to section 1055 in an amount not to exceed \$1,000, 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. Mann was put on notice of the violation for the failure to file a Statement during the field inspection on

September 9, 2011. On October 19, 2011, the Division received a deficient Statement filed by Mann. A civil liability of \$1,000 could be considered for the failure to file a Statement for the reservoir.

19. In total the State Water Board could consider a maximum penalty of \$3,468,000 (\$3,467,000 plus \$1,000) for both the unauthorized diversion and the failure to file a Statement. 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.
20. In this case, Mann 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, Mann has failed to take any corrective action to cease the unauthorized diversion nor has he filed a water rights application.
21. Mann 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, foregoing the cost of acquiring an appropriative water right, and foregoing the cost of annual water right fees. Mann's property contains a reservoir with an estimated capacity of 183 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 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. The reservoir has existed since at least 1978 and Mann has owned the property since at least 1992. Evaporation losses for the 183 acre-foot reservoir have been estimated at 28 acre-feet per year. The stockwatering of 300 head of cattle at the reservoir has been estimated at 5 acre-feet per year. Considering stockwatering and evaporation losses from the reservoir in each of the last three years, Mann has avoided paying an estimated \$19,602.

Additionally, the Division estimates that its staff cost to review the existing project and develop the enforcement documents to be \$ 5,136. The water right filing fee for 183 acre-feet of water would be \$3,595 and the annual water right fees since fiscal year 2009-10 would be \$369.

22. 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 3 years of violation in the amount of **\$66,000**. This liability amount includes a proposed \$1,000 for failure to file required Statement by the July 1 deadline and 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 and violations of the new Statement law. 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**

23. Mann 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).)
24. If Mann requests a hearing, Mann 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.
25. If Mann 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.
26. If Mann does not wish to request a hearing within 20 days of the date of this complaint, Mann 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

27. If Mann 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:



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

DIVISION OF WATER RIGHTS

ORDER WR 2012 –00XX-DWR

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**CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion by

**Robert Mann (Individual and Trustee) and  
Robert C. Mann 1999 Trust**

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**SOURCE:** Unnamed Stream tributary to Pepperwood Creek thence House Creek thence Wheatfield Fork  
Gualala thence South Fork Gualala thence Gualala River

**COUNTY:** Sonoma

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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 Robert Mann (Individual and Trustee) and Robert C. Mann 1999 Trust (referred to collectively as Mann) to cease and/or abate a threatened, unauthorized diversion, storage, and use of water in violation of California Water Code section 1052.

Mann is alleged to have violated or are 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 Mann for the violation and threatened violation of the prohibition against unauthorized diversion, 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. Mann owns property that includes a reservoir on an Unnamed Stream tributary to Pepperwood Creek. 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. Mann does not have a water right permit or license to store surface water in said reservoir.

3. Mann 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 (Instream Flow 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 United States Geological Survey topographic maps of Sonoma County was undertaken by Division staff. The review provided evidence that Sonoma County Assessor's Parcel Number 109-310-002 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, Robert C. Mann is the current owner of parcel 109-310-002. On August 18, 2011, Division staff spoke with Lucy Mann via the telephone and requested to conduct an inspection of the reservoir located on the property.
2. On September 9, 2011, Division staff conducted an on-site inspection of the Mann property, accompanied by Lucy Mann, located at 29670 King Ridge Road in Cazadero. During the inspection, Division staff found the reservoir stores water that is collected annually during the rainy season from an Unnamed Stream. Lucy Mann confirmed no other source of water is diverted to the reservoir. Based on measurements taken during the inspection and aerial photographs, the reservoir surface area when full is approximately 13.4 acres and the reservoir is estimated to have a capacity of 183 acre-feet. Lucy Mann stated the use of water is stockwatering. Division staff also notified Lucy Mann of the requirement to file a Statement of Water Diversion and Use (Statement) and of the potential penalties for failure to file a Statement.
3. On October 19, 2011, the Division received a Statement filed by Mann. The Statement was deficient because the type of claim, the capacity of the reservoir, and the location of the point of diversion were not identified.
4. By letter dated October 28, 2011, the Division notified Mann that storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on Division staff findings, Mann 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. Mann 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, Mann has not submitted the requested response or otherwise indicated an intended course of action.

