



## State Water Resources Control Board

April 12, 2024

CERTIFIED MAIL

Diamond Lake Ranch, LLC  
c/o Dennis & Laura Montgomery

CERTIFIED MAIL NO: [REDACTED]

Dear Mr. and Mrs. Montgomery:

**NOTICE OF VIOLATION: UNAUTHORIZED DIVERSION, LICENSE 9179 TERMS AND CONDITIONS, DIVERSION DURING CURTAILMENT, FAILURE TO FILE REPORTS OF LICENSEE, MONITORING AND REPORTING, FAILURE TO FILE INITIAL STATEMENTS, AND CHANGES TO THE LICENSE NOT AUTHORIZED BY THE BOARD**

The State Water Resources Control Board (State Water Board, or Board), Division of Water Rights (Division) staff have identified the following ongoing violations on your property located at [REDACTED] in Raymond, or Madera County Assessor's Parcel Number [REDACTED]:

1. Unauthorized diversions of water occurred during the 2022-2023 season of diversion – Water Code section (WC §) 1052.
  - a. Division staff reviewed recent aerial images of Diamond Lake from August 7, 2022, and July 1, 2023, and determined the volume of water held in storage using the reservoir's area-capacity (a-c) curves. Based on the difference in volume attributed to the surface areas observed on the referenced dates above, Division staff have determined that you diverted more water than the maximum allowable diversion rate of 25 acre-feet (AF) within their previous and subject season of diversion (i.e., 11/1/2022 to 4/30/2023). Reservoir volume calculations were supported with precipitation data from the Department of Water Resources' (DWR) California Data Exchange Center (CDEC). See Enclosure for analysis.
  - b. In your Draft Compliance Plan, created in response to a previous Notice of Violation (NOV) addressed to you (dated March 3, 2023), you asserted you would release water in excess of 25 AF to prevent unauthorized diversions from occurring (the Enclosure to this letter supports otherwise).

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

2. Violation of terms and conditions of License 9179: the amount of water beneficially used shall not exceed 25 acre-feet (AF) per year, there is no outlet pipe installed or other means satisfactory to the State Water Board available to release water to satisfy prior rights and prevent unauthorized diversions from occurring, and you have not filed annual Reports of Licensee since you purchased the subject property in 2021 – WC §1846(a)(1), & California Code of Regulations, Title 23 (CCR) §929.
  - a. You were previously notified of the need for an outlet pipe in the Division’s first NOV, dated March 3, 2023. In response, your agent submitted on your behalf a Draft Compliance Plan stating you would provide a photograph to the Division by the end of summer 2023 of the alleged pump you would purchase to bypass excess water. To date, no photographic evidence has been provided to Division staff.
3. Diversions of water to storage occurred while your water right was curtailed – WC §1846(a)(2).
  - a. You violated a curtailment order<sup>1</sup> by diverting water to storage into Diamond Lake during the entire month of November 2022.
4. Failure to File annual Reports of Licensee – CCR §929, & WC §1846(a)(2).
  - a. On April 22, 2022, Division staff notified you of the need to comply with monitoring and reporting regulations. Annual reporting is also a term and condition of your license. You purchased the subject property in September 2021. At the time, annual reports were due by April 1 each year. As of 2024, annual reports are due by February 1. No annual Reports of Licensee have been filed since the previous owner last filed for 2020.
5. Monitoring and reporting regulations – CCR, sections (§§) 931-938, & WC §1846(a)(2).
  - a. No measurement devices have been installed. You were notified of this regulation on a previous NOV (dated March 3, 2023), and you submitted a Draft Compliance Plan indicating you would install the device by the end of Fall 2023. To date, no evidence of an installed measurement device has been received by Division staff.
6. Failure to File Initial Statements of Water Diversion and Use (Statement/s) – WC §5101.

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<sup>1</sup> August 12, 2022, Notice of Approval of Emergency Regulation Action.

