

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

Soule, A.D. & N.A.
Diversion No. 473

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Soule, A.D. & N.A. (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 Deputy Director, in determining whether and the extent to which to impose information orders under this subdivision, will consider the need for the information and the burden of producing it, and will take reasonable efforts to avoid requiring duplicative reporting of information that is already in the State Water Board's possession. The Deputy Director will prioritize information orders for larger diverters and landowners or water right holders with the highest potential to impact surface flows. (Cal. Code Regs., tit. 23, §875.8, subd. (a).)
4. The Division of Water Rights sent an Information Order for Winter Surface Diversions in the Shasta and Scott River Watersheds (Information Order) (Order WR 2022-0052-DWR) to water right holders on January 7th, 2022.
5. The Information Order required water right holders to submit a Scott or Shasta Watershed Information Order Form (Information Order Form or Form) within 15 calendar days for each requested water right. The Information Order Form was due January 24th, 2022.
6. Water Code section 1846(a)(2) states: "a person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs:...A regulation or order adopted by the Board."

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 ID Claim Diversion No. 473.
10. Recipients of the Information Order include surface water diversions that are likely for the purpose of stockwater use. Cal. Code Regs., tit. 23, § 875.7 limits the amount of water that can be diverted for livestock watering from September 1 through January 31. The information requested is tailored to provide the State Water Board information needed to determine compliance with the inefficient stockwater prohibition.
11. The Information Order states:

“The attached Information Order Form(s) must be completed and submitted by mail or email **within fifteen (15) days from the effective date of this Order** for the water right(s) listed in Table A below. The Information Order Form must be submitted by: January 24, 2022.”
12. The Diverter failed to submit the Information Order Form(s) for the subject water right within 15 calendar days of the issuance of the Information Order.
13. On February 7, 2022, the Division issued Notices of Violation to Diverters who had not yet submitted Information Order Forms.
14. As of February 22, 2022, the State Water Board has not received the Information Order Form(s) from the Diverter.
15. 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

16. 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.
17. 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 thereunder 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.”

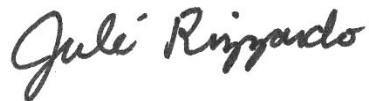
18. Each day a Form is not filed by the deadline is a day of violation of the Emergency Regulation.
19. As of February 22, 2022, the violation continued unabated for 31 days. The maximum liability for the violation alleged is \$15,500 (number of water rights x 31 days x 500).
20. In determining the appropriate amount of a civil liability, both Water Code section 1848(d) and Water Code section 1055.3 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.
21. The Emergency Regulations were adopted by the State Water Board in response to Governor Newsom’s Declaration of a state of emergency due to 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.
22. 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 it is required to protect is diminished by the failure to submit the Information Order Form.
23. The Information Order Form was due by January 22, 2022 but has still not been filed with the State Water Board.
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 \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

Soule, A.D. & N.A.

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



Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Dated: February 22, 2022