

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to Comply with Scott Watershed Information Order

Lance Batistich

Water Right IDs: S025829, S025819, S025820, S025830, S028076

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Lance Batistich (Diverter) is alleged to have violated Title 23, Division 3, Chapter 2, Article 24, section 875.8 of the California Code of Regulations.
2. On August 17, 2021, the State Water Resources Control Board (State Water Board or Board) adopted an emergency regulation, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Klamath River Watershed (hereinafter "Regulation" or "Emergency Regulation"). The Regulation went into effect on August 30, 2021, when it was approved by the Office of Administrative Law and filed with the Secretary of State. State Water Board [Resolution No. 2021-0029](#) adopted the Regulation and describes the need for the Regulation and its intent.
3. Under the Emergency Regulation, the Deputy Director for the Division of Water Rights (Division) may issue an information order to some or all landowners in the Scott River and Shasta River watersheds, requiring them to provide information related to diversion and use of water relevant to implementing the regulation. (Cal. Code Regs., tit. 23, sec. 875.8.) The Emergency Regulation requires the Deputy Director, in determining whether to impose information orders, to consider the need for the information and the burden of producing it and take reasonable efforts to avoid requiring duplicative reporting of information the State Water Board already possesses. (Cal. Code Regs., tit. 23, §875.8, subd. (a).)
4. The Division of Water Rights sent an Information Order for Water Use in the Scott River Watershed (Information Order) (Order WR 2022-0171-DWR) to the Diverter on September 30, 2022. Information Order was delivered to the individual on October 5, 2022.

5. The Information Order required the Diverter to submit a Scott Watershed Information Order Form (Information Order Form or Form) within 14 calendar days of the Information Order's issuance for each requested water right. The Information Order Form was due October 14, 2022.
6. Under Water Code section 1846, subdivision (a)(2), "a person or entity may be liable... in an amount not to exceed five hundred dollars (\$500) for each day" the violation of a "regulation or order adopted by the Board" occurs.
7. 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.
8. The Executive Director delegated this authority to the Deputy Director for Water Rights. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. This authority has been redelegated to the Assistant Deputy Director.

ALLEGATIONS

9. The Diverter is the owner of record for Water Right IDs S025829, S025819, S025820, S025830, and S028076. These Water Right IDs divert and use water from the Scott River. They are subject to the Emergency Regulation.
10. According to paragraph 2 of the Information Order, "By October 14, 2022, each recipient of this Order who diverts water for use on their land parcel(s) shall submit, under penalty of perjury, the information described in this paragraph." The Information Order Form further stated, "You must submit this form within 14 days from issuance of the Order. This corresponds to a submission date of October 19, 2022."
11. The Diverter failed to submit the Information Order Form(s) for the subject water rights by the October 14, 2022 deadline stated in the Information Order.
12. The Diverter received the Information Order through certified mail on October 5, 2022. As of the date this ACL complaint was issued, the State Water Board has not received the Information Order Response Form(s).
13. Violation of the Information Order shall be subject to enforcement and any applicable penalties pursuant to Water Code sections 1058.5 and 1846.

PROPOSED CIVIL LIABILITY

14. Water Code section 1846 states that 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.

15. The Diverter is alleged to have violated the Emergency Regulation by failing to submit a Form within 15 calendar days of issuance of the Information Order as required by Emergency Regulation section 875.9 (b), which states:

“Failure to meet the requirements of this article or of any order issued there under constitutes:

(1) a violation subject to civil liability pursuant to Water Code section 1846, and

(2) an infraction pursuant to Water Code section 1058.5, subdivision (d). Each of these can carry a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.”

16. Each day after the deadline that the Form is not filed is a day of violation of the Emergency Regulation.

17. As of the date of this ACL Complaint, the violation continued unabated for 55 days. The maximum liability for the violation alleged is \$27,500 (55 days x \$500/day).

18. In determining the appropriate amount of a civil liability, Water Code sections 1848, subdivision (d) and Water Code section 1055.3 both provide that the State Water Board shall consider all relevant circumstances, including, but not limited to, all of the following factors: the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action undertaken by the violator.

