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April 5, 2016

Via OnTrac

John O'Hagan, Assistant Deputy Director
State Water Resources Control Board
Division of Water Rights Records Unit
1001 I Street, 2nd Floor
Sacramento, CA 95814

STATE WATER RESOURCES
CONTROL BOARD
DIVISION OF WATER RIGHTS
SACRAMENTO
2016 APR -6 AM 11:33

Re: Written Request for Hearing

Dear Mr. O'Hagan:

Delbert Lehr and Jeff Lehr do hereby request a hearing under the Cease and Desist Order issued in regard to License 217 and License 3421, Application 1024 and Application 11786.

Notice is given that this matter should be easily resolved without a full hearing. No water was utilized for fire protection from the sources or for dust suppression in 2015 despite the reference in the report. The water provided to Sierra Pacific Industries in 2014 for trucking to their work site was provided as a courtesy to a neighbor and we believe was utilized on lands which are within the watershed of the Feather River. We believe it will be found that those lands of Sierra Pacific hold riparian rights to the Feather River flows. The diversion from the facilities located upon the Lehr property was for the convenience of Sierra Pacific and the diversion of riparian waters and not used under the licenses. Under the case of *Holmes v. Nay*, a riparian user may divert at a location off of the riparian land so long as no injury to intervening users occurs.

The State Board review of the purpose of use of the post-1914 rights, the Lehrs are

obviously put on notice and cautioned by the Board not to provide for this courtesy to a neighbor in the future, but any claim violation would appear to be not a substantive violation and certainly the State Water Resources Control Board would encourage neighbors to cooperate in drought years. To require Sierra Pacific to develop its own point of diversion for riparian waters would appear to be putting form over substance and we suspect the SWRCB staff who were reviewing this matter did not initially think of the use in that fashion. They were quite courteous and obviously are attempting to enforce the law and provide notice of their concern in regard to the limited purposes and place of use of the licenses.

The point made in regard to the lack of a statement of use for riparian use is also correct and helpful. The Lehrs will need, if this property is to be properly developed, a point of diversion for riparian water. In the past, obviously, the licenses were not the only source of water. Domestic water is provided from a spring which does not flow off of the property and is located on adjacent Forest Service Land, and for which the Lehrs hold a real property access permit from the Forest Service. We will be reviewing the question of whether or not a location for extraction of riparian water from the Feather River should be developed with the cooperation from the Department of Fish and Wildlife of the State of California, or whether, instead, under the doctrine of *Holmes v. Nay*, that a riparian may divert at an upper tributary point (the post-1914 appropriative right filings) so long as there are no intervening users and no harm to water users, and provide for filing of a Statement of Water Diversion and Use for riparian purposes at those locations. Your investigation report is helpful in alerting the Lehrs to the need to plan their future water use and document it now. The fact is that other than the spring water, it appears that riparian water has not been utilized for some period of time and the licenses being satisfactory for the current uses. You know, of course, the housing and other riparian uses were curtailed when the operations of the lumber mill stopped.

CONCLUSION:

We would appreciate it if you provide us approximately thirty (30) days to make a determination of where Statements of Diversion and Use for riparian use should be filed and reports made of no use under those rights since 2009. We believe out of an abundance of caution a Statement of Use should be filed for the spring located on Forest Service Land even though the spring does not appear to be tributary to the Feather River. The question will be whether other statements for other locations for riparian diversion should be filed at this time.

Hopefully, the Cease and Desist Order can be resolved with a stipulation that

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except in fire emergencies, trucks will not be filled from the two post-1914 diversion locations. It is appreciated that no threat of expenses or fines was made in the notice, again, indicating the cooperative nature of your staff. Be assured that will be reciprocated.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 
PAUL R. MINASIAN *jj*

PRM/jg

cc: Delbert and Jeff Lehr
S:\Denise\Lehr\Letter to SWRCB 4-04-16.wpd