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## State Water Resources Control Board

AUGUST 23, 2012

In Reply Refer to:  
DL: A028539

CERTIFIED MAIL NO # 7004-1160-0002-0464-6700  
Return Receipt Requested

ARMELIM DE SOUSA, ET AL  
3030 S. CENTRAL AVE  
TURLOCK, CA 95380

Dear Mr. De Sousa:

NOTICE OF CEASE AND DESIST ORDER FOR FAILURE TO RETURN COMPLETED 2012 TERM 91 COMPLIANCE CERTIFICATION STATEMENT UNDER LICENSE 13034 (APPLICATION A028539), DIVERSION OF WATER FROM VIVIAN SLOUGH IN STANISLAUS COUNTY

Enclosed is a draft Cease and Desist Order (CDO) for failing to return your completed 2012 Term 91 Compliance Certification Statement under the above-referenced 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.

On May 10, 2012, the Office of Delta Watermaster mailed you an Advance Notice of Probable Water Diversion Curtailment (Exhibit A) notifying you of a probable water diversion curtailment.

On July 24, 2012, the Office of Delta Watermaster mailed you a Water Diversion Curtailment Letter along with a 2012 Term 91 Compliance Certification Statement which was delivered to you by certified mail on July 27, 2012. The Water Diversion Curtailment Letter stated that "By no later than August 15, 2012 you must complete the enclosed 2012 Term 91 Compliance Certification Statement and return it to our office certifying, under penalty of perjury, that you will either: (1) cease diversion from all water sources; (2) cease diversion under the specified appropriate water right but will use water from your alternate water source(s); or (3) continue diversion under the specified appropriate water right because of the lack of hydraulic continuity to the Delta downstream from your point of diversion."

On August 22, 2012, Office of Delta Watermaster staff left you a voice message informing you that your 2012 Term 91 Compliance Certification Statement had not been received and that a draft CDO would be issued if you do not return your completed Compliance Certification Statement.

As of the date of this letter, the State Water Board has not received your 2012 Term 91 Compliance Certification Statement for the subject right. Therefore, you are in violation of the

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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](http://www.waterboards.ca.gov)

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 completed 2012 Term 91 Compliance Certification Statement; or (2) Submit a written request for a hearing on the draft CDO, as described below.

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.

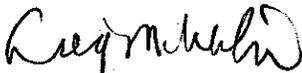
You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

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

Sincerely,



Craig M. Wilson  
Delta Watermaster

Enclosures: 1) Draft Cease and Desist Order  
2) May 10, 2012 Advance Notice of Probable Curtailment (Exhibit A)  
3) July 24, 2012 Water Diversion Curtailment Letter (Exhibit B)  
4) 2012 Term 91 Compliance Certification Statement (Exhibit C)

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

**DELTA WATERMASTER**

**ORDER WR 2012 –00XX-DW**

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**CEASE AND DESIST ORDER**

In the Matter of Violation of Term 91 Compliance by

**Armelim De Sousa, et al**

**License 13034 (A028539)**

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SOURCE: Vivian Slough

COUNTY: Stanislaus

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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 Armelim De Sousa, et al (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, 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 unauthorized diversion or use of water subject to this division.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code

On August 24, 2012, 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, unauthorized diversion or use of water and/or Title 23, division 3, Chapter 2, Article 20, section 847 of the California Code of Regulations. 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 2010-0048, 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. Your License contains a term (Standard Term 91) that prohibits diversion of water under specified conditions. These conditions occur when stored water (supplemental Project water from the

Central Valley Project operated by the U.S. Bureau of Reclamation or the State Water Project operated by the California Department of Water Resources is being released to meet water quality standards and other inbasin entitlements in the Sacramento-San Joaquin Delta Watershed.

2. On May 10, 2012, the Office of Delta Watermaster mailed you an Advance Notice of Probable Water Diversion Curtailment (Exhibit A) notifying you of a probable water diversion curtailment.
3. On July 24, 2012, the Office of Delta Watermaster mailed you a Water Diversion Curtailment Letter (Exhibit B) along with the 2012 Term 91 Compliance Certification Statement (Exhibit C) which was delivered to you by certified mail on July 27, 2012. The Water Diversion Curtailment Letter stated that "By no later than August 15, 2012 you must complete the enclosed 2012 Term 91 Compliance Certification Statement and return it to our office certifying, under penalty of perjury, that you will either: (1) cease diversion from all water sources; (2) cease diversion under the specified appropriative water right but will use water from your alternate water source(s); or (3) continue diversion under the specified appropriative water right because of the lack of hydraulic continuity to the Delta downstream from your point of diversion."
4. On August 22, 2012, Office of Delta Watermaster staff left you a voice message informing you that your 2012 Term 91 Compliance Certification Statement had not been received and that a draft CDO would be issued if you do not return your completed Compliance Certification Statement.
5. As of August 23, 2012, the Office of Delta Watermaster has not received your 2012 Term 91 Compliance Certification Statement.

**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 a completed 2012 Term 91 Compliance Certification Statement.

### **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:

DRAFT

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DRAFT



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

May 10, 2012

### **ADVANCE NOTICE – PROBABLE WATER DIVERSION CURTAILMENT DURING 2012**

Armelim De Sousa, et al  
3030 S. Central Avenue  
Turlock, CA 95380

#### **NOTICE OF PROBABLE CURTAILMENT OF WATER DIVERSION DURING 2012 (TERM 91) WATER RIGHT License 13034 (APPLICATION NO. A028539)**

Your License 13034 contains a term (Standard Term 91) that prohibits diversion of water under specified conditions. These conditions occur when stored water (supplemental Project water) from the Central Valley Project operated by the U.S. Bureau of Reclamation or the State Water Project operated by the California Department of Water Resources is being released to meet water quality standards and other inbasin entitlements in the Sacramento-San Joaquin Delta Watershed. The State Water Resources Control Board is giving this advance notice to advise affected diverters on the probability of a water diversion curtailment.

**Based on projected water and weather conditions, you may not be able to divert water under License 13034 from the period of early June through August 31, 2012.**

You will be sent a Notice of Curtailment of Water Diversion by certified mail when the water diversion curtailment period actually begins. If you plan to use water during the water diversion curtailment period, you must arrange to obtain an alternate source of water such as ground water or contract (purchased) water from agencies that have available water.

If you have any questions concerning this notice, please call Dustin La Vallee of the Delta Watermaster staff at (916) 445-5961.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig M. Wilson".

Craig M. Wilson  
Delta Watermaster

cc: Don Glaser, Regional Director  
Mid-Pacific Region  
Bureau of Reclamation  
U.S. Department of the Interior  
2800 Cottage Way, MP-100  
Sacramento, CA 95825-1898

Jeff Sanberg  
Central Valley Operations Office  
Bureau of Reclamation  
U.S. Department of the Interior  
3310 El Camino Ave, Suite 300  
Sacramento, CA 95821

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

Mark Cowin, Director  
State Department of Water Resources  
1416 Ninth Street, 11th Floor  
Sacramento, CA 95814

Exhibit A



## State Water Resources Control Board

July 24, 2012

# **WATER DIVERSION CURTAILMENT NOTICE**

Armelim De Sousa, et al  
3030 S. Central Avenue  
Turlock, CA 95380

### **NOTICE OF CURTAILMENT OF WATER DIVERSION DURING 2012 (TERM 91) WATER RIGHT License 13034 (APPLICATION NO. A028539)**

Your License 13034 contains a term (Standard Term 91) that prohibits diversion of water under specified conditions. These conditions occur when stored water (supplemental Project water) from the Central Valley Project operated by the U.S. Bureau of Reclamation or the State Water Project operated by the California Department of Water Resources is being released to meet water quality standards and other inbasin entitlements in the Sacramento-San Joaquin Delta Watershed.

You are hereby notified that the State Water Resources Control Board has determined that supplemental Project water is being released in the Sacramento-San Joaquin Delta Watershed.

### **YOU MUST IMMEDIATELY DISCONTINUE WATER DIVERSION UNDER License 13034 FROM AUGUST 2, 2012 THROUGH AUGUST 31, 2012, UNLESS NOTIFIED EARLIER.**

If release of supplemental Project water continues into September, a Notice of Continued Curtailment of Water Diversion will be sent to you at the end of August. If you are still in need of water, you must now use your alternate water supply such as groundwater or contract (purchased) water from agencies that have available water.

The water diversion curtailment required by this Notice does not apply if there is a section of streambed downstream of your point of diversion where there is no visible surface flow. A determination of "no hydraulic continuity" must be made by direct personal observation and only when there is no diversion occurring under the water right listed above.

**PLEASE NOTE: By no later than August 15, 2012 you must complete the enclosed 2012 Term 91 Compliance Certification Statement and return it to our office certifying, under penalty of perjury, that you will either: (1) cease diversion from all water sources; (2) cease diversion under the specified appropriative water right but will use water from your alternate water source(s); or (3) continue diversion under the specified appropriative water right because of the lack of hydraulic continuity to the Delta downstream from your point of diversion. In this regard, State Water Board staff may inspect your point of**

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

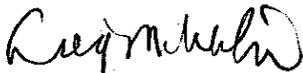
1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

**diversion to determine compliance with this Notice.**

Under California Water Code (CWC) section 1052(a), unauthorized water diversions are considered a trespass against the State of California as well as a violation of the terms and conditions of your water right permit or license. Continued violation could be subject, after the appropriate notification, to enforcement action including imposition of administrative civil liability (CWC section 1052) or issuance of a cease and desist order (CWC division 2, part 2, chapter 12). The enforcement action could include monetary penalties not to exceed \$500 per day for administrative civil liability or not to exceed \$1,000 per day for violation of a final cease and desist order.

If you have questions or need assistance, please contact Dustin La Vallee at (916) 445-5961 or by email at: [dlavallee@waterboards.ca.gov](mailto:dlavallee@waterboards.ca.gov). Written correspondences or inquiries should be addressed as follows: State Water Resources Control Board, Office of the Delta Watermaster, Attn: Dustin La Vallee, 1001 I Street, P.O. Box 100, Sacramento, CA, 95812.

Sincerely,



Craig M. Wilson  
Delta Watermaster

cc: Don Glaser, Regional Director  
Mid-Pacific Region  
Bureau of Reclamation  
U.S. Department of the Interior  
2800 Cottage Way, MP-100  
Sacramento, CA 95825-1898

Paul Fujitani  
Central Valley Operations Office  
Bureau of Reclamation  
U.S. Department of the Interior  
3310 El Camino Ave, Suite 300  
Sacramento, CA 95821

John O'Hagan, Manager  
Enforcement Section  
Division of Water Rights  
1001 I St.  
Sacramento, CA 95812

Mark Cowin, Director  
State Department of Water Resources  
1416 Ninth Street, 11th Floor  
Sacramento, CA 95814

**2012 TERM 91 COMPLIANCE CERTIFICATION STATEMENT**

*Return by August 15, 2012 to:*

State Water Resources Control Board  
Office of Delta Watermaster  
P.O. Box 100  
Sacramento, CA 95812

**APPROPRIATIVE WATER RIGHT SUBJECT TO THE TERM 91 WATER DIVERSION CURTAILMENT:**

License No. 13034 (Application A028539)

*Please correct owner name and/or address*

Armelim De Sousa, et al  
3030 S. Central Avenue  
Turlock, CA 95380

**COMPLIANCE CERTIFICATION**

*In response to the Term 91 Notice of Curtailment of Water Diversion during 2012 from the Office of Delta Watermaster:  
(check the applicable boxes below)*

- NO DIVERSION** – *I hereby certify that I will not be diverting any water under the specified appropriative water right nor will I be serving its place of use from any other source during the 2012 Term 91 water diversion curtailment period.*
- ALTERNATE SOURCE** – *I hereby certify that I will not be diverting any water under the specified appropriative water right during the 2012 Term 91 water diversion curtailment period. However, I will be serving all or a portion of its place of use with my alternate source(s) of water, as specified below:*
  - Ground (well) water
  - Riparian water right(s) and/or pre-1914 appropriative water right(s) whose water use is reported as required by California Water Code section 5100 et. seq. under Statement of Water Diversion and Use No(s): \_\_\_\_\_
  - Riparian water right(s) and/or pre-1914 appropriative water right(s) whose water use is not required to be reported by a Statement of Water Diversion and Use due to an exclusion in California Water Code section 5101 (water use regulated by a watermaster appointed by the Department of Water Resources; reported in an annual hydrological data bulletin by the Department of Water Resources, such as the Delta Lowlands area; or included in an annual report submitted by a court-appointed watermaster to the court or the State Water Resources Control Board).
  - Post-1914 appropriative water right(s) not subject to the 2012 Term 91 Water Diversion Curtailment Notice :  
Application No(s): \_\_\_\_\_, Permit or License No(s): \_\_\_\_\_
  - Contract (purchased) water from \_\_\_\_\_
  - Will serve the place of use by withdrawing water stored under Permit/License No. \_\_\_\_\_ prior to start of this curtailment period.
  - Other source (specify) \_\_\_\_\_
- NO HYDRAULIC CONTINUITY** – *I will continue pumping under the specified appropriative water right because I hereby certify that there is a section of streambed where no visible flow exists downstream of the point of diversion covered by the specified appropriative water right to either the Sacramento River, San Joaquin River, and/or the Sacramento-San Joaquin Delta. I determined there is no visible flow when I was not diverting water under this appropriative water right, as summarized below:*

Location of the streambed section downstream of my point of diversion where there is no visible flow:

From: \_\_\_\_\_

To: \_\_\_\_\_

*I declare under penalty of perjury that the information in this certification is true to the best of my knowledge.*

Name: \_\_\_\_\_  
(Permittee/Licensee/Authorized Representative)

Phone No.: (       ) \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 2012