

State Water Resources Control Board

July 3, 2012

In Reply Refer
to: BRC:A015857

FRED F PODESTA III
8000 N PODESTA LN
LINDEN, CA 95236

Dear Mr. Podesta:

ORDER ADOPTING CEASE AND DESIST ORDER FOR FAILURE TO FILE 2010 ANNUAL USE FOR LICENSE 8252, APPLICATION 15857

Enclosed is a copy of Order WR 2012-0010-DWR signed by the Assistant Deputy Director of the State Water Resources Control Board (State Water Board), Division of Water Rights on July 3, 2012. This Order adopts the draft Cease and Desist Order (CDO) dated May 23, 2012 for failure to file your 2010 annual use report.

On May 23, 2012, the Division sent you a certified letter instructing you to submit your deficient 2010 annual use report online through our Report Management System (RMS). Instructions on how to access the RMS system as well as contact information for Division staff were provided. The Division allowed 20 days from receipt of the draft CDO to submit your 2010 annual use report to avoid formal enforcement action. The United States Post Office confirms the draft CDO was delivered on June 6, 2012 at 11:38am (Certified Mail # 70042510000391460279). As of the date of this letter, 27 days after confirmed receipt of the draft CDO, the Division has not received your 2010 annual use report.

Since you have not complied with the conditions of the draft CDO by submitting your 2010 annual use report within 20 days of receipt, the enclosed Order adopts the draft CDO and subjects you to a potential \$1000/day Administrative Civil Liability beginning on June 27, 2012 as permitted by Water Code Section 1845(b)(1).

Enforcement is at the discretion of the State Water Board and we will take into consideration any corrective action taken. Therefore, you should immediately submit your 2010 annual use report using the access information provided on the enclosed sheet. Since your 2011 annual use report was due by July 1, 2012, you may want to submit both use reports at the same time to avoid a similar action on your 2011 annual use.

If you have any questions please contact me, the Division's Enforcement Section Manager, at (916) 341-5368, or Mr. Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement at (916) 341-5445 or ATAURIAINEN@waterboards.ca.gov.

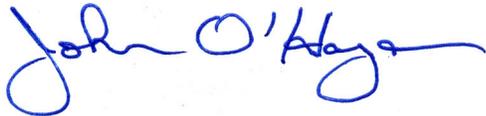
CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

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

If you wish to write a letter, please send a written response to:

Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000
Attention: Enforcement Section

Sincerely,

A handwritten signature in blue ink that reads "John O'Hagan". The signature is fluid and cursive, with a large initial "J" and a distinct "O'Hagan" ending.

John O'Hagan, Chief
Enforcement Section

Enclosure: Cease and Desist Order
 Confidential User Information Sheet

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

DIVISION OF WATER RIGHTS

ORDER WR 2012-0010-DWR

CEASE AND DESIST ORDER

In the Matter of Violation of License Term by

Fred F Podesta Jr

SOURCE: Unnamed Stream

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 Fred F Podesta Jr (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your license.

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

The State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate any of the following:

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

On May 23, 2012, 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 Licensee for the violation of the terms and conditions of your license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights 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. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

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 February 2011, the Division mailed out an initial notice (Exhibit A) 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 2010 use report online. The Licensee was also notified that if they had any questions on the new reporting process, they could contact the Division by phone or email. The deadline to submit their 2010 use report online was July 1, 2011.
3. In September 2011, the Division started to mail out delinquency letters, which also included a copy of the February 2011 letter, to all the licensees who had not submitted their 2010 use report by July 1, 2011 (Exhibit B). The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
4. As of May 23, 2012, the Division has not received the licensee's 2010 annual use report.

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 2010 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 Division 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.

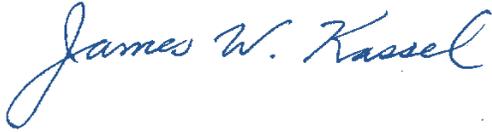
Reservation of Enforcement Authority and Discretion

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

A handwritten signature in blue ink that reads "James W. Kassel". The signature is written in a cursive style with a large, looping initial "J".

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

Dated: July 3, 2012

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