

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

ORDER WR 2023-0030-EXEC

In the Matter of Unauthorized Diversion by

NOVY RANCHES

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE DEPUTY DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Deputy Director of the State Water Resources Control Board's ("State Water Board") Division of Water Rights (Division) following the settlement negotiations between the Division's Prosecution Team and Novy Ranches ("Novy"). In accordance with the attached Settlement Agreement, the Division's Prosecution Team ("Prosecution Team") and Novy Ranches have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

Novy Ranches is a cattle ranching company and beef retailer that is owned by the 2019 Lowell L. Novy Revokable Trust. Novy Ranches – Grenada is located along the Shasta River, east of the city of Grenada.

Novy Ranches – Grenada consists of about 1,085 total acres and eight (8) parcels of land, from which approximately 659 acres are made up of irrigated pasture. These parcel boundaries extend over land that was originally patented as six (6)

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60. This authority has since been redelegated to the Deputy Director in a letter from the Executive Director dated April 3, 2023."

separate land patents, which consist of: Homestead Certificate 2207, Homestead Certificate 2333, Serial Patent 654202, State Volume Patent 1434, Serial Patent 2 and Serial Patent 29.

At Novy Ranches – Grenada, Novy Ranches diverts water from the Shasta River from two points of diversion under a claim of both pre-1914 and riparian water rights. These diversions are reported under two Statements of Water Diversion and Use (Statement), S000808 and S024708. S000808 was filed on June 7, 1967, by Novy Ranches' predecessor in interest.

The State Water Resource Control Board, Division of Water Rights received a complaint on January 16, 2021 and a separate complaint on January 17, 2021 that allege Novy Ranches is diverting water under a riparian claim of right to non-riparian land.

On July 27, 2021, the Division of Water Rights, North Coast Enforcement Unit issued a Report of Investigation (ROI) and Notice of Violation (NOV). Division staff concluded that large portions of the Novy Ranches – Grenada property were not contiguous to the Shasta River as it was originally patented, and it determined that any claim of riparian right does not extend to those lands. The NOV requested further information to support riparian claims or other bases of right to the Shasta River within 30 days and requested a site inspection.

On August 27, 2021, Novy Ranches responded to the Notice of Violation. Novy Ranches stated that they have riparian rights and adjudicated rights to White Slough, but did not provide any additional support for their riparian claim to the Shasta River. Lastly, Novy Ranches stated that they had a reasonable basis to claim pre-1914 appropriative rights for the entirety of the property based on the oral history, the chain of title, the physical infrastructure, and the irrigated lands. However, complete documentation has not yet been presented to the Division of Water Rights.

On March 16, 2023, the Division issued a Supplemental ROI. The report focused on the claims of riparian right in Section 13 of Novy Ranches' property. The Division

concluded there is no evidence indicating that a riparian right could exist in Section 13.

Novy Ranches has diverted and used water from the Shasta River for irrigation of pasture and livestock watering without a valid basis of right. This constitutes either a violation or a threatened violation of the prohibition against unauthorized diversion of water under Water Code section 1052, which states that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2.

Novy Ranches – Grenada and the Prosecution Team have engaged in settlement negotiations and agree to settle the violations identified above through this Settlement Agreement in lieu of hearing.

3.0 SETTLEMENT AGREEMENT

The Settling Parties executed the Settlement Agreement attached hereto. The general terms of the settlement are that the Division Prosecution Team will deem the violations resolved and will not pursue further enforcement of any of the violations alleged within the settlement agreement if Novy Ranches (1) ceases all unauthorized diversion of water; (2) implements the compliance actions described in Paragraph 3 of the Settlement Agreement; and (3) waives the right to request reconsideration of this Order.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and Novy Ranches is approved and is incorporated by reference into this Order.

This Order constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory

or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink, appearing to read "Erik Ekdahl", with a long, sweeping flourish extending to the right.

