



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOVEMBER 16, 2012

In Reply Refer to:
DS: A003957

CERTIFIED MAIL NO # 7004-2510-0003-9150-3181
Return Receipt Requested

SAYBROOK
C/O MIEKE HOLKEBOER
401 WILSHIRE BLVD., SUITE 850
SANTA MONICA, CA 90401

Dear SAYBROOK:

NOTICE OF CEASE AND DESIST ORDER FOR FAILURE TO FILE ANNUAL WATER USE REPORT UNDER LICENSE 2399 (APPLICATION A003957), DIVERSION OF WATER FROM SAN JOAQUIN RIVER IN SAN JOAQUIN COUNTY

Enclosed is a draft Cease and Desist Order (CDO) for failing to report your 2011 annual water use under the above-reference water right. This letter serves as notice to you of the intent of the State Water Resources Control Board (State Water Board), Delta Watermaster to adopt the CDO. Therefore, this matter requires your immediate attention.

In March 2012, the Division of Water Rights (Division) mailed out an initial notification letter to all licensees, including you, advising of the new requirement to submit annual water use reports online. The letter included the website address of the State Water Board's reporting system as well as the online access information specific to each licensee. The letter gave the deadline to submit your 2011 annual water use report as June 30, 2012.

In August 2012, the Office of Delta Watermaster contacted you informing you that your 2011 annual water use report had not been received by the State Water Board and provided you with a copy of the March 2012 notification letter (enclosed), along with a copy of the water right license. You were given an extension to file the report of licensee. On September 24, 2012, you requested and were granted another extension. This extension expired on November 5, 2012.

As of the date of this letter, the State Water Board has not received your 2011 water use report for the subject right. Therefore, you are in violation of the terms and condition of your license.

Within 20 days from the date you receive this notice, you must: (1) Come into compliance with the terms of your license by submitting your 2011 annual water use report; or (2) Submit a written request for a hearing on the draft CDO, as described below.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

To submit your 2011 annual water use report, please visit the following website:
<http://www.waterboards.ca.gov/RMS> using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you disagree with the facts or time schedules for the corrective actions set forth in the CDO, you may request a hearing before the State Water Board. **Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice.**

You may mail your written hearing request to: State Water Resources Control Board, Division of Water Rights, Attn: Enforcement Section, P.O. Box 2000, Sacramento, CA 95812-2000.

You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

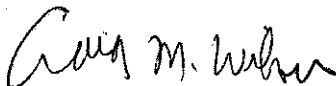
If you request a hearing, a hearing will be scheduled before the State Water Board or a designated hearing officer. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider. You will be notified of the hearing date and the submittal deadlines as soon as they are scheduled.

If you fail to come into compliance or request a hearing within 20 days of the date you receive this notice, the State Water Board will adopt the CDO. If you fail to comply with the adopted CDO, the State Water Board may consider additional enforcement of the CDO without further notice. Such enforcement may include the imposition of administrative civil liability of up to \$1,000 for each day of noncompliance, or referral to the Attorney General for further action.

If you have questions or need assistance with the reporting system, please contact staff at (916) 327-3289 or by email at: dsaechao@waterboards.ca.gov.

If you have any questions regarding the CDO, please contact me at (916) 445-5962.

Sincerely,



Craig M. Wilson
Delta Watermaster

Enclosures: 1) Cease and Desist Order
2) August 2012 Email of Delinquent Report and Extension (Exhibit A)
3) March 2012 letter (Exhibit A, Attachment 1)
4) Saybrook Confirmation Email of Ownership of Lathrop Parcels (Exhibit B)
5) Saybrook Extension Request (Exhibit C)
6) Water Right Ownership Letter Email (Exhibit D)
7) Confidential User Information Sheet

cc: John O'Hagan, Manager
Enforcement Section
Division of Water Rights

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

DELTA WATERMASTER

ORDER WR 2012 -00XX-DWM

CEASE AND DESIST ORDER

In the Matter of Violation of Annual Reporting Requirements by

Saybrook

SOURCE: San Joaquin River

COUNTY: San Joaquin

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Johnnie L Costa (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your license, and/or an unauthorized diversion or use of water.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052 and/or license terms for which section 1831 (d) provides, in part:

The 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 unauthorized diversion or use of water subject to this division.
- (2) Any term or condition of a permit, license, certification, or registration issued under this division.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board Delta Watermaster provided notice of the CDO against Licensee for the violation of the terms and conditions of your license, and/or Title 23, Division 3, Chapter 2, Article 20, section 847 of the California Code of Regulations, and the unauthorized diversion or use of water. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to provide enforcement of license and permit terms and conditions. Pursuant to State Water Board Resolution 2012-0048, the Delta Watermaster is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq.

