COMMONWEALTH of VIRGINIA

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DEL MONTE FRESH PRODUCTION, INC.
FOR
AMES FARM WATER SYSTEM
DUER HOME FARM WATER SYSTEM
DENNIS ROAD MLC WATER SYSTEM
Unpermitted Groundwater Withdrawal

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-268, between the State Water Control Board and Del Monte Fresh Production, Inc., regarding the Ames Farm, Duer Home Farm, and the Dennis Road MLC Water Systems, for the purpose of resolving certain violations of the Virginia Ground Water Management Act of 1992 (Va. Code § 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10, *et seq.*).

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Act" means the Ground Water Management Act of 1992, Va. Code § 62.1-254, *et seq.*

2. "Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

3. "Del Monte" means Del Monte Fresh Production, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Del Monte Fresh Production is a "person" within the meaning of Va. Code 62.1-44.3 and 9 VAC 25-610-10.

4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7. 9 VAC 25-600-10.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183. 9 VAC 25-610-10.

6. "Director" means the Director of the Department of Environmental Quality. 9 VAC 25-610-10.

7. "Facilities" means the Ames Farm, Duer Home Farm and the Dennis Road MLC Water Withdrawal Systems, owned by Del Monte Fresh Production, located in Accomack County, Virginia used primarily for crop irrigation and domestic use at the migrant labor camp; may include potable water for the shop and office, filling and cleaning equipment, seedling preparation for packaging, and washing and/or preparation of farm products for planting or sale.

8. "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. 9 VAC 25-610-10.

9. "Groundwater Management Area" means a geographically defined groundwater area in which the board has deemed the levels, supply or quality of groundwater to be adverse to public welfare, health and safety. VAC 25 600-10.

10. "Horizontal Datum" a geodetic datum for any extensive measurement system of positions, usually expressed as latitude-longitude coordinates, on the earth's surface. A horizontal geodetic datum may be local or geocentric. If it is local, it specifies the shape and size of an ellipsoid representing the earth, the location of an origin point on the ellipsoid surface, and the orientation of x- and y-axes relative to the ellipsoid. If it is geocentric, it specifies the shape and size of an ellipsoid, the location of an origin point at the intersection of x-,y-, and z-axes at the center of the ellipsoid, and the orientation of the x-,y-, and z-axes relative to the ellipsoid. Examples of local horizontal geodetic datums include the North American Datum of 1927, the European Datum of 1950, and the Indian datum of 1960; examples of geocentric horizontal geodetic datums include the North American Datum of 1983 and the World Geodetic System of 1984.

11. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law.

12. "Permit" means a groundwater withdrawal permit issued by the board permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area. 9 VAC 25-610-10.

13. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or

private or public corporations organized under the laws of this Commonwealth or any other state or country. 9 VAC 25-610-10.

14. "Regulations" means the Groundwater Withdrawal Regulations, 9 VAC 25-610-10 *et seq.*

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

17. "Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn. 9 VAC 25-610-10.

18. "Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties. 9 VAC 25-610-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Del Monte, owns and operates the Facilities in Accomack County, Virginia. Accomack County is located in the Eastern Shore Groundwater Management Area as declared in 9 VAC 25-600-20.

2. On May 15, 2014 a meeting was held with representatives of Del Monte, and the staff of DEQ concerning proposed operations for the 2014 growing season for the Del Monte Fresh Production Eastern Shore Facilities and the operation of those facilities in excess of 300,000 gallons without a groundwater withdrawal permit.

3. On July 31, 2014 and September 15, 2014, the Department received water withdrawal reports for the Facilities for July and August 2014, which showed groundwater withdrawal activity in excess of 300,000 gallons per month during that period.

4. Reports submitted indicate that 4,170,000 gallons were withdrawn from DEQ well numbers 100-00991, 100-00992, 100-00994, and 100-00995 in July 2014 from the Ames Farm Withdrawal System; reports submitted indicate that 361,000 gallons were withdrawn from DEQ well number 100-01192 in July 2014 from the Duer Home Farm Withdrawal System; the withdrawal estimate provided indicates that 327,360 gallons were withdrawn from the Dennis Road MLC Withdrawal System during the month of August 2014.