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: June 13, 2023

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Novy Ranches (“Novy Ranches”) and the State Water Resources Control Board (“State Water Board” or “Board”), Division of Water Rights Prosecution Team, referred to hereinafter jointly as the Settling Parties.

RECITALS

1. Novy Ranches is a cattle ranching company and beef retailer that is owned by the 2019 Lowell L. Novy Revocable Trust. Novy Ranches is comprised of multiple ranches, but the “Novy Ranches – Grenada” is the only ranch subject to this agreement. The Novy Ranches – Grenada is located along the Shasta River, east of the city of Grenada.
2. Novy Ranches – Grenada is composed of Siskiyou County Assessor’s Parcel Numbers (APNs): 038-200-010, 038-170-180, 038-180-060, 038-210-030, 039320-080, 038-220-030, 038-220-020, and 038-230-040. Ownership of these parcels is the 2019 Lowell L. Novy Revocable Trust. The Novy Ranches – Grenada also includes APN 038-220-010, which is owned by Joseph and Rita Zenkus and is leased by Novy Ranches. The Novy Ranches – Grenada consists of about 1,085 total acres and eight (8) parcels of land, from which approximately 659 acres are made up of irrigated pasture. These parcel boundaries extend over land that was originally patented as six (6) separate land patents, which consist of: Homestead Certificate 2207, Homestead Certificate 2333, Serial Patent 654202, State Volume Patent 1434, Serial Patent 2, and Serial Patent 29.
3. At Novy Ranches – Grenada, Novy Ranches diverts water from the Shasta River from two points of diversion under a claim of both pre-1914 and riparian water rights. These diversions are reported under two Statements of Water Diversion and Use (Statement), S000808 and S024708. S000808 was filed on June 7, 1967, by Novy Ranches’ predecessor in interest. The diversion is shared with neighboring landowners, Rice Livestock Company and Joseph and Rita Zenkus. Novy Ranches’ representatives have submitted the property’s Supplemental Statement from 1978 to present day.
4. The Shasta River watershed is habitat to fall-run Chinook salmon, culturally significant steelhead trout and state and federal Endangered Species Act (ESA) listed threatened Southern Oregon/Northern California Coast (SONCC) coho salmon. In recent years, populations of anadromous salmonids have declined in the watershed due to degradation of the habitat that is necessary for the survival of these cold-water fish. Factors that have contributed to this degradation include physical barriers such as dams and weirs, flow alterations due to water withdrawals, loss of water quality due to elevated water temperatures and low dissolved oxygen levels and loss of riparian vegetation. The high summer water temperatures in the Shasta River and its tributaries are primarily caused by a depletion of streamflow, as found in the water quality modeling conducted during the development of the Shasta River Total

Maximum Daily Loads (TMDLs). Pursuant to the California Water Action Plan, the Shasta River watershed was identified by the State Water Resources Control Board and California Department of Fish and Wildlife as a priority stream system to enhance flows to support anadromous fish.

