CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 29, 2013

CERTIFIED MAIL # 7004-2510-0003-9147-1114
Return Receipt Requested

In Reply Refer to:
DS: A010068A

JOE AVIS FARMS
c/o JOE AVIS
4510 Point Pleasant Rd
Elk Grove, CA 95757

Dear JOE AVIS:

NOTICE OF DRAFT CEASE AND DESIST ORDER FOR FAILURE TO FILE 2012 ANNUAL WATER USE REPORT UNDER LICENSE 2805A (APPLICATION A010068A), DIVERSION OF WATER FROM Dredger Cut IN SACRAMENTO COUNTY

Enclosed is a draft Cease and Desist Order (CDO) for failing to report your 2012 annual water use under the above-reference water right. This letter serves as notice to you of the intent of the State Water Resources Control Board (State Water Board), Delta Watermaster to adopt the CDO. Therefore, this matter requires your immediate attention.

In January 2013, the Division of Water Rights (Division) mailed out an initial notification letter to all licensees, including you, advising of the requirement to submit annual water use reports online. The letter included the website address of the State Water Board's reporting system as well as the online access information specific to each licensee. The letter gave the deadline to submit your 2012 annual water use report as June 30, 2013.

On July 26, 2013, the Office of Delta Watermaster mailed out delinquency letters to a portion of licensees, of which you were a part, informing you that your 2012 annual water use report had not been received by the State Water Board and that you were in violation of the terms and conditions of your license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations. The letter gave you 20 days to file the 2012 report. The letter included the website address of the State Water Board's reporting system as well as the online access information specific to each licensee. The letter provided information regarding penalties for failure to file the required annual water use reports and included contact numbers for assisting with filing the online report. A copy of the January 2013 notification letter was included as an attachment.

As of the date of this letter, the State Water Board has not received your 2012 water use report for the subject right. Therefore, you are in violation of the terms and condition of your license.

Within 20 days from the date that you receive this notice, you must: (1) Come into compliance with the terms of your license by submitting your 2012 annual water use report; or (2) Submit a written request for a hearing on the draft CDO, as described below.

To submit your 2012 annual water use report, please visit the following website: http://www.waterboards.ca.gov/RMS using the User ID and Password shown on the enclosed Confidential User Information Sheet.

If you disagree with the facts or time schedules for the corrective actions set forth in the CDO, you may request a hearing before the State Water Board. **Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice**.

You may mail your written hearing request to: State Water Resources Control Board, Division of Water Rights, Attn: Enforcement Section, P.O. Box 2000, Sacramento, CA 95812-2000.

You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

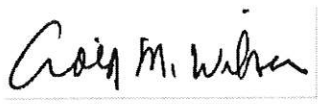
If you request a hearing, a hearing will be scheduled before the State Water Board or a designated hearing officer. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider. You will be notified of the hearing date and the submittal deadlines as soon as they are scheduled.

If you fail to come into compliance or request a hearing within 20 days of the date you receive this notice, the State Water Board will adopt the CDO. If you fail to comply with the adopted CDO, the State Water Board may consider additional enforcement of the CDO without further notice. Such enforcement may include the imposition of administrative civil liability of up to $1,000 for each day of noncompliance, or referral to the Attorney General for further action.

If you have questions or need assistance with the reporting system, please contact staff at (916) 327-3289 or by email at: dramy.saechao@waterboards.ca.gov.

If you have any questions regarding the CDO, please contact me at (916) 445-5962.

Sincerely,



Craig M. Wilson
Delta Watermaster

Enclosures: 1) draft Cease and Desist Order
2) July 26, 2013 delinquency letter (Exhibit A)
3) Confidential User Information Sheet

ec: John O'Hagan
Enforcement Section
Division of Water Rights

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

DELTA WATERMASTER

ORDER WR 2013-00XX-DWM

CEASE AND DESIST ORDER

In the Matter of Violation of Annual Reporting Requirements by

Joe Avis Farms
License 2805A (Application A010068A)

SOURCE: Dredger Cut

COUNTY: Sacramento

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Joe Avis Farms (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your license, and/or an unauthorized diversion or use of water.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052, which provides:

> The State Water Board is authorized to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following
>
> (1) The prohibition set forth in Section 1052 against unauthorized diversion or use of water subject to this division.
>
> (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board Delta Watermaster provided notice of the CDO against Licensee for the violation of the terms and conditions of your license, unauthorized diversion or use of water and/or Title 23, Division 3, Chapter 2, Article 20, section 847 of the California Code of Regulations. California Water Code section 85230(b) provides that the Delta Watermaster shall exercise the State Water Board's delegated authority to provide enforcement of license and permit terms and conditions. Pursuant to State Water Board Resolution 2012-0048, the Delta Watermaster is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq.

FACTUAL BASIS FOR ISSUING THE CDO

The facts and information upon which this CDO is based are as follows:

1. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use

under licenses, and developed an online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.

2. In January 2013, the Division of Water Rights (Division) mailed out an initial notice to the Licensee notifying them of: the annual use reporting instructions on how to access the RMS system and submit their 2012 use report online. The Licensee was also notified that if they had any questions on the reporting process, they could contact the Division by phone or email. The deadline to submit their 2012 use report online was June 30, 2013.

3. On July 26, 2013, the Office of Delta Watermaster mailed out delinquency letters, which also included a copy of the January 2013 letter, to all the licensees who had not submitted their 2012 use report by July 1, 2013 (Exhibit A). The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and granted licensee 20 days to file the 2012 use report. The letter gave notice that continued failure to submit the annual use report may result in enforcement action by the State Water Board.

4. As of August 27, 2013, the State Water Board has not received Licensee's 2012 annual use report for License 2805A (A010068A).

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Licensee shall immediately come into compliance with the terms of the License by submitting their report of 2012 annual use by accessing the Report Management System at www.waterboards.ca.gov/RMS using the User ID and Password shown on the User Information Sheet accompanying this CDO.

   Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact the staff noted on the letter accompanying this CDO.

Consequences of Non-Compliance

In the event Licensee fails to comply with the requirements of this Order, Licensee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845 (b)(1) of up to $1,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

> **Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.**

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Licensee for unauthorized diversion of water in accordance with Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse Licensee from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD

Craig M. Wilson
Delta Watermaster

Dated: August 29, 2013

DRAFT

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