5. VA Code §§ 62.1-258 and 9 VAC 25-610-40(A) states that, "It shall be unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any groundwater other than in accordance with a ground water withdrawal permit."

6. Based on the results of the meeting held May 15, 2014, and the groundwater withdrawal reports submitted for July and August 2014, the Board concludes that Del Monte has violated Va. Code §§ 62.1-258, 9 VAC 25-610-40(A) of the Regulations, as described in above.

In order for Del Monte to return to compliance, DEQ staff and representatives of Del Monte have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in § § 62.1-270, the Board orders **Del Monte**, and **Del Monte** agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $10,500 in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

1. Del Monte shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Del Monte for good cause shown by Del Monte, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Del Monte, admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Del Monte consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Del Monte declares it has received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992 and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein, except that Del Monte reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of Del Monte. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Del Monte to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Del Monte shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Del Monte, shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Del Monte, shall notify the DEQ Office of Water Supply Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;
   b. the projected duration of any such delay or noncompliance;
   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Office of Water Supply Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Del Monte. Nevertheless, Del Monte agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Del Monte has completed all of the requirements of the Order;
    b. Del Monte petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
    c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Del Monte.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Del Monte from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Del Monte and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Del Monte certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Del Monte to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Del Monte.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

By its signature below, Del Monte voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2014.

_____
Jeff Steers, Land Protection and Revitalization, Director
Department of Environmental Quality

Del Monte Fresh Production, Inc., voluntarily agrees to the issuance of this Order.

Date: 12/8/14 By: Paul J Rice, SVP NA Operations
(Person) (Title)
Del Monte Fresh Production, Inc.

State of Florida
County of Miami-Dade
~~Commonwealth of Virginia~~

~~City/County of~~ _____

The foregoing document was signed and acknowledged before me this 8th day of December, 2014, by Paul J. Rice who is Senior Vice President of Del Monte Fresh Production, Inc., on behalf of the company.

Delfina R. Campos
Notary Public

_____
Registration No.

My commission expires: _____

Notary seal:

DELFINA R. CAMPOS
MY COMMISSION EXPIRES
July 8, 2018
#FF 132086
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

APPENDIX A
SCHEDULE OF COMPLIANCE

Del Monte shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Groundwater Withdrawal Regulations, comply with the following regarding the withdrawal of groundwater at the Ames Farm, Duer Home Farm, and the Dennis Road MLC Withdrawal Systems:

Withdrawal Limits, & Reporting:

Duer Home Farm

1. Del Monte is authorized to withdraw 3,000,000 gallons per calendar year from the withdrawal system.

2. Total pumpage from the withdrawal system shall not exceed 2,000,000 gallons in a calendar month.

3. The permitted withdrawal will be used primarily for crop irrigation. Other beneficial uses may include potable water for the shop and office, filling and cleaning equipment, seedling preparation for packaging, and washing and/or preparation of farm products for planting or sale. No other beneficial uses are authorized.

4. The withdrawal of groundwater shall originate from DEQ wells; 100-01192 and 100-01193.

Dennis Road MLC

5. Del Monte is authorized to withdraw 2,455,200 gallons per calendar year from the withdrawal system.

6. Total pumpage from the withdrawal system shall not exceed 491,040 gallons in a calendar month.

7. The permitted withdrawal will be used for domestic water uses to supply the employee housing units. No other beneficial uses are authorized.

8. The withdrawal of groundwater shall originate from DEQ wells; 100-01317, 100-01318, 100-01319, 100-01320, 100-01321, 100-01322, 100-01323, 100-01324, 100-01325, 100-01326, and 100-01327.

Dennis Road MLC & the Duer Home Farm

9. Del Monte shall submit updated location information to read in degrees minutes and seconds for each active well, as well as, any unabandoned inactive wells for each withdrawal system at the Facilities within 60 days of execution of this Order. Locational information shall be collected in the Horizontal Datum, North American Datum of 1927.

10. Del Monte shall install and maintain in-line totalizing flow meter to read gallons, cubic feet, or cubic meters at each active well in accordance with 9 VAC 25-610-140(A)(6)(a) within 60 days of execution of this Order.