5. A Safe Harbor Agreement (SHA) is a voluntary agreement between private or non-federal property owners and the National Oceanic and Atmospheric Administration (NOAA). The purpose of the Shasta River Template Safe Harbor Agreements is to promote the survival and recovery of the SONCC coho salmon. A Safe Harbor Agreement for the Novy Ranches – Grenada was signed on November 23, 2020 by Judith Holmes (for Lowell L. Novy, DVM) representing Novy Ranches – Grenada and by NOAA Fisheries' National Marine Fisheries Service (NMFS) on February 24, 2021.
6. On June 15, 2022, the Environmental Protection Information Center and Friends of the Shasta River filed suit against NMFS in the United States District Court Northern District of California, alleging that permits issued under the Safe Harbor Agreements are in violation of Section 10 of the ESA, the Biological Opinion was unlawful under the ESA, and the Environmental Assessment is unlawful under NEPA. One allegation in the complaint is that NMFS violated 50 C.F.R. § 222.308(a), because Novy Ranches is unlawfully applying water to non-riparian land under a riparian claim of right. On August 10, 2022 NMFS sent a letter to Novy Ranches requesting a meeting to discuss the legality of Novy Ranches riparian claims. On August 18, 2022 Novy Ranches replied stating that they are still conducting research and that they would like to meet in late September or October. On November 16, 2022, Novy Ranches stated that a historian is helping conduct a Pre-1914 analysis and is struggling to obtain documents.
7. The State Water Resource Control Board, Division of Water Rights received a complaint on January 16, 2021 and a separate complaint on January 17, 2021 that allege Novy Ranches is diverting water under a riparian claim of right to non-riparian land. The first complaint also alleged impacts of the alleged unauthorized diversion to the Clean Water Act (CWA) and federally and state listed threatened coho salmon. In support of the allegations of non-riparian land, the second complaint cites a comment letter for Novy Ranches Safe Harbor Agreement produced by the Karuk Tribe, Yurok Tribe, Quartz Valley Indian Reservation, Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources.
8. Land Patents are conveyance documents created on the initial transfer of land titles from the Federal government to individuals. Riparian rights attach to a tract of land when it was patented if the land was contiguous to a watercourse when the land patent was issued.
9. Division staff concluded that large portions of the Novy Ranches – Grenada property were not contiguous to the Shasta River as it was originally patented, and it determined that any claim of riparian right does not extend to those lands. A portion of Serial Patent 29, a portion of Serial Patent 2, Serial Patent 654202, Homestead Certificate 2207, and Homestead Certificate 2333 were not contiguous with the Shasta River. Serial

Patent 2 within Section 25, Township 44 North Range 6 West, M.D.M, Serial Patent 29 within Section 25 Township 44 North Range 6 West, M.D.M, Serial Patent 29 within Section 19 Township 44 North Range 5 West, M.D.M, and State Patent 1434 were contiguous with the Shasta River. The report also states that land on non-contiguous patents were being irrigated under a riparian claim of right.

10. The place of use associated with the Novy Ranches - Grenada does not appear to have any adjudicated water rights to the Shasta River listed in the Shasta River Decree. Adjudication maps from 1922-1923, indicate that much of the place of use of the Grenada Novy Ranch is land that was planned “to be put under irrigation” in the future, but not irrigated at the time of the adjudication.
11. Land within the Novy Ranches - Grenada under irrigation at the time of the adjudication, was irrigated by White Slough for which Novy Ranches claims adjudicated rights and are referenced in the Shasta River Decree.
12. On July 27, 2021, the Division of Water Rights, North Coast Enforcement Unit issued a Report of Investigation (ROI) and Notice of Violation (NOV). The NOV informed Novy Ranches that large portions of the Novy Ranches – Grenada cannot be riparian to the Shasta River and any diversion and use of water from the Shasta River onto those lands must be supported by an alternative basis of right. The NOV also states that diversion to non-riparian land without an alternative basis of right is illegal and Novy Ranches could be subject to enforcement for unauthorized diversion. The NOV requested further information to support riparian claims or other bases of right to the Shasta River within 30 days and requested a site inspection.
13. On August 27, 2021, Novy Ranches responded to the Notice of Violation. Novy Ranches continued to claim riparian rights to land within Township 44 North Range 6 West, M.D.M in Section 13 and provided a memorandum in support of their riparian rights claim on such land. Novy Ranches’ claim of riparian right relies on the argument that an eddy, slough, or historic channel of the Shasta River crossed into Serial Patent 29 lands, thereby granting such lands with riparian rights to the Shasta River. Regarding land in Section 24 in Township 44 North Range 6 West, M.D.M. and Section 19 in Township 44 North Range 5 West, M.D.M, Novy Ranches stated that they have riparian rights and adjudicated rights to White Slough, but did not provide any additional support for their riparian claim to the Shasta River. Lastly, Novy Ranches stated that they had a reasonable basis to claim pre-1914 appropriative rights for the entirety of the property based on the oral history, the chain of title, the physical infrastructure, and the irrigated lands. However, complete documentation has not yet been presented to the Division of Water Rights.
14. An on-site inspection was conducted at Novy Ranches – Grenada by Alex Sweat from the Division of Water Rights on February 17, 2022. During the inspection, Novy Ranches described the various improvements they are making on their property, how the property is irrigated, discussed how ponds on their property are filled, and showed staff a “meander feature” in Section 13 within Serial Patent 29.
15. On March 16, 2023, the Division issued a Supplemental ROI. The report focused on

