CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

OCT 22 2012

In Reply Refer to:
BRC:1:36:A003040

Certified Mail No. 70042510000391466066
Return Receipt Requested

Thermalito Water & Sewer District
410 Grand Avenue
Oroville, CA 95965

To Whom it May Concern:

DRAFT CEASE AND DESIST ORDER FOR FAILURE TO FILE 2011 ANNUAL USE REPORT UNDER LICENSE 737 (APPLICATION A003040), DIVERSION OF WATER FROM CONCOW CREEK IN BUTTE COUNTY

Enclosed is a Draft Cease and Desist Order (CDO) for failing to report your 2011 annual use under the above-referenced right. This letter serves as notice of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), to adopt the CDO. Therefore, this matter requires your immediate attention.

On March 5, 2012, the Division mailed out an initial notification letter to all permittees and licensees, including you, advising of the requirement to submit annual use reports online. The letter gave the website address of our reporting system as well as the access information specific to each permittee or licensee. The deadline to submit your 2011 annual use report was June 30, 2012.

As of the date of this letter, the Division has not received your 2011 annual use report for the subject right. Therefore, you are in violation of the terms or conditions of your License.

Within 20 days from the date you receive this notice, you must: (1) Come into compliance with the terms of your License by submitting your 2011 annual use report; or (2) submit a written request for a hearing on the draft CDO, as described below.

To submit your 2011 annual 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 the Division at (916) 323-9393 or by email at: ewrims@waterboards.ca.gov.

If you have any questions regarding the CDO, please contact John O'Hagan, Manager, Enforcement Section at (916) 341-5368 or JOHAGAN@waterboards.ca.gov, or Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement, at (916) 341-5445 or ATAURIAINEN@waterboards.ca.gov.

Sincerely,

James W. Kassel

James W. Kassel, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Draft Cease and Desist Order
2) Confidential User Information Sheet

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

DIVISION OF WATER RIGHTS

ORDER WR 2012–0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Violation of Annual Use Reporting Requirements by

Thermalito Water & Sewer District
(License 737, Application 3040)

SOURCE: Concow Creek

COUNTY: Butte

DRAFT

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 Thermalito Water & Sewer District (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your License.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052 and/or license terms for which section 1831 (d) provides, in part:

> *The State Water Board is authorized to issue a Cease and Desist Order 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 the unauthorized diversion or use of water subject to this division.*
>
> *(2) Any term or condition of a permit, license, certification, or registration issued under this division.*

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Licensee for the violation of the terms and conditions of your license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations and the unauthorized diversion or use of water. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights 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. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

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 <u>annual</u> reporting of water diversion and use under permits and licenses, and developed a new 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. On March 5, 2012, the Division mailed out a notice to the Licensee notifying of:

the annual use reporting requirements, instructions on how to access the RMS system and submit their 2011 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 2011 use report online was June 30, 2012.

3. As of October 17, 2012, the Division has not received the Licensee's 2011 annual use report.

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 2011 annual use report 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 Division 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

James W. Kassel, Assistant Deputy Director
Division of Water Rights

Dated: OCT 22 2012

DRAFT