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State Water Resources Control Board

JUN 17 2015

In Reply Refer to:  
MC:UN000707,  
S024453, D032277

Mr. Perry Norris, Executive Director  
Truckee Donner Land Trust  
10069 West River Street, Suite C-1  
Truckee, CA 96161

Dear Mr. Norris,

**NOTICE OF DROUGHT CONDITIONS AND REMINDER THAT A PENDING APPLICATION TO APPROPRIATE WATER DOES NOT GIVE YOU THE RIGHT TO DIVERT AND/OR USE WATER, AND REQUEST FOR BYPASS PLAN**

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) sent the Truckee Donner Land Trust (Trust) a letter of finding dated April 30, 2014. This letter concluded that the Trust did not then have a valid basis of right to divert any volume of water at Lake Van Norden.

Our April 30, 2014 letter identified the actions that the Trust is required to do with regards to the diversion of water at Lake Van Norden. The Trust was required to submit an application to appropriate water or to notify the Division of its intentions to remove the dam, and also to file an Initial Statement of Water Diversion and Use (Statement). The Trust complied by notifying the Division of its intentions to reduce the height of the dam in order to reduce the storage capacity to 5 acre-feet, and filed a Small Domestic Use Registration to appropriate this same volume for domestic purposes. Additionally, the Trust filed a Statement. These actions taken by the Trust did not create a water right, but rather initiated the process to obtain an appropriative water right to seasonally store water collected from the South Fork Yuba River. Filing a Statement is the only available method for the Trust to account for water diverted to storage in 2013 prior to being notified of the apparent lack of proper authorization, and the Trust is required to continue filing Supplemental Statements for water diverted without a valid basis of right until such time as a registration certificate is issued.

However, as of May 1, 2015, all post-1914 water rights have again been curtailed in the Sacramento and San Joaquin River watersheds. A pending application to appropriate water is not a water right and it does not give you a right to divert water. The diversion and use of water without a water right is a trespass against the State for which you could be subject to civil liability of up to \$1,000 per day plus \$2,500 for each acre-foot diverted or used. (See Water Code, § 1052.) The State Water Board has administrative authority to impose such liability where a party diverts water subject to the State Water Board jurisdiction without a necessary permit or license. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board

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issues a Cease and Desist Order against an unauthorized diversion, violation of any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

During this time of water scarcity, the State Water Board will be investigating and pursuing enforcement against the unauthorized diversion or use of water, including persons with pending applications that divert water prior to receiving the necessary permit. Enforcement efforts will be particularly strong in areas of the State where existing water supplies are insufficient to meet the needs of all water rights holders and curtailment notices have been issued.

Therefore, the Trust should ensure that any inflow into the reservoir is met with an equal discharge below the dam such that the water level reflects losses due to seepage and evaporation. **Please submit a plan within 20 days of receipt of this letter to indicate how the Trust will ensure all inflows are bypassed.**

Please contact Michael Contreras by telephone at (916) 341-5307 or via email at [mcontreras@waterboards.ca.gov](mailto:mcontreras@waterboards.ca.gov) if you should have any questions.

Sincerely,



Victor Vasquez, Supervisor  
Enforcement Unit 3  
Division of Water Rights

Cc: John Svahn, Stewardship Director  
Truckee Donner Land Trust  
[john@tdlandtrust.org](mailto:john@tdlandtrust.org)