the claims of riparian right in Section 13 of Novy Ranches' property. The Division concluded there is no evidence indicating that a riparian right could exist in Section 13, because there is little to no evidence indicating that the river ever flowed on that property, and even if an eddy, slough, or historic channel of the Shasta River did, at one time, exist on the property, it is clear from on-site inspection that no amount of water flows in that channel at this time, as such, any riparian right that could have attached, would have been lost due to avulsion of the river. However, a portion of State Volume Patent 1434 extends into Section 13, which is contiguous with the Shasta River.

16. Novy Ranches has diverted and used water from the Shasta River for irrigation of pasture and livestock watering without a valid basis of right. This constitutes either a violation or a threatened violation of the prohibition against unauthorized diversion of water under Water Code section 1052, which states that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 of the Water Code is a trespass.
17. The following facts support the basis for the alleged violation or threatened violation of Water Code section 1052:
 - a. Novy Ranches owns the property and operates a shared diversion ditch and a solely owned pump.
 - b. The water diverted by Novy Ranches – Grenada and used for irrigation and stockwatering from the Shasta River is surface water diverted from a natural channel and no evidence has been presented that such water was applied to beneficial use before December 19, 1914. Thus, except as described below, it is currently subject to appropriation in accordance with Division 2 of the Water Code.
 - c. The State Water Board has not authorized Novy Ranches – Grenada to divert and use water from the Shasta River through the issuance of an appropriative permit or license.
 - d. Novy Ranches' other basis of right claims to divert water from the Shasta River to land patented under Serial Patent 29 within Township 44N Range 6W Section 13, Serial Patent 2 within Township 44N Range 5W Section 19, Serial Patent 654202, Homestead Certificate 2207, and Homestead Certificate 2333 are currently unsupported as follows:
 - (i) Serial Patent 29 within Township 44N 6W Section 13, Serial Patent 2 within Township 44N Range 5W Section 19, Serial Patent 654202, Homestead Certificate 2207, and Homestead Certificate 2333 were not contiguous to the Shasta River at the time of patenting and are not currently contiguous. Thus, those lands cannot be riparian to the Shasta River.

- (ii) Novy Ranches does not own adjudicated water rights to the Shasta River associated with the Novy Ranches – Grenada property. Maps from the Shasta River Adjudication show that much of the Novy Ranches – Grenada property were not under irrigation in the 1920s. Portions of the property under irrigation in 1922 were irrigated by White Slough. Novy Ranches has not provided sufficient additional evidence to establish a pre-1914 appropriative right to the Shasta River.
- 18. Novy Ranches – Grenada is in violation of, or is threatening to violate, Water Code section 1052's prohibition against the unauthorized diversion or use of water by diverting from the Shasta River for the purpose of irrigation on property not riparian to the source, without a valid appropriative right. Novy Ranches' points of diversion are a shared gravity diversion conveyed by an earthen ditch and a solely owned pumped and diverts water for irrigation on non-riparian parcels therefore presents a current and threatened future unauthorized diversion and use of water in violation of Water Code section 1052.
- 19. The Settling Parties have engaged in settlement negotiations and agree to settle the violations identified above through this Settlement Agreement in lieu of hearing.
- 20. This Agreement will be submitted to the Administrative Hearings Office for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving settlement.

STIPULATIONS

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Settling Parties do hereby agree to settle the matter as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Agreement, this Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Unauthorized Diversion Violations.** The Settling Parties agree to settle the above recited violations as follows:
 - a. Novy Ranches shall, within 45 days of the Effective Date of this Agreement, cease and desist any unauthorized diversion and use of water from the Shasta River to:

- i. Serial Patent 29 within Township 44N Range 6W Section 13, Serial Patent 2 within Township 44N Range 5W Section 19, Serial Patent 654202, Homestead Certificate 2207, and Homestead Certificate 2333.
 - b. Novy Ranches shall maintain and provide to the Division upon request, records of all surface water diversions from the Shasta River.
 - c. Novy Ranches – Grenada shall grant the staff of the State Water Board, with 30 days of a written request: 1) entry upon the property where water is being diverted, stored, conveyed, or used, 2) access to inspect, the equipment (including monitoring and control equipment), practices, or operations related to the exercise of its water rights, and 3) access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with Water Code.
 - d. Novy Ranches shall continue to maintain a working measurement device for any diversions from the Shasta River.
4. **Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and the implementing Order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
5. **Time is of the Essence.** Time is of the essence and the Settling Parties shall submit this Settlement Agreement and proposed implementing order to the Executive Director before noon on June 9, 2023, and sooner if possible.
6. **Waiver of Reconsideration.** Novy Ranches waives the right to request reconsideration of the State Water Board Executive Director's order approving this Agreement, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in that order.
7. **Review of Additional Information.** Both Parties acknowledge that Novy Ranches is working to obtain documentation that may substantiate a pre-14 appropriative water right. This documentation could expand the place of use of water available to Novy Ranches – Grenada from the Shasta River. Upon submittal of such additional information as it relates to the terms of this Agreement, the State Water Board agrees to review such information and respond to Novy Ranches in writing within 90 calendar days.
8. **Board Authority.** This Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in this Agreement shall excuse Novy Ranches from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.

9. **Successors.** This Agreement is binding on any successors or assigns of the Settling Parties.
10. **Independent Judgment.** Each Party represents and declares that in executing this Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
11. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
12. **Additional Documents.** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
13. **Grant Funding.** This Agreement is not intended to limit grant funding opportunities that may otherwise be available to Novy Ranches.
14. **Entire Agreement.** This Agreement reflects and represents the entire agreement between and among the Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each Party represents that it has not relied on any inducements, promises or representations made by the other Party, other than those contained in this Agreement.
15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
16. **Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
17. **Section Headings.** The Parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
18. **Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
19. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
20. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
21. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to

persons or property resulting from acts or omissions by Novy Ranches or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

IT IS SO STIPULATED

State Water Board, Division of Water Rights' Prosecution Team

By: _____
Roberto Cervantes
Acting Assistant Deputy Director
Division of Water Rights
_____ Date

Novy Ranches

By: _____
Lowell L. Novy
_____ Date

By: _____
Judith L. Holmes
_____ Date

parties to or guarantors of any contract entered into by the Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

IT IS SO STIPULATED

State Water Board, Division of Water Rights' Prosecution Team

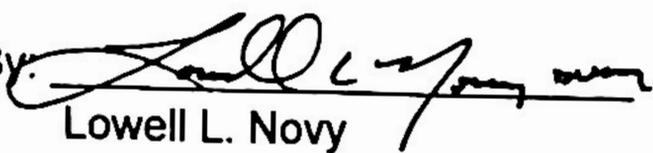
By: 

Roberto Cervantes
Acting Assistant Deputy Director
Division of Water Rights

6/13/23

Date

Novy Ranches

By: 

Lowell L. Novy

06/13/2023

Date

By: 

Judith L. Holmes

06/13/2023

Date