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## State Water Resources Control Board

CERTIFIED MAIL

In reply refer to:  
INV 15021

Robert O. Valentine

CERTIFIED MAIL NO:

Dear Mr. Valentine:

### **NOTICE OF VIOLATIONS FOR WATER RIGHT PERMIT 17266A (A024790A) - MENDOCINO COUNTY**

On April 21, 2021, Governor Gavin Newsom issued an executive order declaring a drought State of Emergency in Mendocino and Sonoma counties due to severe drought conditions in the Russian River Watershed. On May 10, 2022, the State Water Resources Control Board (Board) adopted a revised Emergency Curtailment Regulation to Protect Water Supplies in the Russian River Watershed (Emergency Regulation). As part of the drought curtailment inspection efforts, Division of Water Rights (Division) staff review water right permits/licenses and inspect the diversion facilities to ensure compliance with the Emergency Regulation.

Division staff reviewed your water right Permit 17266A (A024790A) and the associated Annual Water Diversion and Use Reports and have identified multiple violations. The violations include, but are not limited to, the following:

1. Unauthorized storage reservoir located within your property, not covered under Permit 17266A or the pending change petition;
2. Terms and conditions under Permit 17266A are out of compliance; and,
3. No information regarding a measurement device has been installed at the point of diversion under Permit 17266A, with the capability of reporting weekly volumes for their water diversions as defined in the California Code of Regulations, Title 23, Sections 931 – 938 (Measurement Regulations); no measurement data files have been submitted.

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

## **BACKGROUND**

On September 26, 1986, the Division issued Permit 17266A (A024790A) authorizing 60 acre-feet per annum offstream storage to be collected from Edwards Creek, from January 1 to May 30 of each year for frost protection and irrigation purposes. The maximum rate of diversion to offstream storage is limited to 1.2 cubic feet per second. The development period to complete application of the water ended on December 31, 2002.

On April 19, 2004, you filed two petitions. A petition for extension of time to develop your permit, and a petition for change. In the change petition, it stated that the offstream reservoir named in the permit has changed from offstream to an onstream reservoir. The petition requested to add the dam (existing onstream reservoir) as a second point of diversion, and to retain the authorized diversion to offstream storage from Edwards Creek. Furthermore, the petition stated that the existing reservoir has a capacity of 12 acre-feet and that you proposed to enlarge the reservoir capacity to 28.6 acre-feet, as well as requesting to expand the existing place of use. Both petitions are still pending.

## **UNAUTHORIZED OFFSTREAM RESERVOIR**

Satellite imagery shows that an offstream reservoir located within your property, APN 050-340-20-00, was built in the fall of 2017. Our records indicate that no water right is associated with this reservoir. Additional storage is considered an initiation of a new water right and it requires an approval by the Division.

## **TERMS AND CONDITIONS UNDER PERMIT 17266A**

On June 26, 2013, Division staff conducted a compliance inspection of Permit 17266A. During the inspection, they identified the absence of a device for measuring bypass flow. Permit term 16 requires a device for measuring any flows the permit's terms require. It states:

“No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained.”

The lack of a device for measuring bypass flows therefore constitutes a violation of permit term 16.

Then, on March 10, 2014, the Division requested submission of a plan demonstrating how you would comply with permit term 16. On April 23, 2014, you submitted a letter requesting a delay in the bypass installation until September 1, 2014. To date, the Division has yet to receive a satisfactory compliance plan, or evidence of an installed bypass flow measuring device on Edwards Creek in accordance with permit term 16.

Furthermore, Term 11 states “Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.” Since 2014, you have frustrated effort by Division staff to gain access to your property to conduct compliance and curtailment inspections. This is a clear violation Permit 17266A’s terms and conditions. If access is not provided, Division staff may obtain an inspection warrant.

## **WATER MEASUREMENT AND REPORTING REGULATIONS**

In January 2016, the Board adopted new water use measurement regulations. These regulations require the installation of measuring devices and set standards for monitoring and reporting diversions of water. These new 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. Water users are required to submit the data collected by their measurement device with their annual water use reports. Water users were given one to two years to comply with these regulations, depending on the diversion size. Water users with a water right, or claimed right, to divert 10 acre-feet of water or more must install a measurement device by no later than January 1, 2018. The regulations can be found in Title 23 of the California Code of Regulations, sections 931 through 938.

By February 1 of each year, water right owners are required to submit their annual water use reports to the Board detailing how much water was diverted and used in the previous water year. Our records indicate that your Annual Water Diversion and Use Reports do not contain the required information of your measurement device and measurement data, as defined by the measurement regulations. This failure constitutes a violation of section 925 (c)(7) of Title 23 of the California Code of Regulations.

## **REQUIRED ACTIONS**

Within 30 days of receipt of this letter, you are required to provide the following:

### *Unauthorized Storage Reservoir*

1. The basis of right and source of water for the unauthorized storage reservoir located within your property, and information on how this new offstream reservoir is associated with Permit 17266B and/or the existing change petition.
2. In order to accurately determine the capacity of this offstream reservoir and the existing reservoir named in the permit, submit survey maps prepared by a civil engineer or a land surveyor registered or licensed in the State of California pursuant to the California Code of Regulations Title 23, Division 3, Sections 717 and 1701.3.

*Terms and Conditions under Permit 17266B*

1. Submit evidence a bypass flow measuring device has been installed in accordance with permit term 16 as described above,
2. Allow Division staff reasonable access to conduct any future compliance and curtailment inspections in accordance with permit term 11 as described above.

*Water Measurement and Reporting Regulations*

1. Submit evidence that a measurement device has been installed at the point of diversion, with the capability of reporting weekly volumes for their water diversions under Permit 17266B,
2. Submit measurement data files that document weekly diversion volumes, recorded by the measurement device, as required under section 933 of Title 23 of the California Code of Regulations. Measurement data files must be submitted for the 2018-2022 Annual Water Use reports.

If you have any questions regarding compliance with the measurement regulations, you can contact Division staff directly at (916) 341-5342 or by email at:

[DWR-Measurement@waterboards.ca.gov](mailto:DWR-Measurement@waterboards.ca.gov) or you can visit our website at:

[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)

**ENFORCEMENT**

Failure to provide the required information is considered a violation of the terms and conditions of Permit 17266B, and the adopted regulations by the Board. Water Code section 1846 grants the Board the authority to impose an administrative civil liability in amount not to exceed five hundred dollars (\$500) for each day of violation of a regulation adopted by the Board. If no action is taken regarding the aforementioned violations, we may initiate a formal enforcement action.

Submissions of evidence can be sent directly to Haweya Farah via email at [Haweya.Farah@waterboards.ca.gov](mailto:Haweya.Farah@waterboards.ca.gov). Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Haweya Farah, P.O. Box 2000, Sacramento, CA 95812-2000.

ROBERT O. VALENTINE  
Water Right ID: A024790A

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Sincerely,

A handwritten signature in cursive script that reads "Kathryn Bare".

Kathryn Bare, P.E.  
Senior Water Resource Control Engineer  
Enforcement Section  
Division of Water Rights