11. Groundwater withdrawn from each metered well and the total groundwater withdrawn from each withdrawal system shall be recorded monthly and reported on forms approved by the Department to the Groundwater Withdrawal Permitting Program by the tenth day of each month for the respective previous month. Records of ground water withdrawal shall be maintained by Del Monte as required in 9 VAC 25-610-130(F).

Ames Farm Facility

12. Del Monte shall comply with the following conditions:

    a. Withdrawal Limits and Reporting

        i. Del Monte is authorized to withdraw 65,000,000 gallons per calendar year from the withdrawal system.

        ii. Total pumpage from the withdrawal system shall not exceed 16,250,000 gallons in a calendar month.

        iii. The withdrawal will be used primarily for crop irrigation. Other beneficial uses may include potable water for the shop and office, filling and cleaning equipment, seedling preparation for packaging, and washing and/or preparation of farm products for planting or sale. No other beneficial uses are authorized.

        iv. The withdrawal of groundwater shall originate from DEQ wells; 100-00989, 100-00990, 100-00991, 100-00992, 100-00993, 100-00994, and 100-00995.

        v. Del Monte shall submit updated location information to read in degrees minutes and seconds for each active well, as well as, any unabandoned inactive wells at the facility within 60 days of execution of this Order. Locational information shall be collected in the Horizontal Datum, North American Datum of 1927.

        vi. Del Monte shall install and maintain in-line totalizing flow meter to read gallons, cubic feet, or cubic meters at each active well at the facility in accordance with 9 VAC 25-610-140(A)(6)(a) within 60 days of execution of this Order.

vii. Groundwater withdrawn from each metered well and the total groundwater withdrawn from each withdrawal system shall be recorded monthly and reported on forms approved by the Department to the Groundwater Withdrawal Permitting Program by the tenth day of each month for the respective previous month. Records of ground water withdrawal shall be maintained by Del Monte as required in 9 VAC 25-610-130(F).

b. Or; Minor Modification of the Middleton Farm Permit (GW0063800)

i. Within 15 days of the execution of this Order, Del Monte shall complete all requirements for a Minor Modification of the Middleton Farm Permit (GW0063800) to include the Ames Farm wells as requested by the Department.

Corrective Action Plan

13. No later than **December 15, 2014**, Del Monte shall submit an approvable Corrective Action Plan (CAP) that details the procedures that Del Monte will take to meet the requirements of 9 VAC 25-610-94 for the Facilities that includes the following:

a) Provide well construction reports for all wells associated with applications submitted on the Water Well Completion Report, Form GW2; please provide camera survey schedules for any well reconnaissance activities necessary to obtain this information.

b) Geophysical investigations to characterize the aquifer system at all proposed withdrawal sites.

The CAP must be sufficient to meet all criteria necessary for groundwater withdrawal permit issuance in accordance with 9 VAC 25-610-110 (D). The CAP shall also include a schedule of completion dates for all items listed. Upon DEQ approval of the CAP, Del Monte shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein.

Groundwater Withdrawal Permit Application Submittal:

16. Within 18 months of execution of this Order, Del Monte shall submit complete Groundwater Withdrawal Permit Applications that includes a Water Conservation and Management Plan in accordance with 9 VAC 25-610-100 (B)(2) and (3) to the Groundwater Withdrawal Permitting Program for the Duer Home Farm and the Dennis Road MLC Facilities.

17. Submit a complete Groundwater Withdrawal Permit Application that includes a Water Conservation and Management Plan in accordance with 9 VAC 25-610-100 (B)(2) and (3) to the Groundwater Withdrawal Permitting Program within 18 months of execution of this Order; or complete a minor modification of the Middleton Farm Permit as outlined in Appendix A, Condition 12 (b) of this Order for the Ames Farm Facility.

DEQ Contact

Unless otherwise specified in this Order, Del Monte Fresh Production, Inc., shall submit all requirements of Appendix A of this Order to:

Commonwealth of Virginia
Department of Environmental Quality
Office of Water Supply Planning
P.O. Box 1105, Richmond, VA 23218