



State Water Resources Control Board

January 8, 2024

CERTIFIED MAIL

FRED AND MATILDA ROBINSON

[REDACTED]

CERTIFIED MAIL NO: [REDACTED]

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND USE, AND INCOMPLETE STATEMENT OF DIVERSION AND USE FOR LAKE COUNTY ASSESSOR PARCEL NUMBER [REDACTED], WATER RIGHT ID S023275

Fred and Matilda Robinson:

You are identified as the property owner for Lake County Assessor's Parcel Number (APN) [REDACTED] (Property) and water right ID S023275 (Statement). The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) staff reviewed aerial imagery associated with your riparian water right claim on your property. Staff review of imagery and annual Supplemental Statements of Water Diversion indicates you are diverting surface water to storage in two ponds on your property. Division records indicate the riparian claim does not include all the necessary information required per the California Water Code, including a lack of information on capacity of diversion and a place of use marked on a map. Division staff issued a Notice of Potential Violation on October 11, 2023, to request additional information on riparian diversions to storage. However, despite several attempts by staff to contact you by phone and voicemail to discuss the Notice of Potential Violation on October 24, 2023, November 6, 2023, and December 6, 2023, contact was not established. Since additional information could not be obtained, the Division is now contacting you to provide notice that you are in violation of the California Water Code.

In addition to the diversion to storage violation, the Initial Statement of Diversion and Use submitted to the Division on July 27, 2010, reported 35-acre feet of diversions under a riparian right of claim. Due to the diversion size, Supplemental Statements of Water Diversion 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 all subsequent Supplemental Statements of Water Diversion and Use lack the required information of your measurement device and the measurement data collected from the device.

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

The purpose of this letter is to notify you that your diversion of water is subject to the State Water Board's permitting authority and in violation of the California Water Code. This letter also informs you of your risk of administrative civil liability and of your regulatory compliance options. This Notice of Violation is not a formal assessment of the State Water Board, and you are not required to pay any penalty now. Still, you must take immediate action to come into compliance or a formal enforcement process and resulting monetary penalties may result.

Violations

- (1) Division review of the Initial Statement of Diversion and Use and subsequent Supplemental Statements of Water Diversion and Use indicates the riparian claim lacks all necessary information. Lacking information includes details on the capacity of the diversion works and a general description of the area in which the water is used with a corresponding map. These failures violate California Water Code Section 5103, subdivisions (d) and (g).
- (2) Division review of the Initial Statement of Diversion and Use, subsequent Supplemental Statements of Water Diversion and Use, and aerial imagery associated with your property suggests you are using a riparian claim to store water at an unspecified reservoir(s). You cannot divert natural flow under a riparian claim to seasonal storage without an appropriative water right issued by the State Water Board. Attachment A identifies your property with two ponds that may be seasonally storing water. Diversion to storage for seasonal use is not authorized under a riparian right. Only water permitted with an appropriative water right may be seasonally stored.

If you have multiple diversion locations (i.e., you divert water from a stream from multiple locations or divert water by use of a dam), you must file a separate Statement for each diversion location. If you have any questions about how many diversion points your water infrastructure uses, please contact the Division at the phone number or email provided below.

- (3) The Division has reviewed your Supplemental Statements of Water Diversion and Use reports and found that you have failed to submit information regarding your measuring device(s) and data collected from such device(s). In addition, the data submitted must reflect the amount diverted for each specific right and not a total amount of a reservoir or stream. Measurement devices and corresponding data must record the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and total volume of water diverted or collected to storage. These failures violate Title 23 of the California Code of Regulations, section 920, subdivision (f)(6) and (f)(12) and section 932, subdivision (a).

Penalties

The information obtained by the State Water Board indicates you are diverting water subject to the State Water Board's permitting authority without an appropriate water right that authorizes your water diversion and use. A diversion of water subject to the State Water Board's permitting authority without a basis of right is an unauthorized diversion or use of water. An unauthorized diversion or use of water constitutes a trespass against the State, and the State Water Board may impose a civil liability in an amount not to exceed \$1,000 for each day that the unauthorized diversion or use of water occurs, plus \$2,500 for each acre-foot of water, during a critically dry year preceded by two or more consecutive below normal, dry, or critically dry years, or during a period for which the Governor has declared a state of emergency due to drought. (Cal. Water Code, § 1052, subd. (c)(1).) In any other time, the Board may impose a civil liability in an amount not to exceed \$500 for each day the unauthorized diversion or use of water occurs.

This letter constitutes your notice of the above-mentioned Water Code requirements. Your response to the allegations listed in this notice is required and should be submitted in a timely manner. 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.

Corrective Actions

Within 30 days from the date of this notice letter you must take the following corrective actions:

1. You must provide evidence and justification validating your riparian water right claim is not diverting to storage; or
2. If you cannot provide sufficient evidence to justify a riparian water right claim, you must cease your non-riparian diversions and uses of water until you obtain a water right for non-riparian use. In addition, submit evidence demonstrating that your non-riparian use has ceased and will not resume. If you cannot complete this within the time limit, you must contact the Division and develop a compliance plan defining when and how you will cease non-riparian water use; or
3. If you wish to continue non-riparian water use for storage, you must obtain water under an alternative basis of right. Examples include, but are not limited to, water purchased under a contract or diverted and used under a permit the State Water Board has issued; and
4. Should diversions under the riparian right continue in volumes greater than 10-acre feet, you must correct ongoing violations regarding measurement and reporting violations by submitting amended Supplemental Statements of Water

Diversion and Use. The amended reports must include the required information in Violation 3 above 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; or

5. If a device is not yet installed and should you continue diversions under a riparian right in volumes greater than 10-acre feet, you must submit a compliance plan defining when and how and when you will install appropriate measurement devices to meet requirements established in Title 23 of the California Code of Regulations, section 920, subdivision (f)(6) and (f)(12) and sections 931 through 938.

If you have any questions regarding this matter, please contact Chris Baimas directly at (916) 323-3643 or by email at Chris.Baimas@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Chris Baimas, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Kramer".

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

Enclosure: Attachment A: Aerial Map of Parcels