



State Water Resources Control Board

April 15, 2024

CERTIFIED MAIL

In reply refer to:
INV 14291

Glenn C. Rice and Cynthia Anne Hoy, Revocable Trust
c/o Wagner and Bonsignore CCE



CERTIFIED MAIL NO:



NOTICE OF VIOLATION: UNAUTHORIZED DIVERSION FROM SUISUN CREEK IN NAPA COUNTY - PERMIT 20869 (A030244) AND LICENSE 12972 (A027982)

On August 14, 2023, The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received the second of two complaints against Glenn Rice and Cynthia Hoy (Respondents). The August 14, 2023 complaint is related to a complaint originally submitted on September 21, 2021. Both complaints include allegations that the Respondents are diverting water tributary to Suisun Creek outside of the season of diversion for use at APN [REDACTED]. The Complainant further alleges that the Respondents are violating the terms and conditions of License 12972 (A027982) and Permit 20869 (A030244). On April 28, 2022, the Division sent out a Notice of Complaint addressing the allegations listed in the first complaint. On April 27, 2022, Paula J. Whealen (Respondent's agent) of Wagner Bonsignore Consulting Engineers responded to the allegations in a letter.

License 12972 and Permit 20869

Division records indicate the Respondents hold water right License 12972 (A027982) and Permit 20869 (A030244). License 12972 allows diversion to storage of up to 10 ac-ft of water from an unnamed stream from December 1 of each year to February 1 of the following year for the purposes of stockwatering and fire protection. Permit 20869 allows for the diversion to storage of up to 19 ac-ft from an unnamed stream and Suisun Creek from November 1 of each year and April 30 of the following year. Permit 20869 also limits the maximum rate of diversion to offstream storage and establishes minimum bypass flows in Suisun Creek. The permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

any other purpose. The total quantity of water diverted under the permit and license shall not exceed 19 ac-ft per year.

Allegations

1. Respondents are diverting out of season and are exceeding the face value of their water rights.

Division staff have reviewed the Annual Water Use Reports and Reports of Licensee (Reports) from 2012 – 2020 and have found that the annual amount of water diverted exceeds the 19 acre-feet allowed under the combined water rights. The Respondents' agent explained that the reports were filed incorrectly at the direction of previous landowners and can be amended at the request of the Division.

As part of the second complaint, the Division received evidence that includes an email sent to Jason Anderson from the Respondent, Glenn Rice. The email states that the Respondent files an annual report for their water rights on the aforementioned property and acknowledges that these water rights are authorized for a specific date range of each year. The Respondent admitted that they often pump water from the creek all year round, however, if "someone from Napa or Cal Water or Fish and Game is snooping around, we turn it off." (Enclosure 1) Division staff maintains that the email evidence is contradictory to the annual reports and information provided by the agent in the letter dated April 27, 2022.

In addition to the email evidence, the Complainant has submitted photographic and videographic evidence to the Division. The evidence shows diversions into a water tank that ultimately fills an offstream reservoir located on the Respondents' property. Photos also include evidence of a control timer set up for the pump system, past the storage season, as well as a NETAFIM USA water meter that confirms increased diversions past the storage season. The photos and videos are dated past the permitted season of diversion which is a clear violation of the water right terms and conditions. (Enclosure 2)

2. Respondents have increased reservoir capacity with recent construction.

The Respondents' agent provided an inspection report prepared by Division staff that concluded that the reservoir held approximately 19 ac-ft at the time of the inspection on July 20, 1992. The Respondents' agent also submitted a stamped reservoir survey dated December 31, 2022, that confirms a capacity of 19.54 acre-feet. *No additional information regarding this allegation is required at this time.*

3. The Respondents are diverting water under their permit and license to irrigate their vineyard on APN [REDACTED]; irrigation is not authorized under License 12972 or Permit 20869.

Review of the annual reports indicates that irrigation is one of the uses reported under their permit and license. The Respondents' agent explained that the reports were filed incorrectly at the direction of the previous landowner. The Respondents' agent states that there are four wells on the property used to irrigate the existing vineyard, and that the well water had been stored in the reservoir.

4. The Respondents' outlet pipe/spillway is obstructed, which is a violation of the terms and conditions of the permit and license.

The letter states that the landowner reports the reservoir's outlet pipe is not obstructed, nor has ever been obstructed and that it functions properly, per the Department of Water Resources Division of Safety of Dams (DSOD) staff. The Division received a copy of the letter issued by DSOD staff, of the findings of the inspection performed on January 27, 2022. It notes that the purpose of the inspection was to determine if the dam was under state jurisdiction. DSOD staff determined that the dam was not in their jurisdiction. No information was provided regarding the dam or the spillway's functionality. However, DSOD staff observed the presence of large boulders blocking the spillway exit.

5. The Respondents are violating the bypass flow requirement in their water rights.

Permit 20869 requires the maintenance of minimum bypass flows in Suisun Creek and states that no water shall be diverted under the permit until a measuring device capable of measuring bypass flows is installed. The letter states that gaged flow data is unavailable at the permitted point of diversion and that measuring flow at the point of diversion is impractical. On April 20, 2022, the agent submitted a letter to the Division proposing an alternative bypass measuring method. Staff has conducted a preliminary review of your proposed alternative method. The Division requires additional information demonstrating the accuracy of the proposed method and how it provides overall satisfactory compliance with permit terms 16 and 17.

6. The Respondents are not complying with the measurement and reporting requirements of their water rights.

The Respondents' agent submitted 2021 Reports for License 12972 and Permit 20869. Division staff reviewed recent annual water use reports and found that it meets the requirements of the California Code of Regulations, Section 931 through 938. *No additional information regarding this allegation is required at this time.*

Enforcement

The State Water Board has the authority to initiate enforcement action at its discretion for alleged unauthorized diversion or use of water. Failure to provide the required information is considered a violation of the terms and conditions of Permit and License 12972 and the adopted regulations by the Board. Water Code section 1846 grants the Board the authority to impose an administrative civil liability in amount not to exceed five hundred dollars (\$500) for each day of violation of a regulation adopted by the Board. Furthermore, Water Code section 1831 grants the State Water Board authority to issue Cease and Desist Orders (CDO) when it determines a person is violating or threatening to violate a regulation adopted by the Board. A person who violates a CDO may be subject to an administrative civil liability of up to \$1,000 per day.

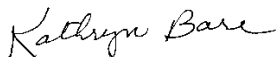
Corrective Actions

Within 30 days of receipt of this letter, you must:

- 1) Submit a response to the allegations and evidence enclosed with this letter.
- 2) Provide information demonstrating how the Respondents distinguish between water diverted under their appropriate water rights and presumed groundwater wells, in relation to storage of water in offstream reservoir.
- 3) Provide evidence that shows the outlet pipe is not obstructed and that the spillway is capable of functioning properly.
- 4) Explain why measuring bypass flows at the permitted point of diversion is impractical. Additionally, you must demonstrate the accuracy of your proposed alternative measuring method of bypass flows in Suisun Creek.

Correspondence or inquiries should be sent directly to Haweya Farah via email at Haweya.Farah@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Haweya Farah, P.O. Box 2000, Sacramento, CA 95812-2000

Sincerely,



Kathryn Bare, PE
Senior Water Resources Control Engineer
Central Coast & Southern California Enforcement Unit
Division of Water Rights

- Enclosure
1. Email Evidence
 2. Photographic/Video* Evidence

*Request video evidence via email.

Ecc: Jesse Gebauer (Agent)

[REDACTED]

Glenn Rice

[REDACTED]

Jason Anderson

[REDACTED]