

State Water Resources Control Board

APR 30 2014

In Reply Refer to:
MC:UN000707

Mr. Perry Norris, Executive Director
Truckee Donner Land Trust
10069 West River Street, Suite C-1
Truckee, CA 96161

Dear Mr. Norris:

NOTICE OF FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE AND NOTICE OF WATER RIGHT REQUIREMENTS FOR WATER STORAGE AT LAKE VAN NORDEN, SOUTH FORK YUBA RIVER, NEVADA AND PLACER COUNTIES

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received a copy of the letter dated September 29, 2011 sent by the Department of Water Resources (DWR), Division of Safety of Dams (DOSOD) to Royal Gorge, LLC (Royal Gorge), the former owner of the properties containing Lake Van Norden and its dam. The letter notified Royal Gorge of the determination by DOSOD that the dam at Lake Van Norden was in need of repairs. The letter prompted Division staff to investigate whether the storage of surface water at Lake Van Norden had a valid basis of right. As explained further below, Division staff have researched the available records and conclude that there is neither an appropriate water right permit or license, a valid pre-1914 or riparian claim, nor a current Statement of Water Diversion and Use (Statement) associated with Lake Van Norden. Consequently, this letter serves as notice that the diversion and storage of water at Lake Van Norden is unauthorized and identifies possible courses of action to address the unauthorized status of the diversion.

Timeline of Staff Investigation

On August 2, 2012, Division staff accompanied DOSOD staff on its site inspection of the partially deconstructed dam. At the time of the field inspection, Division staff understood that the Lake Van Norden project undertaken by Royal Gorge was in default, that the project would be managed by a receiver appointed by the Placer County Superior Court, and that the Nevada and Placer County properties where Lake Van Norden and its dam are situated were in the process of ownership change. Currently, the properties containing Lake Van Norden are held by the Truckee Donner Land Trust (Trust).

In response to the Division's initial request to identify the basis of right for water held at Lake Van Norden, Division staff received a letter dated August 29, 2012 from Robert Maddow, legal counsel to the receiver/operator of the Lake Van Norden project, who stated that neither the receiver nor

Royal Gorge can file a Statement because the water rights are held entirely by the Pacific Gas and Electric Company (PG&E) and because water is not taken under control and stored for beneficial purpose. Mr. Maddow enclosed copies of pertinent documents, including a copy of an application submitted by PG&E to the California Public Utilities Commission (CPUC) dated June 7, 1996 to transfer ownership of the properties containing Lake Van Norden and its dam. The CPUC application provided background information which explained that PG&E decided to decommission and breach the dam in 1976 rather than repair it to meet DWR seismic safety standards. Mr. Maddow also provided a copy of PG&E's letter dated July 18, 1979 sent to the State Water Board, which stated that PG&E will transfer 2,200 AF of its 5,261 AF pre-1914 water right claim at Lake Van Norden under Statement S000947 to Lake Fordyce, which also had a separate PG&E pre-1914 claim under Statement S009033.

Mr. Maddow also provided a copy of the grant deed transferring the relevant properties to Royal Gorge dated July 31, 1998. The grant deed included language to reserve "...all riparian and appropriative rights which are annexed to, inherent in and parts and parcel of said real property being conveyed, whether prescriptive or other, together with all right, title, and interest of any nature whatever in and to waters which now or hereafter flow in the Yuba River and any tributaries thereof."

In an e-mail sent on December 4, 2013 in response to Division staff's inquiry, Joseph Ray, a PG&E water rights engineer, provided a summary of the company's activities regarding the transfer of the properties at Lake Van Norden together with supporting documents that describe PG&E's proposal to move its pre-1914 water storage rights at Lake Van Norden to Lake Fordyce. Supporting documents that were provided include PG&E's June 18, 1979 letter to the Division proposing the relocation of its storage rights to Lake Fordyce, and a letter dated August 17, 1979 from the Division to DOSOD indicating that the Division's review found that PG&E had sufficient water rights to cover the proposed transfer to Lake Fordyce and that the Division concurred with the proposed transfer, provided that others are not injured. Additionally, a copy of a letter from PG&E to the Division dated June 29, 1982 was included which listed several Statement numbers that PG&E asked to discontinue, including Statement S000947 which PG&E indicated was abandoned. In his e-mail, Mr. Ray explained that language in the grant deed reserving water rights was intended to preclude the new owner from diverting water from the river under riparian or any other claim; however, Mr. Ray also stated that all water rights at Lake Van Norden have been transferred to Lake Fordyce or had been abandoned and that PG&E does not claim any water right at Lake Van Norden.