- a. On April 22, 2022, Division staff notified you of the need to file Statements for siltation pond 1 (SP1),<sup>2</sup> and siltation ponds 2 and 3 (SP2, SP3)<sup>3</sup> to report your diversion and use of water in said ponds, even if the dams erected were later removed.
  - b. To date, you have not filed any new Statements to report your diversion and use of water for the new points of diversion (POD/s – i.e., small earthen dams for ponds SP1, SP2, and SP3), not authorized by the license.
7. Changes to License 9179 without prior approval from the Board – WC §1701.
- a. Diamond Lake now has a larger total surface area subject to inundation by water diverted to storage when full, 5.66 acres, than when the license was issued, 3.8 acres. An increase in surface area of Diamond Lake as well as the effective place of use<sup>4</sup> of 1.86 acres (5.66 – 3.8) are not authorized by the license. As such, this change is ineligible for a potential minor change petition – WC §1700.4(a)(2).
  - b. The additional storage capacity of Diamond Lake added after licensing of 21.75 AF (47.95 - 26.2) has caused injury to a downstream legal user of water – WC §1702. The alleged injury by your enlarged reservoir to the legal downstream user of water is the premise of this investigation.
  - c. You added new PODs to create SP2 and SP3 which were later allegedly “washed out” by winter storms, per your agent, but SP1 still remains.
  - d. During the site visit with Division staff on February 25, 2022, you asserted that SP1 was constructed by the previous owner of the subject property to prevent silt from entering into Diamond Lake from its western inlet channel,<sup>5</sup> and that SP2 and SP3 were also constructed to prevent silt from entering Diamond Lake from the licensed source stream, Grub Gulch Creek.
    - i. However, in the July 28, 2023, Response Letter from your agent, they asserted that SP1 is not a separate siltation pond, that it is “part of Diamond Lake,” that SP1 is instead the product of “a previous landowner constructed a road through the swale of the lake and installed a culvert,” and that the storage of water in SP1 does not require regulatory approval from the Board.

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<sup>2</sup> Diverting water to storage from an Unnamed Stream tributary to Grub Gulch Creek.

<sup>3</sup> Previously diverted water to storage from Grub Gulch Creek, upstream of Diamond Lake.

<sup>4</sup> The new surface area of Diamond Lake, when full, available for recreation and stockwatering.

<sup>5</sup> Unnamed Stream tributary to Grub Gulch Creek.

- ii. Siltation control at SP1, as you asserted during the site visit, is a form of water quality use,<sup>6</sup> a beneficial use that is not authorized by your license – WC §1700.

The purpose of this letter is to inform you of the violations listed above, to provide Division staff's recommendation to pursue a water right to legalize all of the storage capacity of Diamond Lake<sup>7</sup> to prevent further unauthorized diversions of water from occurring, to inform you of the potential liability the State Water Board can impose against you if you do not diligently pursue compliance, and to remind you that Division staff previously recommended informal enforcement via Compliance Plan followed to completion. However, Division staff recommend this be the final request for voluntary compliance, and propose the next step be formal enforcement in the form of an Administrative Civil Liability ("ACL" – i.e., fines) if you fail to comply, or if you again divert greater than 25 AF during the season of diversion in the future.

### **DETERMINATION OF MAXIMUM POTENTIAL CIVIL LIABILITY**

#### **1. Unauthorized Diversion – WC §1052**

- a. Division staff estimate that Diamond Lake filled by December 15, 2022. Division staff calculated days of beneficial use after Diamond Lake was filled by estimating the days the property was occupied (see Enclosure).
- b. Based on reviews left on Airbnb by customers who rented the subject property, Division staff determined the subject property was rented at least 19 times after the lake filled. Per Airbnb, your property must be rented for a minimum of 3 days. Thus, each customer review represents at least 3 rental days or days of beneficial use. Additionally, two of the 19 reviews mentioned staying a week or seven days each. Therefore, based on Airbnb reviews only, the subject property was rented and used at least 65 days<sup>8</sup> after the unauthorized diversion occurred.<sup>9</sup>

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<sup>6</sup> CCR §670

<sup>7</sup> 47.95 AF (current capacity) – 26.2 AF (capacity measured during licensing inspection) = 21.75 AF of additional storage capacity added after the license was issued and not authorized by the Board.

<sup>8</sup> [(17 reviews) \* (3 days)] + [(2 reviews) \* (7 days)] = 65 days rented by customers who left a review.

<sup>9</sup> i.e., Diamond Lake filled, diverting an estimated minimum of 34.7 AF to storage in the subject season of diversion.

- c. However, the days of use could be higher since not all renters of the subject property leave a review. Additionally, based on Airbnb reviews,<sup>10</sup> and from the site visit,<sup>11</sup> staff learned there is a tenant/ caretaker who resides on the property. Therefore, days of beneficial use is likely much higher than just 65 days, but staff will use it as a baseline for proposed maximum liability.
  - d. Additionally, Diamond Lake filled during a period for which the Governor had issued a proclamation of a state of emergency<sup>12</sup> under the California Emergency Services Act – WC §1052(c)(1). Thus, having a violation of \$1,000 for each day in which the trespass occurs – WC §1052(c)(1)(A), and \$2,500 for each acre-foot of water diverted or used in excess of your water right (i.e., 9.7 AF per Enclosure) – WC §1052(c)(1)(B). Thus, Division staff estimate a potential liability of **\$89,250**<sup>13</sup> for violating WC §1052.
2. Violation of licensed terms and conditions – WC §1846(a)(1)
    - a. The Board cannot impose liability for a violation with liability recovered under WC §1052 (i.e., unauthorized diversion of water, section 1 above). The estimated statutory maximum liability will not include a fine for violations of licensed terms and conditions because its liability would be included under unauthorized diversion in section 1 above – WC §1848(c).
  3. Diversions of water to storage during curtailment – WC §1846(a)(2)
    - a. You violated a curtailment order by diverting water to storage into Diamond Lake during the entire month of November 2022. There were at least 11 days of precipitation or diversion during November 2022 while you were curtailed. The State Water Board may impose a liability in the amount not to exceed \$500 for each day in which the violation occurs – WC §1846(a). Thus, Division staff estimate a potential liability of **\$5,500**<sup>14</sup> for violating the curtailment order in November 2022.
  4. Failure to File annual Reports of Licensee – CCR §929, & WC §1846(a)(2).
    - a. You have not fulfilled your annual diversion and use reporting requirements since you purchased the subject property on September 30, 2021. Your first report for calendar year 2021 was due on April 1, 2022. Since then, it has

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<sup>10</sup> Per multiple reviews, the caretaker of the property stays in the basement of the tri-level main residence on the property when guests are there. The caretaker also has a dog that shares the property with guests.

<sup>11</sup> Division staff met the caretaker/ tenants on the day of the inspection.

<sup>12</sup> May 10, 2021, Emergency Drought Proclamation.

<sup>13</sup> [(\$1,000 per day) \* (65 days)] + [(\$2,500 per AF) \* (9.7 AF)] = \$89,250

<sup>14</sup> (\$500 per day) \* (11 days) = \$5,500

been 639 days of violation. You may be liable up to \$500 for each day in which the violation occurs – WC §1846(a). Failure to comply with this regulation is a potential liability of **\$319,500**.<sup>15</sup>

5. Monitoring and reporting regulations – CCR, sections (§§) 931-938, & WC §1846(a)(2).
  - a. You were notified of monitoring and reporting requirements when you received the Division's ROI and Transmittal Letter on April 22, 2022. Through the end of 2023, you were 588 days past due with this regulation (i.e., annual Reports of Licensee). You may be liable for this violation a liability not to exceed \$500 for each day in which the violation occurs – WC §1846(a)(2). Failure to comply with this regulation is a potential liability of **\$309,000**.<sup>16</sup>
6. Failure to File Initial Statements of Water Diversion and Use (Statement/s) – WC §5101.
  - a. You were notified of the requirement to file initial Statements for SP1, SP2, and SP3 when you received the Division's ROI and Transmittal Letter on April 22, 2022. You had 30 days to file Statements by May 22, 2022. Failure to file a Statement within 30 days after the Board has called the violation to your attention is a potential liability of \$1,000, plus \$500 for each additional day on which the violation continues – WC §5107(c)(1). Through the end of 2023, you were 588 days past due on filing said Statements. The State Water Board may impose a potential maximum liability of **\$295,000**<sup>17</sup> for each POD or Statement, totaling **\$885,000**<sup>18</sup> for all three statements yet to be filed.

The statutory maximum liability that the Board could potentially impose for Water Code sections 1052, 1846, and 5107 violations referenced above is **\$1,608,250**.<sup>19</sup>

## CORRECTIVE ACTIONS

- 1) Unauthorized Diversion – WC §1052
  - a. Division staff believe that diverting greater than the Licensed amount of 25 AF per year will be a recurring issue when entering a transition period from multiple dry or drought years followed by a wet water year, as it occurred during the subject season of diversion. Diamond Lake will again pose a threat of unauthorized diversion because it can now divert to storage

<sup>15</sup> (\$500 per day) \* (639 days) = \$319,500

<sup>16</sup> (\$500 per day) \* (618 days) = \$309,000

<sup>17</sup> \$1,000 + [(588 days) \* (\$500/ day)] = \$295,000

<sup>18</sup> \$295,000 \* 3 = \$885,000

<sup>19</sup> \$89,250 + \$5,500 + \$319,500 + \$309,000 + \$885,000 = \$1,608,250

more water than License 9179 authorizes in one year if it draws down enough in depth or surface area after multiple dry seasons. Using the a-c and drawdown-capacity curves provided with your Draft Compliance Plan, staff estimate the “breakeven point,” leaving at most 25 AF of potential storage remaining in Diamond Lake, is at about 3.9 acres in surface area or about 5 feet in drawdown from full, respectively, but you should work with your agent to determine more precise estimates. Thus, if Diamond Lake drops below the estimated surface area of 3.9 acres or experiences a drawdown of 5 feet from full or greater, you have the potential to again divert more than authorized by your license in one season of diversion.

- b. In order to prevent this license term violation and future threat of unauthorized diversion of water from occurring, Division staff recommends you file an application to appropriate water for the expanded storage capacity in Diamond Lake, not initially authorized by the License (i.e., 21.75 AF), OR
- c. you could lower the spilling elevation of Diamond Lake’s dam to reduce the storage capacity of the lake to the capacity at the time of licensing (i.e., 26.2 AF) to prevent future unauthorized diversions from occurring.

2) Violation of terms and conditions of License 9179 – WC §1846(a)(1)

- a. Your license does not authorize the diversion of greater than 25 AF of water to storage. In future seasons of diversion, you may not divert greater than 25 AF of water to storage until you secure a water right authorizing the entire capacity of Diamond Lake OR lower the spillway to an elevation which prevents greater than 25 AF of water to be collected, AND
- b. Install a permanent outlet pipe OR other means satisfactory to the State Water Board available to release water to prevent unauthorized diversions from occurring, AND
- c. File annual reports promptly by February 1<sup>st</sup> each year.

3) Violation of curtailment order – WC §1846(a)(2)

- a. Provide the State Water Board with the best mailing address for you to ensure prompt delivery of future curtailment Orders or Notices of Water Unavailability affecting your water right and ability to divert water.
- b. Additional drought information and updates can be found on the Board’s website at: <https://www.waterboards.ca.gov/drought/>.

4) Failure to File annual Reports of Licensee – CCR 23 §929, & WC §1846(a)(2).

- a. Division staff request that you correct these ongoing violations by submitting

amended water Diversion and Use Reports within **30 days** of receipt of this notice.

- b. 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.
- c. 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.
- d. To file your pending reports:
  - i. Visit the State Water Board's reporting website:  
<https://rms.waterboards.ca.gov/login.aspx>
  - ii. Enter login credentials (user: [REDACTED], pass: [REDACTED]),
  - iii. Enter diversion and use information for all outstanding reporting years (i.e., 2021, 2022, and 2023).

5) Monitoring and reporting regulations – CCR §§931-938, & WC §1846(a)(2)

- a. Install an adequate measurement device to more accurately measure diversion and use of water under your license in Diamond Lake.
- b. Provide Division staff with evidence of:
  - i. the installation of the measurement device,
  - ii. certification that the measurement device was installed by a qualified professional,
- c. Register your measurement device on the Board's reporting website when filing your annual reports.
- d. Maintain records of your required monitoring frequency (i.e., monthly).
- e. Submit annual reports on time (i.e., due by February 1 each year).
- f. For more information on measurement and reporting visit:

[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)



## 6) Failure to File Initial Statements – WC §5101

- a. File an Initial Statement of Water Diversion and Use Form<sup>20</sup> for the new PODs added after your license was issued (i.e., the three earthen dams constructed to create SP1, SP2, and SP3 – one Statement per POD), regardless of the dams being removed or still diverting water to storage,
- b. After you receive a Statement number for the ponds that were allegedly washed out by winter storms (i.e., SP2, SP3), contact Division staff to inform the ponds no longer exist and request the PODs/ Statements be inactivated,
- c. Then continue to file Supplemental Statements for the remaining pond not authorized by your license (i.e., SP1) until you obtain a water right authorizing all of the new potential storage in Diamond Lake (i.e., 21.75 AF, 47.95 – 26.2) OR until you render SP1's dam permanently incapable of storing water. If you choose to remove or render SP1's dam permanently incapable of storing water, you must first consult with the California Department of Fish and Wildlife among other regulatory agencies having jurisdiction over work in a stream channel or the removal of dams.
- d. Division staff request that you correct these ongoing violations by submitting the three pending initial Statements within **30 days** of receipt of this notice.

## 7) Changes to License 9179 without prior approval by the Board – WC §1701

- a. Water Code section 1701 states “At any time after notice of an application is given, an applicant, permittee, or licensee may change the point of diversion, place of use, or purpose of use from that specified in the application, permit, or license; but such change may be made only upon permission of the board.” Thus, if you would like to make changes to your license in the future (e.g., change or add authorized beneficial uses, add or move points of diversion, etc.), you should first get the change approved by the Board to ensure that proper notice is given to potentially interested parties or parties who could be injured by changes made to your diversion works.
- b. SP1 is an unauthorized pond. It diverts water from a source not authorized by your license (i.e., Unnamed Stream tributary to Grub Gulch Creek), and for a beneficial use not authorized by your license (i.e., water quality use).
- c. If you would like to add water quality use for siltation control in SP1, you will

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[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/docs/intl\\_stmnt\\_form.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/intl_stmnt_form.pdf)

first need an appropriate water right to authorize the storage of water in said pond.

This letter constitutes your notice<sup>21</sup> of the above-mentioned Water Code and regulatory requirements. Your response to the allegations listed in this notice is required and should be submitted along with the pending items from the Draft Compliance Plan (i.e., pump and measurement device/ staff gage) within **60 days**. The State Water Board has discretion when considering an enforcement action and shall consider your corrective actions taken in response to this notice in determining whether and what civil liability is appropriate for violations. Therefore, this matter requires your immediate attention.

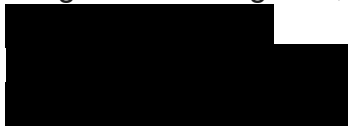
If you have any questions, please contact Ramon Ruiz at (916) 327-8535 or via e-mail at [Ramon.Ruiz@waterboards.ca.gov](mailto:Ramon.Ruiz@waterboards.ca.gov). Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Ramon Ruiz, P.O. Box 2000 Sacramento, CA 95812-2000.

Sincerely,

Ramon Ruiz  
Water Resource Control Engineer  
Division of Water Rights, Enforcement

Enclosure: Notice of Violation 2

CC: Wagner & Bonsignore, CCE



Regional Water Quality Control Board,  
Central Valley Region, Fresno Branch,  
Waste Discharges to Surface Water, NPDES Program,  
1685 E Street  
Fresno, CA 93706

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<sup>21</sup> This is the second NOV issued to you with regard to violations of license terms and conditions (i.e., no outlet pipe or other means available satisfactory to the Board to release water when needed), and failure to comply with monitoring and reporting regulations (i.e., no measurement device installed).

EC: Jule Rizzardo  
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