5. On November 15, 2011, the Division sent a letter to the Department of Water Resources, Division of Safety of Dams (DOSOD) to notify DOSOD the Division had conducted an on-site inspection of a reservoir in Sonoma County which may be under DOSOD jurisdiction.
6. On November 29, 2011, the Division received a letter from Mann. The letter stated the reservoir was constructed in the 1950's for conservation of water for wildlife and livestock. The letter also stated that, "...water runs freely through the spillway except during the late summer and fall when flow in the drainage area is nonexistent." The letter failed to indicate the intended course of action and did not include an implementation plan with a schedule.
7. On January 10, 2012, DOSOD Area Engineer Lakhbir Singh inspected the dam on Mann's property. The Division received a copy of DOSOD's findings letter dated March 8, 2012. The letter states that the dam is approximately 65 feet high, stores over 100 acre-feet of water and is subject to DOSOD jurisdiction. The dam is currently being operated and maintained in violation of California Water Code section 6077.
8. 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 Mann has not provided evidence supporting an existing basis of right. Mann has collected water to storage and used stored water without a basis of right since at least 1992; the year Sonoma County Assessor's records indicate Mann obtained the property.
9. As of the date of this complaint, Division records show that Mann has not filed an application to appropriate water. Division records also show that Mann is listed as the primary owner of water rights License 444 authorizing diversion and use of water for irrigation purposes in Modoc County; indicating that Mann is familiar with the California water rights system.

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

#### **Corrective Action Options**

##### **Option 1:**

1. Within 30 days of the date of this Order, Mann shall file an appropriate water right application with the Division for storage and use of water in their reservoir, 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. It is noted that pursuant to the Instream Flow Policy applications for the diversion of water to storage on a Class I or Class II stream can no longer be accepted unless an exception to the provisions of the Instream Flow Policy is obtained from the State Water Board; and
2. After the appropriate water right application is received, the State Water Board will make a stream class determination for the project. If it is determined the project is on a Class III stream, or if the State Water Board grants an exception to the Class I or Class II stream provisions, then within 90 days of the date of the application being accepted, Mann shall submit a reservoir operation plan (Operation Plan) for acceptance by the Assistant Deputy Director for Water Rights. The Operation Plan must demonstrate how the reservoir will be operated without storing additional water subject to the State Water Board's permitting authority, or alternatively how it will be operated in compliance with the State Water Board's Instream Flow Policy. If Mann intends to continue to divert and store water subject to the

State Water Board's permitting authority while pursuing a water right permit through the application process, then the Operation Plan must at a minimum detail interim operating conditions consistent with section 2.2 of the Instream Flow Policy. Specifically, the reservoir Operation Plan shall describe how Mann will bypass all water outside the Instream Flow Policy's diversion season of December 15<sup>th</sup> to March 31<sup>st</sup>, provide for an appropriate minimum bypass flow (MBF) during the diversion season, and keep hourly records of the diversion of water. The MBF should be based on the criteria outlined in Instream Flow Policy. The reservoir Operation Plan shall include the installation of measuring devices and bypass facilities, a monitoring and reporting schedule for those facilities that complies with section 10 of the Instream Flow Policy, and a schedule detailing the completion date for the construction of those facilities. Mann shall implement the Operation Plan in accordance with the schedule contained therein. No additional water shall be collected to storage unless consistent with the Operation Plan as accepted by the Assistant Deputy Director for Water Rights, if and until a permit is issued pursuant to Mann's water right application submitted in accordance with paragraph 1 of this option.

3. If the State Water Board denies or cancels Mann's water right application, then within 150 days of the State Water Board issuing that decision Mann 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 2.

Or,

**Option 2:**

4. Within 30 days of the date of this Order, Mann 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, Mann 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, Mann shall diligently comply with all provisions and time schedules of the plan. If Mann is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, Mann 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, Mann 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 Mann 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 Mann for unauthorized diversion or use in violation of California Water Code section 1052 regardless of their compliance with an Operation Plan or other corrective action plan accepted in accordance with a corrective action option described above.

### **Regulatory Changes**

Nothing in this Order shall excuse Mann 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:

