

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Unauthorized Diversion by  
**Minnie A. Corda, LLP and Testamentary Trust of Ernest H. Corda**  
**Cease and Desist Order WR 2008-00XX**

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SOURCE: Unnamed Streams tributary to San Antonio Creek thence Petaluma River  
COUNTY: Marin County

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Minnie A. Corda LLP, and Testamentary Trust of Ernest H. Corda (Corda) to cease their unauthorized collection of water to storage and violations of the conditions of License 7165 (Application 18859). With the cancellation of Application 31036 on November 14, 2006 that sought additional water rights, Corda continues to violate the conditions of License 7165 and collect water to storage in the Lower Reservoir. Therefore, the State Water Board is authorized to issue a CDO in accordance with Water Code section 1831(d) which states:

The State Water Resources Control Board (State Water Board) is authorized to issue a cease and desist order (CDO) 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.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD 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 Corda for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

## FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. Records of the Marin County Assessor's Office show that Corda is the current owner of Marin County Assessor's Parcel Number 125-040-04. Aerial photographs show that four reservoirs are located on this property.
2. License 7165 (Application 18859) issued on March 1, 1965, authorizes the collection of 23 acre-feet per annum (AFA) to storage at the Upper Reservoir for stockwatering, recreation and fish culture purposes.
3. On March 21, 2000, Corda filed Application 31036 with the Division to divert 298 AFA of water to storage in four reservoirs for the purpose of vineyard irrigation and frost protection on over 500 acres of vineyard. Application 31036 proposed to: 1) increase the storage capacity of the Upper Reservoir covered by License 7165 and to cover the additional irrigation use from the reservoir, 2) cover the storage in the existing Lower Reservoir including expansion of its existing capacity, and 3) develop and construct two additional large reservoirs.
4. On October 25, 2006, Division staff conducted a compliance inspection of four reservoirs noted on the Corda property, Marin County Assessor's Parcel number 125-040-04, located at 833 Chileno Valley Road. Division staff observed the following:
  - a) The Upper Reservoir covered by License 7165, having a capacity of approximately 34 AF, has been used to irrigate 43 acres of vineyard. License 7165 authorizes 23 AF of storage to be used for stockwatering, recreation and fish culture purposes. This stored water has been used consumptively for vineyard irrigation, which is not authorized by the license. Application 31036 was filed to increase the storage capacity of the reservoir and cover the additional uses from the reservoir.
  - b) Two reservoirs with estimated capacities of less than 10 AF each are located on the property. Division staff confirms that The Department of Fish and Game (DFG) received Applications to Appropriate Water by Livestock Stockwatering Registration from Corda.
  - c) A fourth reservoir, designated as the Lower Reservoir, has an estimated capacity of about 10 AF. Division staff estimated the capacity based on a measured surface area of 3.8 acres and a water depth to the spillway invert of approximately 3 feet. Corda confirmed that the reservoir is used for non-consumptive uses including stockwatering, recreation, fire protection, wildlife enhancement and preservation, as well as for sediment and flood control. Application 31036 was filed to increase the capacity of the Lower Reservoir to 49 AF and allow use of the water for vineyard irrigation and frost protection purposes in addition to the existing uses.
  - d) Construction of the two other large reservoirs proposed under Application 31036 has not proceeded and there was no evidence of construction at the reservoir sites at the time of inspection
5. By letter dated November 14, 2006, the Division notified Corda that Application 31036 had been cancelled. The Order Canceling the Application indicated that the cancellation was the result of Corda's lack of due diligence in pursuing actions required within the Memorandum of Understanding for preparation of environmental documents.

6. On November 29, 2006, Mr. Henry Corda contacted the Division requesting reconsideration of the Cancellation Order. On February 23, 2007, State Water Board Order WR 2007-0006-EXEC denied the petition for reconsideration.
7. With the confirmed cancellation of Application 31036, Corda is in violation of the conditions of License 7165 in that; 1) there exists the potential for the collection of storage in excess of the amounts authorized by License 7165 at the Upper Reservoir, and 2) vineyard irrigation constitutes an unauthorized use under License 7165. Additionally, with the cancellation of Application 31036, the collection of water to storage in the Lower Reservoir constitutes an unauthorized diversion of water.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, that Corda shall cease and desist from unauthorized diversion and use of water in excess of Corda's legal rights and shall pursue the following corrective actions and time schedules outlined herein:

**1. ACTIONS ASSOCIATED WITH LICENSE 7165 AND THE UPPER RESERVOIR**

- a) Within **90 days** of the date of this Order, Corda shall have a registered Civil Engineer perform a survey of the Upper Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gauge that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir. This will allow Corda to insure that water collected to storage in any single year does not exceed the 23 AFA authorized by License 7165.
- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gauge has been installed.
- c) Following the installation of the staff gauge, Corda shall maintain a record of the monthly staff gage readings at Upper Reservoir along with the reservoir's maximum and minimum water level of each year and the dates that these levels occurred. Additionally the record shall identify the amount of storage collected during each year. The readings shall be supplied to the State Water Board when requested and with the Reports of Licensee required for License 7165.
- d) Corda shall release all water that flows into the Upper Reservoir in excess of the 23 AF per year amount allowed under existing License 7165 using the existing outlet works, or any other means, to prevent unauthorized water from being collected to storage.
- e) If Corda exercises a riparian right to irrigate or frost protect the vineyard with water from the Upper Reservoir during a period of time when steamflow is entering the reservoir, a staff gauge reading shall be made and recorded prior to commencement of irrigation and daily reading shall be made and recorded thereafter until diversions are completed. This record is in addition to the monthly records required by condition 1.c) above, and shall be submitted along with the information in condition 1.c), above.
- f) No later than **120 days** from the date of this order, Corda shall either: (1) File a Petition for Change in Place of Use and Purpose of Use for License 7165, or (2) Discontinue use of the upper reservoir for uses other than stockwatering, as follows:
  - 1) If a Petition for Change in Place of Use and Purpose of Use for License 7165 is filed, the petition shall request the addition of irrigation use and frost protection use (if applicable) to the existing licensed purposes of use and shall request that

those portions of the existing 43 acres of vineyard that are outside of the existing place of use be added to the existing licensed place of use. If this alternative is selected, Corda shall demonstrate, using the monthly staff gauge readings, that no more than 23 AF of water is collected to storage or applied to the vineyard in any one year. If frost protection is intended to be a use of water, Corda must additionally provide evidence that the 23 acre-feet of water available under License 7165 is sufficient to provide for both the irrigation and frost protection demands of the vineyard. If a Petition is filed, Corda shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, for approval of the petition in accordance with California Code of Regulations, Title 23, Article 15; or,

- 2) In lieu of filing the Petition for Change, Corda shall permanently discontinue use of the upper reservoir for irrigation and frost protection purposes and shall **prior to May 1, 2008**, submit photographic evidence that any pump facilities or pipelines currently used to supply water for other than stockwatering purposes have been dismantled and removed from the reservoir site.

## 2. ACTIONS ASSOCIATED WITH THE LOWER RESERVOIR

- a) Within **90 days** of the date of this Order, Corda shall have a registered Civil Engineer perform a survey of the Lower Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gauge that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir.
- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gauge has been installed.
- c) Following the installation of the staff gauge and until a valid basis of right is approved by the Division for the Lower Reservoir, Corda shall maintain a monthly record of the staff gauge readings of the Lower Reservoir. The readings shall be supplied to the State Water Board on May 1 of each year.
- d) Until such time as a basis of right is approved by the Division, Corda shall release any water that has been collected above the previous month's staff gauge reading using existing outlet works, or any other means (pumping or siphoning), to prevent water not authorized to be collected to storage from being stored in the Lower Reservoir.
- e) Within **150 days** of the date of this Order, Corda shall; (1) File the appropriate Water Right Application with the Division of Water Rights and pursue securing a legitimate basis of right, or (2) Render the Lower Reservoir incapable of storing water as follows:
  - 1) If the results of the survey for the Lower Reservoir identify that its capacity is 10 AF, or less, and the reservoir will be used for stockwatering purposes, Corda shall file an Application to Appropriate Water by Livestock Stockwatering Registration. Corda shall initially submit the application to the DFG and provide notice to the Division of that filing. Upon receipt of DFG's response to the application and any associated conditions, Corda shall submit the application along with DFG's conditions and the required filing fee to the Division.
  - 2) If the reservoir capacity is greater than 10 acre-feet and Corda does not wish to lower the spillway to make the capacity less than 10 acre-feet to proceed with the

steps in item e)1 above, then Corda shall file an Application to Appropriate Water by Permit along with all necessary filing fees and supplemental forms and information, and shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, in accordance with California Code of Regulations, Title 23, Chapter 2, or

- 3) In lieu of filing an Application to Appropriate Water for the Lower Reservoir, Corda shall render the Lower Reservoir incapable of storing water. This shall be accomplished as follows:
  - a) Corda shall submit a plan and time schedule for the approval of the Division, DFG, and the Regional Water Quality Control Board that identifies how and when the Lower Reservoir, not covered by a legitimate basis of right, will be rendered incapable of storing water.
  - b) Corda shall secure all necessary permits required by DFG and the Regional Water Quality Control Board for alteration of the Lower Reservoir and shall comply with all requirements from these agencies when rendering the reservoir incapable of storing water.
  - c) Corda shall submit quarterly progress reports to the Division on the status of work, until such time as the reservoir has been altered sufficiently that it will not store water. Photographs of the completed work, showing no water storage at the location of the existing reservoir shall be submitted to substantiate completion of the work.

### **3. ACTIONS ASSOCIATED WITH REGISTRATION OF LIVESTOCK STOCKPOND APPROPRIATIONS**

- a). Within 30 days of the receipt of the conditions specified by DFG for Corda's current Applications to Appropriate Water by Livestock Stockwatering Registration, Corda shall submit the applications forms with accompanying DFG conditions and the appropriate filing fees to the Division.
4. Corda shall comply with all written directives of the Assistant Deputy Director for Water Rights until such time as the State Water Board authorizes the above actions covering water rights for the two reservoirs, or directs otherwise. In the event that Corda fails to comply with the requirements of the above time schedules, Corda shall be in violation of this CDO and subject to monetary penalties and further enforcement actions as described below:

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to Chapter 12 of the Water Code (commencing with section 1825), 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. (Water Code, § 1845, subd. (a).) section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel, Assistant Deputy Director  
Division of Water Rights*

Dated:

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