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## State Water Resources Control Board

July 6, 2023

CERTIFIED MAIL

ANDREW FOBERT

### **NOTICE OF VIOLATION: FAILURE TO COMPLY WITH DIVERSION MEASUREMENT AND REPORTING REGULATION FOR WATER RIGHT ID A011499**

To Andrew Fobert:

The State Water Resources Control Board (“State Water Board” or “Board”) Division of Water Rights (“Division”) relies on accurate and timely water use data from you and other diverters to help manage California’s water.

By February 1 of each year, water right owners must submit Water Diversion and Use reports to the Board detailing how much water was diverted and used in the previous water year. These reports include supplemental statements of water diversion and use, progress reports by permittees, reports of licensees, and water use reports of registration holders. These reports must include information on the device or method used to calculate the amount of water diverted, as well as the measurement data collected by such a device. **Our records indicate that multiple Water Diversion and Use Reports lack the required information of your measurement device and the measurement data collected from the device.**

Compliance with measurement regulations is increasingly important as we investigate measures to protect the Clear Lake hitch. The Clear Lake hitch is a large minnow found only in Clear Lake that spawns in its tributary creeks and could soon go extinct. In response to the situation, the Board is increasing attention in Lake County to ensure water users are complying with their right or claimed right.

### **Water Measurement and Reporting Regulations**

Seven years ago, in January 2016, the State Water Board adopted new water use measurement regulations. The regulations require the installation of measuring devices and set standards for monitoring and reporting diversions of water. These monitoring and reporting requirements are designed to improve the Board’s water supply awareness, while allowing water diverters the flexibility to determine how best to comply with the new requirements based on their individual circumstances.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Water users were given until 2018 to comply with these regulations. The regulations can be found in Title 23 of the California Code of Regulations, sections 931 through 938.

**Water users must submit the data collected by their measurement device with their Annual Water Diversion and Use Reports.**

### **Violation**

The Division of Water Rights has reviewed your Water Diversion and Use Reports and found that you have failed to submit information regarding your measuring devices, failed to submit the data collected from such devices, or both. In addition, the data submitted must reflect the amount diverted for each specific right and not a total amount of a reservoir or stream. Data must also reflect a volume of water diverted by each right and not simply a rate or reservoir elevation. These failures violate Title 23 of the California Code of Regulations, section 929, subdivision (c)(4) and (c)(7).

### **Enforcement**

Water Code section 1846 grants the Board the authority to impose an administrative civil liability in an amount not to exceed five hundred dollars (\$500) for each day of violation of a regulation adopted by the Board.

### **Corrective Action**

**The Division of Water Rights requests that you correct these ongoing violations by submitting *amended* water Diversion and Use Reports within 30 days of receipt of this notice.**

**The amended reports must include the required information regarding your diversion measurement device or method used to calculate the amount of water diverted, and the data collected by such a device or method.**

**Failure to correct this violation may subject you to enforcement actions and penalties as high as \$500 per day beginning from the first day of noncompliance.**

If you do not yet have a measurement device installed or have not adopted an appropriate measurement method, you may be in violation of Title 23, Chapter 2.8, Section 932, of the California Code of Regulations. Additional regulations regarding Water Diversion and Use Reports and measuring and monitoring may also be required per Title 23 requirements for these water rights. We have developed interim guidance for compliance and measurement device reporting that is enclosed with Exhibits A and B. Digital versions of the guidance documents will also be emailed separately. If you do not have an email address on file, please supply one to the staff address below to receive a copy of the interim guidance.

If you have any questions regarding compliance with the measurement regulations, you can visit our website:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/water\\_measurement.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/water_measurement.html)

Or you can contact knowledgeable Division staff directly at (916) 322-8469 or by email at [Nicholas.Kehrlein@waterboards.ca.gov](mailto:Nicholas.Kehrlein@waterboards.ca.gov).

Sincerely,

Karen Kramer, PG  
Environmental Program Manager – Enforcement Special Projects Section  
Division of Water Rights

Enclosures: 1. Exhibit A SB-88 Data File Guidance  
2. Exhibit B SB-88 Data File Template

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