CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAY 0 5 2015

CERTIFIED MAIL

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Modesto, CA 95358

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ORDER WR 2015-0022-DWR: ORDER FOR ADDITIONAL INFORMATION IN THE MATTER OF DIVERSION OF WATER BY MICHAEL PASSALAQUA AND PEDER HOY, LICENSE NUMBER 001173 (APPLICATION A005269)

The attached State Water Resources Control Board (State Water Board) Order WR 2015-0022-DWR (Order) affects your diversions from the Tuolumne River, and you are required to respond to the enclosed Order. As a pre-1914 and/or riparian water right claimant, you must provide specific information identified in the Order within the timelines identified therein. This requires your immediate attention.

Emergency Regulations for Curtailment of Diversions to Protect Senior Water Rights

On March 17, 2015, the State Water Board amended and re-adopted emergency regulations regarding Informational Order authority during drought (California Code of Regulations, title 23, amending section 879, subdivision (c)) (Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on March 27, 2015. The Regulations establish requirements for water right holders to provide information in specific circumstances.

Section 879, subdivision (c)(1)(A) authorizes the Deputy Director for the Division of Water Rights to issue orders requiring additional information from parties claiming a riparian or pre-1914 right to divert water in response to an investigation, curtailment order or any notice of curtailment, where no Statement of Water Diversion and Use for such right was on file with the Board as of January 17, 2014. Section 879, subdivision (c)(1)(D) authorizes the Deputy Director to issue orders requiring additional information upon receipt of information that indicates actual or threatened unlawful diversions of water by any water right holder, diverter or user.

The Regulations are available at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/water_availability.shtml

MAY 0 5 2015

Allegations of Potentially Unauthorized Diversions

On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watersheds with a post-1914 Appropriative Right." Michael Passalaqua and Peder Hoy (Diverters) are the owners of a post-1914 appropriative water right under License 001173 (Application A005269). License 001173 allows for the direct diversion of 2.08 cubic feet per second of water from the Tuolumne River between May 1st and October 1st. On June 18, 2014, Division staff conducted an inspection of the Diverters' property, point of diversion (POD), and place of use to determine compliance with the curtailment notice for diversions authorized under License 001173. At the time of inspection, Division staff observed that the Diverters were diverting water from the Tuolumne River from the same POD listed in their water right license for irrigation of 172 acres located on Stanislaus County Assessor's Parcel Numbers (APN) 017-045-006 and 017-045-018. The Diverters' parcels are the same as the place of use that is outlined in License 001173. Division staff asked the Diverters under what basis of right they are currently diverting, and the Diverters indicated that they were diverting under a riparian basis of right. Division staff determined from United States Geological Survey data that approximately 24 percent of the flow in the Tuolumne River on June 18, 2014 was water that was released from storage at the Don Pedro Reservoir. Even if the Diverters have a valid riparian right, they would not be authorized to divert released stored water under that right.

Information Required

For water diversions that are conducted under a basis of right other than water right License 001173, you are required to submit the following information no later than 30 days from the effective date above.

(A) The monthly amounts of water diverted and the basis of right allowing for the diversions for each month in 2014 and January through May 2015, and the anticipated monthly amount of water to be diverted and the basis of right each month in 2015 beginning with June 2015. For direct diversion, the diversion information shall include the total amount of water diverted in the month and the maximum rate of diversion for each month. For storage, the diversion information shall include the quantity collected to storage each month. For all methods of diversion, you are requested to identify the method used to determine the amounts reported (Wat. Code § 5103(e)), and the primary use of water. This information shall be filed electronically at: http://water24a/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo.shtml.

(B) Identification and location of the POD and place of use for water right being claimed for each POD, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed, and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water. This information is an attachment to the report filed in (A) and must be filed electronically and mailed to: SWRCB-2014informational-order@waterboards.ca.gov.

(C) The monthly diversion amount for each month starting with June 2015 shall be submitted by the fifth (5th) of each succeeding month until the drought ends. This information shall be filed electronically at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo_actual.php.

Failure to comply with this Order could subject the party to enforcement action. Please provide the information identified on the Information Order by e-mail to: SWRCB-2014informational-order@waterboards.ca.gov.

If you have any questions regarding this Order, please contact Kathy Mrowka, Manager, Enforcement Section at (916) 341-5363 or by e-mail at Kathy.Mrowka@waterboards.ca.gov; or Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement at (916) 341-5445 or by e-mail at Andrew.Tauriainen@waterboards.ca.gov.

Sincerely,

John O'Hagan, for

Barbara Evoy, Deputy Director
Division of Water Rights

Enclosure: Order and Attachment A

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

DIVISION OF WATER RIGHTS

ORDER WR 2015–0022-DWR

ORDER FOR ADDITIONAL INFORMATION

In the Matter of Diversion of Water by

Michael Passalaqua and Peder Hoy
License Number: 001173 (Application A005269)

SOURCE: Tuolumne River

COUNTY: Stanislaus

BACKGROUND:

1. On April 1, 2015, Governor Edmund G. Brown Jr. issued Executive Order B-29-15 to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue. The Executive Order confirms that the Orders and provisions in the Governor's previous drought proclamations and Orders, the January 17, 2014 Proclamation, April 25, 2014 Proclamation, and Executive Orders B-26-14 and B-28-14 remain in full force and effect.

2. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right," which notified all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The State Water Board temporarily lifted the curtailment notice for post-1953 permits and licenses on November 12, 2014. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with a Post-1914 Appropriative Right."

3. On March 17, 2015, the State Water Board amended and re-adopted emergency regulations regarding Informational Order authority during drought (California Code of Regulations, title 23, amending section 879, subdivision (c)) (Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on March 27, 2015. The Regulations establish requirements for water right holders to provide information in specific circumstances.

4. Pursuant to section 879, subdivision (c),

   (1) The Deputy Director may issue an informational order, as provided in paragraph (2), in any of the following circumstances:

(A) Upon receipt of a complaint that staff determines to merit investigation alleging interference with a water right by a water right holder, diverter or user;

(B) Where a water right holder, diverter or user asserts a right to divert under a pre-1914 or riparian right in response to an investigation, curtailment order or any notice of curtailment, and no Statement of Water Diversion and Use for such right was on file with the Board as of January 17, 2014;

(C) Where a water right holder, diverter or user responds to an investigation, curtailment order or any notice of curtailment by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record had been previously filed with the Board; or

(D) Upon receipt of information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.

(2) The Deputy Director may issue an order under this article requiring a water right holder, diverter or user to provide additional information related to a diversion or use described in (c)(1), including the claim of right; property patent date; the date of initial appropriation; diversions made or anticipated during the current drought year; basis of right and amount of a water transfer not subject to approval of the Board or Department of Water Resources; or any other information relevant to authenticating the right or forecasting use and supplies in the current drought year.

(3) Any party receiving an order under this subdivision shall provide the requested information within thirty (30) days. The Deputy Director may grant additional time for submission of information supporting the claim of right upon substantial compliance with the 30-day deadline and a showing of good cause.

(4) The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

(5) Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version. The provisions of Article 12 of this Chapter (commencing with section 768) shall govern petitions for reconsideration of orders issued under this subdivision.

5. Michael Passalaqua and Peder Hoy (collectively referred to as Diverters) are the owners of a post-1914 appropriative water right under License 001173 (Application A005269). License 001173 allows for the direct diversion of 2.08 cubic feet per second of water from the Tuolumne River between May 1st and October 1st. The priority date for License 001173 is November 15, 1926.

6. On June 18, 2014, Division staff conducted an inspection of the Diverters' property, point of diversion (POD), and place of use to determine compliance with the curtailment notice for diversions authorized under License 001173. When the inspection was scheduled, Division staff informed the Diverters that the State Water Board has curtailed all post-1914 appropriative water rights in the San Joaquin River watershed. During the inspection, the Diverters indicated that they received the May 27, 2014 curtailment notice. The Diverters did not submit a curtailment compliance certification, as was required in the curtailment notice, to indicate their manner of compliance with the curtailment. At the time of inspection, Division staff observed that the Diverters were diverting water from the Tuolumne River from the same POD listed in their water right license for irrigation of 172 acres located on Stanislaus County Assessor's Parcel Numbers (APN) 017-045-006 and 017-045-018. The Diverters' parcels are the same as the place of use that is outlined in License 001173. Division staff asked the Diverters under what basis of right they are currently diverting, and the Diverters indicated that they were diverting under a riparian basis of right.

7. The Diverters do not have a Statement of Water Diversion and Use (Statement) on file with the Division for a riparian diversion to indicate their exercise of a riparian right prior to curtailment of their post-1914 water right. Division staff reviewed the parcel map for properties owned by the Diverters; see Attachment A. According to the parcel ownership information available to Division staff, the POD is on a parcel contiguous with the Tuolumne River, but which is not owned by the Diverters. Neither of the Diverters' parcels is contiguous with the Tuolumne River, which is one of the criteria that typically must be satisfied when exercising a riparian basis of right. Therefore, it appears that the Diverters may not be authorized to divert water from the Tuolumne River under a riparian basis of right for use on the parcels owned by the Diverters. Division staff determined from United States Geological Survey data that approximately 24 percent of the flow in the Tuolumne River on June 18, 2014 was water that was released from storage at the Don Pedro Reservoir. Even if the Diverters have a valid riparian right, they would not be authorized to divert released stored water under that right.

FINDINGS:

1. Section 879, subdivision (c)(1)(A) authorizes the Deputy Director for the Division of Water Rights to issue orders requiring additional information from parties claiming a riparian or pre-1914 right to divert water in response to an investigation, curtailment order or any notice of curtailment, where no Statement for such right was on file with the Board as of January 17, 2014. Section 879, subdivision (c)(1)(D) authorizes the Deputy Director to issue orders requiring additional information upon receipt of information that indicates actual or threatened unlawful diversions of water by any water right holder, diverter, or user.

2. The Diverters claimed a riparian right in response to the 2014 Sacramento/San Joaquin curtailment notice and inspections, and the Division does not have a Statement for such right on file. In addition, the Deputy Director has information indicating that the Diverters may have unlawfully diverted stored water from the Tuolumne River on the date of the inspection.

3. To determine whether unauthorized diversions have occurred or are threatening to occur, the State Water Board needs supporting documentation for the claimed riparian right and additional information on the diversions made by the Diverters during 2014 and projected 2015.

IT IS HEREBY ORDERED:

1. This Order is issued on the date shown below. All submittal requirements are based on the effective date of this Order.

2. The Diverters are subject to this Order for additional information pursuant to section 879, subdivision (c) and shall provide the following information for water diversions that are conducted under a basis of right other than water right License 001173 no later than 30 days from the effective date below:

   (A) The monthly amounts of water diverted and the basis of right allowing for the diversions for each month in 2014 and January through May 2015, and the anticipated monthly amount of water to be diverted and the basis of right for each month in 2015 beginning with June 2015. For direct diversion, the diversion information shall include the total amount of water diverted in the month and the maximum rate of diversion for each month. For storage, the diversion information shall include the quantity collected to storage each month. For all methods of diversion, you are requested to identify the method used to determine the amounts reported (Wat. Code § 5103(e).) and the primary use of water. This information shall be filed electronically at: http://water24a/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo.shtml.

(B) Identification and location of the POD and place of use for water right being claimed for each POD, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed, and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water. This information is an attachment to the report filed in (A) and must be filed electronically and mailed to: SWRCB-2014informational-order@waterboards.ca.govmailto:SWRCB-2014informational-order@waterboards.ca.gov.

(C) The monthly diversion amount for each month starting with June 2015 shall be submitted by the fifth (5th) of each succeeding month until the drought proclamations and orders described in Paragraph 1 above are rescinded. This information shall be filed electronically at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo_actual.php .

3. All water users or water right claimants receiving this Order are required to submit the information requested. Failure to comply with this Order subjects the party to enforcement action including, but not limited to, civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

4. 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 diverters for unauthorized diversion or use in violation of Water Code section 1052.

STATE WATER RESOURCES CONTROL BOARD

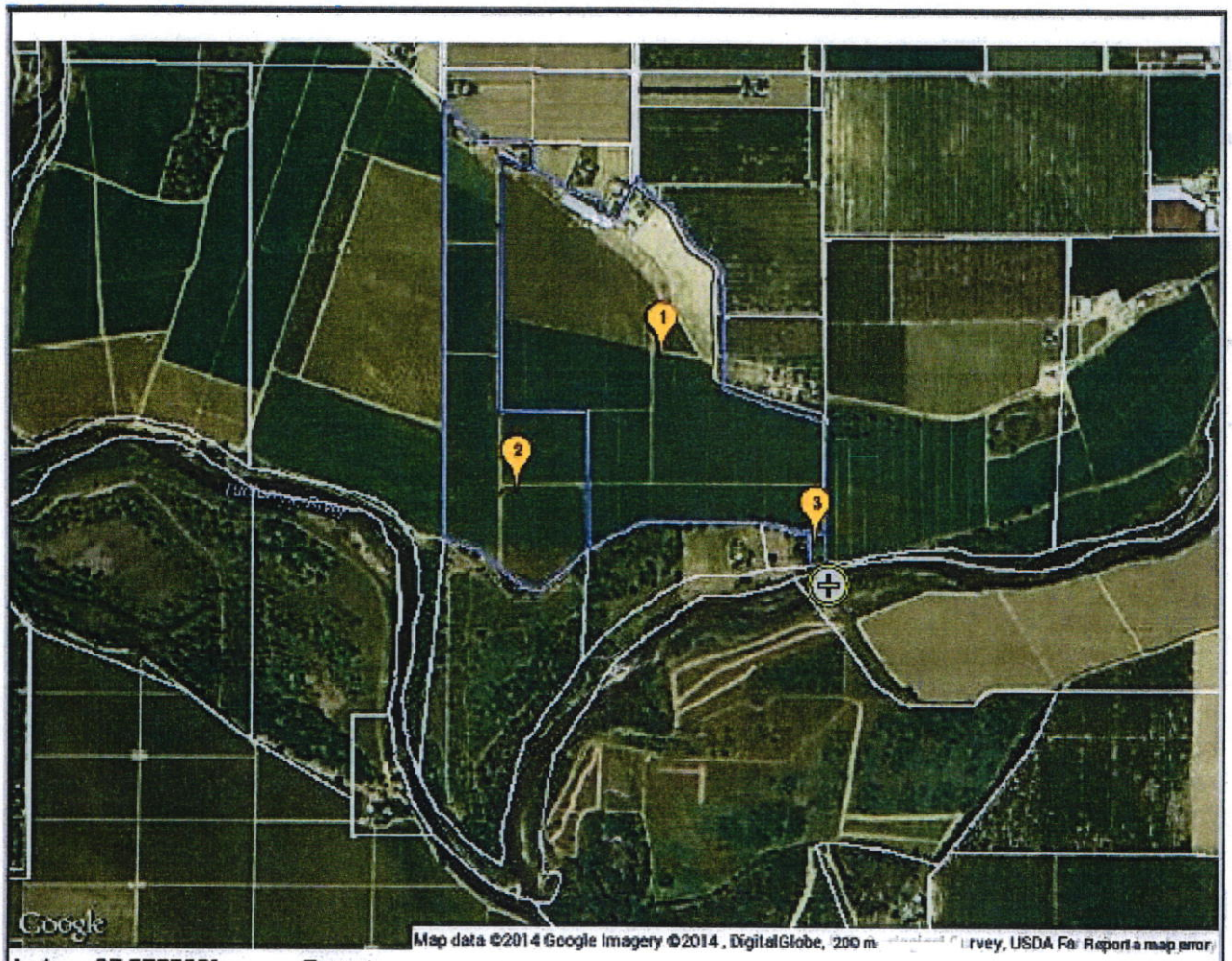
John O'Hagan, For

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAY 0 5 2015

ATTACHMENT A

8/5/2014 ParcelQuest



Lat: 37.575705° **Zoom**
Lon: -121.128259° **15**

ID ▲	Co / APN	Owner	Address	Map
1 ☑	STA 017-045-018-000	HOY PEDER K	3309 YOUNG RD MODESTO CA 95358-8244	MAP INDEX Co Idx
2 ☑	STA 017-045-006-000	PASSALAQUA MIKE S	3222 BANCROFT RD MODESTO CA 95358-8240	MAP INDEX Co Idx
3 ☑	STA 017-045-009-000	ADAMS JAMES M	3739 YOUNG RD MODESTO CA 95351	MAP INDEX Co Idx

page size: 50

*The information provided here is deemed reliable, but is not guaranteed.

Directions for submitting information required under Order WR-2015-0022-DWR

1) Open a blank Informational Order Supporting Data form through the Internet.
   The web address for the form is
   http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo.shtml

2) Your diversion under a claimed riparian right has been assigned the temporary tracking "UN000870". Enter "UN000870" in the "Statement Number" field which is the first field within the box for Part 1 of the form, as shown:

Enter the Statement Number associated with this report (e.g., S012345). If you are reporting for multiple water rights, please use a separate web submission for each Statement Number.	
Statement Number: *	UN000870 | Location of Water Right (County):
Set Password.	You will need a password to re-open this form.
Adjudication Name:	| Adjudication Diversion No.

3) Enter a password of your choice in the "Set Password" field. Please retain this password for future use.
4) Complete the remaining fields in Part 1 and click the button "Save & Continue to Part 2".
5) Complete Parts 2 and 3 and click the button "Save & Submit Form" at the end of Part 3.

You will need the temporary tracking number "UN000870" and the password you established to do the required monthly reporting of actual diversions at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo_actual.php

If you need assistance, please send an email to SWRCB-2014informational-order@waterboards.ca.gov or leave a voicemail at 916-341-5421.