19. In considering the extent of harm caused by the violation:

- a. The Emergency Regulations were adopted by the State Water Board in response to Governor Newsom’s Declaration of a State of Emergency due to extreme drought conditions. Water supply shortages are occurring throughout the state. The Information Order Form is an essential component required by the Information Order to obtain data relevant for determining compliance with the Emergency Regulations.
- b. The Emergency Regulations were adopted “To prevent the diversion of water that would unreasonably interfere with an emergency minimum level of protection for commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead.” (Cal. Code Regs., tit. 23, §875, subd. (a).)
- c. The value of the data contained within the Information Order Form to the public and the State Water Board correspond(s) to its timely submittal, and therefore an increased time lapse between the deadline and the ultimate submittal date results in increased harm to the regulatory program. The State Water Board’s forecasting of water availability and ability to regulate the resources the Emergency Regulation intends to protect is diminished by the failure to submit the Information Order Form.

- d. Inaccurate and incomplete data prevents the State Water Board from developing the realistic supply and demand calculations it needs. With inaccurate data, the State Water Board may curtail more water users than necessary, curtail water users longer than necessary, or both. The reverse is also true. The State Water Board would not curtail deeply enough and harm public trust resources and senior downstream users. Inaccurate and missing data ultimately harm other water users, the environment, or both. This includes the data the Diverter has failed to submit.

20. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Diverter knowingly and intentionally refused to submit the Information Order Form.

- a. The Respondent has submitted Curtailment Certification Forms in response to State Water Board orders imposing curtailments and reporting requirements. Division enforcement subsequently communicated with the Diverter's business representatives regarding the curtailment orders. The Diverter is aware a drought is occurring, aware of the Emergency Regulations, and aware of the State Water Board's enhanced regulatory efforts.
- b. On August 23, 2022, Division enforcement staff inspected the Diverter's property based on information indicating that the Diverter had been irrigating in violation of State Water Board curtailment orders. During the inspection, the Diverter incredulously claimed that a nearly full reservoir had been filled in the winter from precipitation and runoff. It is unlikely the reservoir would have stored a significant amount of water for at least six months after winter, and throughout the high temperatures of the summer months, while the creeks and surrounding area were dry. The Diverter expressed disagreement with State Water Board curtailment orders with hostility and voiced skepticism about the State and Federal agencies. The Diverter repeatedly stated he would continue diverting regardless of the curtailment orders.
- c. The Division issued the Diverter a notice of Cease and Desist Order on September 30, 2022. Consistent with his statements during the August 23, 2022, inspection, the Diverter has refused to accept the Cease and Desist Order and requested a hearing.
- d. The Information Order clearly stated that the Information Order was due no later than October 19, 2022. It included a cover letter providing points of contact if the Diverter had any questions. Division enforcement staff are not aware of any communication or inquiry from the Diverter indicating any effort to submit the Information Order Form.

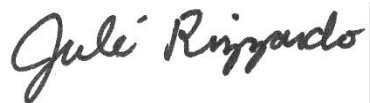
21. In considering the length of time over which the violation occurred, the Information Order Form was due by October 14, 2022, but has still not been filed with the State Water Board. As of the date this ACL complaint was issued, the violation has occurred over a period of 55 days.
22. In considering corrective action undertaken by the violator, no corrective action has occurred. The Information Order Form has not been submitted. Division enforcement staff are not aware of any communication or other inquiry from the Diverter indicating any attempt to submit the Information Order Form.
23. In considering other relevant circumstances, the Division issued the Information Order to obtain information necessary to assess whether the Diverter has diverted and used water in violation of the Emergency Regulations. The Diverter's complete failure to respond to the Information Order has impeded and obstructed the Division's investigation and avoided additional potential penalties for further violations of the Emergency Regulations.
24. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Diverter to submit the Form, the harm of the missing data to the State Water Board's effectiveness in regulating water diversions during a drought, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Division of Water Rights Prosecution Team recommends the imposition of \$5,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

25. The Diverter may request a hearing on this matter before the State Water Board. Any such request for hearing must be delivered to or received by mail by the Board within 20 days after the date that this notice is received in accordance with Water Code section 1055, subdivision (b).
26. If the Diverter requests a hearing, the Diverter will have an opportunity to contest the allegations in this complaint and the imposition of a fine by the Board. The Board will issue a notice setting the specific time and place for the hearing. The hearing notice will be mailed not less than 10 days before the hearing date.
27. At the hearing, the Board will consider whether to impose a monetary fine, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any Board order imposing an ACL shall be final and effective upon issuance.

28. If the Diverter does not request a hearing within 20 days of receipt of this Complaint, then the right to a hearing on the matter is waived. The Assistant Deputy Director for the Division of Water Rights may then issue a final Administrative Civil Liability Order assessing the Proposed Liability.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive style and is positioned above a thin vertical line.

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

Dated: December 9, 2022