

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATE WATER
RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Allegations of Violations of Information Order 2024-0003-DWR

David Ross

Assessor Parcel Number: 004-007-250-000

COUNTY: LAKE COUNTY

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The State Water Resources Control Board's (State Water Board's) Division of Water Rights (Division) alleges that David Ross (Respondent) has failed to comply with requirements listed in Information Order 2024-0003-DWR.
2. On March 24, 2023, Governor Newsom issued Executive Order N-5-23, which directs the State Water Resources Control Board (State Water Board or Board) and California Department of Fish and Wildlife to evaluate minimum instream flows and other actions needed to protect the Clear Lake hitch (hitch); work with water users, Native American Tribes, and other parties on voluntary measures; and consider emergency regulations to establish minimum instream flows to mitigate the effects of drought.
3. On December 6, 2023, the State Water Board adopted the Emergency Information Order Regulations for the Clear Lake Watershed (Emergency Regulations or Regulations). Board Resolution 2023-0044 adopted the Emergency Regulations and describes the need for the Regulations and their intent. The Regulations were approved by the Office of Administrative Law and became effective upon filing with the Secretary of State on January 22, 2024. They are contained in Title 23, section 1050–1052 of the California Code of Regulations.
4. The Clear Lake hitch, also known as “chi,” is a medium-sized fish found only in Clear Lake and its tributaries. The hitch is an important species in the watershed and holds cultural and ecological significance. The hitch population has been in decline for some time, but the recent droughts have exacerbated the decline. There are many factors potentially impacting the hitch population including

reduced and degraded habitat, passage barriers in the creeks, predation, competition with invasive species, and pollution; but a primary threat to hitch survival is water availability in creeks where hitch spawn and migrate. The State Water Board adopted the Emergency Regulations due to the pressing threat to hitch populations resulting from the conditions in the Clear Lake Watershed, the need for prompt information-gathering, and the unique attributes of the watershed.

5. The Emergency Regulations authorize the Deputy Director for the Division of Water Rights (Deputy Director) to issue, to some or all water users in the Clear Lake Watershed, an order requiring them to provide information related to diversion, extraction, or use of water relevant to the State Water Board's Clear Lake hitch protection efforts. Information required by the order includes groundwater well location and depth, beneficial uses of diverted or extracted water, place of use of diverted or extracted water, volume and timing of diversions or extractions, the basis of right with supporting documents or other evidence, parcel information, or any other information relevant to forecasting use, impacts to surface flows, assessing compliance, or contingency planning for future impacts of drought. The information collected under these orders will inform the State Water Board's evaluation of how groundwater pumping and other water uses may influence creek flows that are critical for hitch spawning and migration and will assist the State Water Board's efforts to protect the hitch population as well as other reasonable and beneficial diversions and uses of water in the watershed.

ALLEGATIONS

6. The Respondent owns Lake County Assessor's Parcel Number 004-007-250-000, located within the Clear Lake Watershed and subject to the Emergency Regulations. The Property has 32 acres of agriculture, including three acres that appear to be cannabis cultivation, and a reservoir with a surface area of 0.65 acres.
7. The Deputy Director determined that it is necessary to gather information on surface water diversions or groundwater extractions in the Clear Lake Watershed and, pursuant to the Emergency Regulations, issued an Information Order (Order) to the Respondent on January 31, 2024. The Order included the following instructions:
 - a. Recipients of the Order were directed to submit to the State Water Board two reports. Report 1 was to be submitted no later than March 31, 2024, or within 14 calendar days of receiving the Order, whichever date was later. Report 2 was to be submitted no later than August 31, 2024;
 - b. Recipients of the Order were directed to measure and record their weekly groundwater extraction volumes by well from March 1, 2024, through

July 31, 2024, using a method approved by the State Water Board. Recipients of the Order were directed to identify the method to be used to obtain these measurements as part of Report 1 and to report the actual measurements as part of Report 2. If records were not available for groundwater extractions that occurred prior to receiving the Order, estimations were permitted;

- c. Recipients of the Order were directed to use the State Water Board's online reporting platform to certify Receipt of the Order and confirm their reporting pathway. Also, Recipients of the Order were directed to use the State Water Board's online reporting platform to submit Report 1 and Report 2. United States Postal Service certified mail records indicate the Respondent received the Order on February 5, 2024. The Respondent was thus required to provide the information on or before March 31, 2024.
8. On June 21, 2024, the State Water Board sent the Respondent a letter entitled First Reminder: Information Order and Reporting Requirements for the Clear Lake Watershed (reminder letter). The reminder letter informed the Respondent that they had not yet complied with the Order's Report 1 submittal deadline and directed the Respondent to submit Report 1 within 14 days of receiving the reminder letter. Additionally, the reminder letter informed the Respondent to measure and record weekly groundwater extractions by well from March 1, 2024, through July 31, 2024 and to submit Report 2 by August 31, 2024. United States Postal Service records indicate the Respondent received the reminder letter on June 28, 2024.
9. On September 6, 2024, the State Water Board sent the Respondent a Notice of Violation (NOV) entitled NOTICE OF VIOLATION: FAILURE TO COMPLY WITH INFORMATION ORDER AND REPORTING REQUIREMENTS FOR THE CLEAR LAKE WATERSHED. The NOV informed the Respondent that they had not yet complied with the Order's Report 1 or Report 2 submittal deadlines and directed the Respondent to submit Report 1 and Report 2 within 14 days of receiving the NOV. United States Postal Service records indicate the Respondent received the NOV on September 11, 2024.
10. As of the date of this Complaint the Respondent has not responded to the Order, the reminder letter, or the NOV.

11.

VIOLATION AND MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

12. Under Water Code section 1846, subdivision (a)(2), "A person or entity may be liable for a violation of..." a regulation or order adopted by the State Water Board "in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs."
13. Water Code section 1055 grants the Executive Director for the State Water Board authority to issue an Administrative Civil Liability ("ACL") Complaint to any

person or entity to whom administrative civil liability may be imposed. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an ACL Complaint, and when a hearing has not been timely requested, issue an ACL Order in accordance with Water Code section 1055, subdivision (b). On April 20, 2023, this authority was redelegated to the Assistant Deputy Director for the Permitting and Enforcement branch of the Division of Water Rights.

14. The Deputy Director issued the Order under the authority of the Emergency Regulations. The Order required the Respondent to submit two reports, Report 1 and Report 2. Report 1 was to be submitted no later than March 31, 2024, or within 14 calendar days of receiving the Order, whichever date was later. Report 2 was to be submitted no later than August 31, 2024. Neither report has been received. The Respondent violated the Order by failing to submit Report 1 by May 6, 2024 and then violated the Order again by failing to submit Report 2 by August 31, 2024.
15. Each day since the Respondent has failed to submit a required report is a day of violation. As of October 25, 2024, the Respondent has accrued 208 days of violation, resulting in a statutory maximum liability of \$104,000 (208 days x \$500 per day of violation).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

16. Water Code section 1055.3 requires that the Board, in determining the amount of civil liability, shall take into consideration all relevant circumstances including, but not limited to: 1) the extent of harm caused by the violations; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; and 4) the corrective action, if any taken by the violator.
17. Extent of Harm Caused by the Violation: The State Water Board adopted the Emergency Regulation to authorize issuance of information orders it to collect critical information needed to develop and implement measures to prevent extinction of the hitch and assist in its recovery. A robust understanding of how groundwater and surface water interactions in the Clear Lake Watershed affect creek flows will assist the Board's efforts to identify measures that will protect the hitch population as well as other reasonable and beneficial diversions and uses of water in the watershed. The information collected would inform the Board's efforts to protect the hitch population as well as other reasonable and beneficial diversions and uses of water in the watershed. Failing to submit the reports the Order requires—with the required information—impairs the Board's ability to evaluate how agriculture irrigation in the Clear Lake watershed influences creek flows that are critical for hitch spawning and migration. Furthermore, it hinders efforts to collect information needed to develop measures that will protect the

hitch population while other balancing reasonable and beneficial uses of water in the watershed. Given the importance of this information, the extent of harm caused by the violation is greater than just harm to the orderly and efficient administration of the water resources of the state. The proximity of the subject property to a regular hitch spawning stream makes the need for this information more critical.

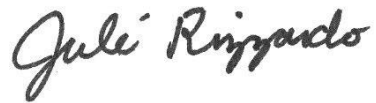
18. Nature and Persistence of the Violation: The Respondent received the Information Order on February 5, 2024, and has not responded as of the date of this Complaint. The Information Order explained the basis for the Order, how the Respondent could comply—in detail, and how to contact Division staff for compliance assistance. After receiving the Order, the Respondent received a reminder letter and a NOV. Despite the Division's efforts, as of the date of this ACL complaint, the Respondent has not answered.
19. Corrective Action, if any, Taken by the Respondent:
The Respondent has failed to submit Report 1 and Report 2. They have not contacted Division staff for compliance assistance.
20. Length of Time that the Violation Occurred:
The Respondent's violation of the Order has been continual and is ongoing as of the date of this Complaint; a total of 208 days.
21. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$4,000.

RIGHT TO HEARING

22. The Respondent may request a hearing on this matter before the State Water Board's Administrative Hearings Office. Any such request for hearing must be delivered to or received by mail by the Administrative Hearings Office within 20 days after the date the Respondent receives this Complaint, as required by Water Code section 1055, subdivision (b).
23. If the Respondent does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Deputy Director for Water Rights, under authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.
24. If the Respondent requests a hearing, an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office will be provided. The Administrative Hearings Office will issue a notice setting the specific time and place for the hearing, and describing the hearing process, not less than 10 days before the hearing date.
25. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that liability shall

not be imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider adopting the order at a subsequent public meeting.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: November 18, 2024