

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2012-0010-DWR**

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**CEASE AND DESIST ORDER**

In the Matter of Violation of License Term by

**Fred F Podesta Jr**

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SOURCE: Unnamed Stream

COUNTY: San Joaquin

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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 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](http://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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