According to the Division's records, the last Supplemental Statement submitted by PG&E for Statement S000947 for Lake Van Norden was dated September 21, 1979, and it indicated that the dam had been breached in September 1976 and 2,200 acre-feet of storage have been transferred to Lake Fordyce. PG&E has also regularly submitted Supplemental Statements under Statement S009033, which included comments stating that the amount of water reported includes water stored under its licensed rights (License 986, A002750) and 2,200 acre-feet of water transferred from Lake Van Norden. It appears that PG&E's intent was to abandon any remaining pre-1914 rights at Lake Van Norden that were not otherwise transferred to Lake Fordyce.

The letter from DOSOD dated September 29, 2011 received by the Division summarized DOSOD's finding that Lake Van Norden dam was within its jurisdiction. The report enclosed with DOSOD's letter indicated that the Lake Van Norden dam was only lowered and was not entirely breached in 1976 and that the breach was subsequently raised again by five feet. DOSOD concluded that the reservoir currently has an actual capacity of approximately 300 acre-feet. Division staff currently understands that DOSOD is working with the Trust to alter the dam to bring it outside of DOSOD's jurisdiction.

Determination of Unauthorized Diversion

PG&E did not entirely breach Lake Van Norden dam and, consequently, surface water continues to be collected in the reservoir today. Division staff's review of the information received and contained in the Division records indicate that PG&E retained riparian water rights in the properties containing Lake Van Norden and its dam but no longer has any pre-1914 water rights at Lake Van Norden due to transfer to Lake Fordyce and through abandonment. The riparian right reserved by PG&E may only be exercised by PG&E or with PG&E's authorization, and Division staff understands that the riparian right is currently not being exercised. Nevertheless, water that may be diverted under PG&E's riparian right is not pertinent to the status of water stored at Lake Van Norden because water diverted under a riparian right may not be put into seasonal storage. Division staff has concluded that there is currently neither a pre-1914 claim nor an appropriative water right permit or license associated with Lake Van Norden. During the August 2012 inspection, Division staff observed recreation and fish and wildlife enhancement as current beneficial uses of the water diverted and stored at Lake Van Norden. Consequently, Division staff has determined that water from the South Yuba River is being diverted to storage at Lake Van Norden without a valid basis of right and is, therefore, an unauthorized diversion.

Requirement to Obtain Post-1914 Appropriative Water Rights

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." In most cases, any diversion initiated after 1914 that collects surface water requires an appropriative water right permit issued by the State Water Board, unless the water diversion is conducted under another claimed basis of water right, such as pre-1914 or a riparian claim. Any diversion undertaken without a valid basis of water right is considered to be a trespass against the state of California, and the property owner/diverter is subject to appropriate enforcement action, including the imposition of an administrative civil liability complaint in the amount of up to \$500 per day, or a cease and desist order with penalties of up to \$1,000 for every day of its violation.

Additionally, current water law requires that an Initial Statement of Water Diversion and Use (Statement) be on file to cover every diversion that is not covered by a post-1914 appropriative water right with few exceptions not applicable here. The Statement form includes a section to identify the basis of right for the diversion. California Water Code section 5107 provides that property owners who, after being notified, fail to file a required Statement within 30 days are also subject to enforcement penalties of up to \$1,000 plus five hundred dollars per day for each additional day on which the violation continues. This letter serves as notice that the Trust has failed to file a Statement for the diversion and use of water at Lake Van Norden.

Because natural water flows that are within the State Water Board's permitting authority are currently stored at Lake Van Norden without a valid basis of right, the Truckee Donner Land Trust is required to do the following within 30 days of receipt of this letter:

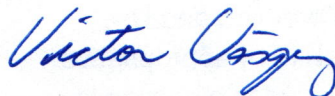
1. a) Submit an application to obtain an appropriative water right for the reservoir. An appropriative water right may be obtained by permit or through one of the available water right registrations if the reservoir meets the registration specifications. Information about obtaining a water right is available at the Division's website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/
Or
b) Notify the Division of its intention to render the reservoir incapable of storing water and submit a reasonable plan and schedule for removing or modifying the existing dam structure. If this option is selected, the Trust should be aware that various agencies have jurisdiction and requirements for work undertaken in natural waterways, and the Trust will be responsible for obtaining all required authorizations.
2. File an Initial Statement of Water Diversion and Use (Statement) for water diverted in 2012, and continue to file triennial Supplemental Statements until an appropriative water right has been obtained or the dam has been rendered incapable of storing water. Information regarding Statements is available at the Division's website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/

Your prompt attention and response to this notice is requested, as the Division can initiate appropriate enforcement action without further notice.

If you have questions regarding this notice of actions required, please contact Mr. Michael Contreras of my staff by telephone at (916) 341-5307 or via e-mail at Michael.Contreras@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows:

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

Sincerely,



Victor Vasquez
Senior Water Resource Control Engineer
Enforcement Unit 3
Division of Water Rights

cc: Please see next page.

cc: David A. Gutierrez, Chief
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Pacific Gas and Electric Company
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Central Valley Regional Water Quality Control Board
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