

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2010 -00XX-DWR**

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**CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion of Water by

**Loren and Dolores Ohm**

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SOURCE: San Joaquin River  
COUNTY: San Joaquin County

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Loren and Dolores Ohm (the Ohms) to cease and desist the unauthorized diversion, and use of water in violation of section 1052 of the Water code.

The Ohms are alleged to have violated or are threatening to violate Water Code section 1831, which provides:

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 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 cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {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 the Ohms for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. 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 Cease and Desist Order 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.

## FACTS AND INFORMATION

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

1. On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta. The Workplan also identified that, if and when illegal diversions were found, those diversions would be subject to enforcement action and directed to cease diversions, obtain a legal water right, or pursue a contract for water supplies with the Department of Water Resources, United States Bureau of Reclamation, or another party.
2. On February 18, 2009, the Division mailed letters to property owners on Roberts and Union Islands within the Delta. Based on reviews of U.S. Geological Survey maps, aerial photography, and San Joaquin County Assessors Maps, the Division sent letters to each property owner that was determined to have been irrigating in the last few years, and for whom the Division has no record of any basis of right for water diversion. The Division requested that each property owner either: inform the Division within 60 days as to the basis of their right by filing a Statement of Water Diversion and Use with appropriate evidence; define a contractual basis for diversion of water; or cease diversion of water until a basis of right is secured. The letter also informed the contacted property owners that a failure to respond may result in enforcement action.
3. The Division mailed a copy of the February 18, 2009 letter to the Ohms, as owners of San Joaquin County Assessor Parcel Nos. 162-100-01 and 162-120-09. The Ohms filed a Statement of Water Diversion and Use (Statement) on April 15, 2009 for water diverted from separate points of diversion on the San Joaquin River to the two separate parcels. The Statement claims riparian and pre-1914 appropriative rights to irrigate various crops on the subject properties. The Statement identifies a year-round diversion season with the 1800's being the year of first use. The Statement also identifies that water is applied based on crops and climate but the amounts diverted is listed as "unknown." Parcel 162-100-01 has continuity with the San Joaquin River but parcel 162-120-09 does not.
4. Consistent with Water Code section 5102, which requires a separate statement be filed for each point of diversion, Division staff separated maps showing each point of diversion and the related places of use, copied the original statement and now show the Ohms' information as two separate statements. Based on the continuity with the San Joaquin River, the Ohms may have a riparian claim under the Statement for parcel 162-100-01 when natural flow exists in the San Joaquin River.
5. Crop data published by the San Joaquin County Agricultural Commission and aerial photographs indicate that about 100 acres of tomatoes have been grown on parcel 162-120-09. According to the 1980 California Department of Water Resources publication "*Crop Water Use in California*," the annual crop consumption use for tomatoes grown on the parcel is 3.0 acre-feet per acre. The estimated annual consumptive use of water for irrigation by the Ohms on parcel 162-120-09 is about 300 acre-feet.
6. On September 23, 2009, a certified letter (Certification # 7001 0320 0001 1831 6344) was sent to the Ohms at 7634 Roberts Road, Stockton, CA 95206. U.S. Postal Service confirms delivery of the letter on September 24, 2009. The letter advised that the San Joaquin County Assessor's Parcel maps show that parcel 162-120-09 does not have continuity to a surface stream. This lack of continuity indicates that a riparian basis of right typically would not exist. The letter requested that the Ohms provide additional evidence to support that the riparian claim for parcel 162-120-09 has been preserved and/or documentation supporting initiation and continuous beneficial use of water under the pre-1914 claim of right. The letter warned of potential enforcement if an adequate response is not received.

7. The State Water Board received a letter dated November 2, 2009, from Dante J. Nomellini, Jr. stating that his firm was working on providing responses to our letter for additional information. Mr. Nomellini stated he anticipated being able to provide a meaningful response over the course of the next 30 days for the Ohms and others. As of December 28, 2009, the Ohms have not provided any additional evidence to substantiate a basis of right for the diversion of water to parcel 162-120-09. Acceptable information supporting a basis of water right would include, but is not limited to: (1) a chain of title supporting riparian status for the parcel, (2) any evidence which supports an existing or implied preservation of the riparian right established prior to severance of the parcel from the stream or other riparian parcels; (3) evidence which verifies the first year of irrigation on the parcel prior to 1914 and documents the subsequent continuous use of water; or (4) statements which provide an alternative valid basis of right for diversions of water to the parcel.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, the Ohms shall immediately cease and desist from diverting water to parcel 162-120-09 until the following are satisfied:

- (1) The Ohms shall submit to the Division sufficient evidence establishing a basis of right or a water supply contract to serve the property. No diversions shall be made to this parcel until the Ohms receive approval from the Assistant Deputy Director for Water Rights to exercise the water right or contract.
- (2) Within 90 days of the date of this Order if no basis of right can be established, the Ohms shall submit a plan showing how and when they will permanently remove the diversion works serving parcel 162-120-09.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water 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. (Wat. Code, § 1845 subd. (a).) Any person or entity that violates a CDO issued pursuant to chapter 12 may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
*Assistant Deputy Director for Water Rights*

Dated: