



State Water Resources Control Board

November 8, 2023

CERTIFIED MAIL

Shaffer Family Irrevocable Trust 2017

CERTIFIED MAIL NO:

Dear Shaffer Family Irrevocable Trust 2017:

NOTICE OF VIOLATION REGARDING ALLEGED UNAUTHORIZED DIVERSION AND USE OF WATER FROM UNNAMED STREAM IN MODOC COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received a complaint dated November 21, 2021, alleging that the Bureau of Land Management (BLM) have excavated a reservoir and directly diverting water from an unnamed stream without a valid water right for use on the BLM property identified as Modoc County Assessor's Parcel Number (APN) [REDACTED]. The complaint alleges that the diversion is impacting downstream water rights.

The Division is responsible for the administration of appropriative water rights in California initiated after 1914, commonly referred to as "post-1914 appropriative water rights." The diversion of water from a surface or subterranean stream requires a water right recognized by the State Water Board, such as a riparian water right, pre-1914 water right claim, or a post-1914 water right permit or license issued by the Division. Diversions from a surface or subterranean stream without a valid basis of right are considered to be a trespass against the State of California, and the property owner or diverter is subject to enforcement, which may include an administrative civil liability, cease and desist order, or both. Administrative civil liability for unauthorized diversion may be as high as \$500 per day and, during drought, as high as \$1,000 per day and \$2,500 per acre-foot of unauthorized water. A person who violates a cease and desist order may be subject to an administrative civil liability of up to \$1,000 per day and, during drought, up to \$10,000 per day.

Based on a review of the Division's records, Division staff did not find a water right permit or license associated with Modoc County Assessor's Parcel Number (APN) [REDACTED] nor a Statement of Water Diversion and Use (Statement) for a riparian or pre-1914 water right claim. Subsequently, Division staff contacted the BLM representatives for more information regarding the reservoir in question. The BLM has provided a response indicating that the reservoir was constructed in 1958 to collect

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

seasonal water runoff from an ephemeral drainage for the purpose of drinking water for cattle and wildlife. The reservoir was constructed between the United States Government and the grazing permittees at that time. Moreover, the reservoir's maintenance was historically a shared responsibility between the BLM and the grazing operators. The Shaffer Family Irrevocable Trust 2017 is the current grazing permittee. Furthermore, the dam and overflow of the reservoir were reconstructed in 2020. Division staff have conducted desktop inspections by analyzing aerial imagery and topographic maps to ascertain the site conditions. Through aerial imagery and topographic maps, it appears that the reservoir on (APN) [REDACTED] does exhibit evidence of defined channels that convey surface water directly to the reservoir. Therefore, if the Shaffer Family Irrevocable Trust 2017 is diverting water from an unnamed stream for use of drinking water for cattle and wildlife, it is likely unauthorized unless it can demonstrate a valid basis of right and must cease diversions until the Shaffer Family Irrevocable Trust 2017 obtain an appropriative water right from the Division.

RECOMMENDATIONS

Division staff recommends that the Shaffer Family Irrevocable Trust 2017:

- Obtain a valid basis of right, such as a Livestock Stockpond Use Registration or other appropriate basis of right, through the State Water Board's permitting and licensing program; or
- Demonstrate an alternative water source not subject to the State Water Board's water right permitting authority (i.e., percolating groundwater); or
- Documentation providing evidence that the reservoir on (APN) [REDACTED] is not collecting surface water within the permitting authority of the State Water Board.

Please note that the State Water Board has the authority to initiate enforcement action at its discretion for alleged unauthorized diversion or use of water or alleged waste or unreasonable use of water. Therefore, you should take all necessary actions to ensure that your diversion is authorized and ceasing unauthorized diversions or unauthorized uses or both.

If you have any questions, please refer to our website for general water right information at <http://www.waterboards.ca.gov/waterrights/> or contact Christine Chen by phone at (916) 341-5866 or via e-mail at Christine.Chen@waterboards.ca.gov.

Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
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P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

Sahil Pathak

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Division of Water Rights
State Water Resources Control Board

ec: Kevin Kunkel
Bureau of Land Management