FACTUAL BASIS FOR ISSUING THE CDO

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

1. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under licenses, and developed a new online Report Management System (RMS) as a component

of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.

2. In March 2012, the Division of Water Rights (Division) mailed out an initial notice to the Licensee notifying them of: the recent annual use reporting change, instructions on how to access the RMS system and submit, at a minimum, their 2011 use report online. The deadline to submit their 2011 use report online was June 30, 2012. In May 2012, State Water Board's Office of Delta Watermaster staff contacted Licensee regarding annual use report. Licensee informed staff that Licensee no longer owned property associated with water right License 2399 (A003957). Staff contacted Licensee's agent regarding water right. Per agent's request, information regarding water right was emailed to agent. Agent informed staff that agent will follow-up with staff regarding new owner for water right. On July 31, 2012, Licensee's agent contacted staff to inform staff of new owner, Saybrook, (hereafter referred to as Licensee).
3. On August 1, 2012, the Office of Delta Watermaster contacted Licensee notifying them of water right License 2399 (A003957) and reporting requirements for water right License 2399. Staff informed Licensee that annual report of licensee was due by July 31, 2012. The report of licensee was delinquent, but staff granted additional time to Licensee until August 31, 2012 for Licensee to file. Staff sent information by email (Exhibit A) to Licensee regarding water right A003957 including a copy of the license and the initial notice to Licensee sent to the prior owner in March 2012 (Exhibit A – Attachment 1). The initial notice notified Licensee of: the recent annual use reporting change, instructions on how to access the RMS system and submit, at a minimum, their 2011 use report online. Based on parcel numbers given to Licensee, Licensee informed staff on August 2, 2012, that Licensee did not own property associated with water right A003957.
4. On August 21, 2012, staff contacted Licensee via email with new parcel numbers regarding water right A003957. Licensee emailed response back that Licensee did own the parcels referenced in email (Exhibit B). On August 30, 2012, Staff contacted Licensee via email asking if Licensee was interested in retaining the license. On September 11, 2012, staff followed up with another email requesting that Licensee file the report of licensee for 2011 by September 15, 2012. Licensee contacted staff on September 14, 2012 with questions regarding reporting requirements and water right License 2399. Staff contacted Licensee regarding the water right and informed Licensee that staff will follow-up with an email response on September 17, 2012. On September 17, 2012, staff followed up with an email responding to Licensee's questions.
5. On September 24, 2012, Licensee contacted staff by email requesting one more extension. Staff responded back via email informing Licensee that Licensee will have 30 days from the date of the ownership letter, which the Division of Water Rights will send out, to either request a revocation or file the report of licensee for 2011 for water right A003957. Licensee accepted staff's response (Exhibit C). On October 5, 2012, staff emailed Licensee to inform Licensee that the Division of Water Rights had mailed the ownership letter (Exhibit D). Licensee was given opportunity to file the annual report for 2011 for water right A003957.
6. As of November 16, 2012, the State Water Board has not received Licensee's 2011 annual water use report for water right A003957.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Licensee shall immediately come into compliance with the terms of the License by submitting their report of 2011 annual use by accessing the Report Management System at www.waterboards.ca.gov/RMS using the User ID and Password shown on User Information Sheet accompanying this CDO.

Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact the staff noted on the letter accompanying this CDO.

Consequences of Non-Compliance

In the event Licensee fails to comply with the requirements of this Order, Licensee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845 (b)(1) of up to \$1,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, 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.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Licensee for unauthorized diversion of water in accordance with Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse Licensee from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD

Craig M. Wilson
Delta Watermaster

Dated:

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DRAFT