

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

ORDER WR 2022-0109-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Failure to Submit Scott River Curtailment Certification Response by

Brent C Martin Etal

Water Right ID(s) SG002948

The Assistant Deputy Director of the Division of Water Rights (Division), through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability Order (ACL Order or Order) to Brent C Martin Etal (Diverter). On February 18, 2022, the Division issued the Diverter an Administrative Civil Liability Complaint (ACLC), which is hereby incorporated by reference as part of this ACL Order.

THE STATE WATER BOARD, OR ITS DELEEGEE, FINDS AS FOLLOWS:

1. On August 30, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 875 through 875.9 (Emergency Regulations).
2. Section 875 of the Emergency Regulations authorizes the Deputy Director of the Division of Water Rights to issue curtailment orders to water right holders, requiring the curtailment of water diversion and use.
3. Section 875.6 subdivision (a) of the Emergency Regulations states “all water right holders issued a curtailment order under [Article 24] are required, within seven days, to submit under penalty of perjury a certification of one or more” of the applicable actions.¹
4. On September 9, 2021 the Division’s Deputy Director issued the Order Imposing Water Right Curtailment And Reporting Requirements For Reported Water Rights In The Scott River Watershed. This Order required that an Online Curtailment Certification be submitted by September 20, 2021.

¹ Applicable actions taken in response to the curtailment order are specified in the California Code of Regulations, title 23, section 875.6, subdivision (a)(1) through (a)(7)

5. On January 10, 2022, the Division sent the Diverter a Notice of Violation notifying the Diverter that the Online Curtailment Certification Form had not been received within seven days of the issuance of the Curtailment Order in violation of the Emergency Regulations. The Diverter was warned of the potential for enforcement with monetary penalties should the violation persist.
6. On February 18, 2022, the Division issued the Diverter an Administrative Civil Liability Complaint (ACLC). The ACLC alleged the Diverter failed to submit their Curtailment Certification Form by September 20, 2021 in violation of section 875.6 of the Emergency Regulations. The ACLC recommended a penalty of \$1,000.
7. The ACLC was mailed to the Diverter via certified mail. The Division confirmed with the United States Postal Service that the ACLC was delivered to the Diverter's address of record on February 22, 2022.
8. The ACLC included a Conditional Settlement Offer, which allowed for a reduced liability amount of \$500, provided that Diverter file the Online Curtailment Certification Form, return the signed acceptance of the Conditional Settlement Offer and waiver of the right to hearing and reconsideration, and agree to pay a reduced liability amount, all by March 20, 2022. The Diverter submitted the Online Curtailment Certification Form, but failed to return the signed Conditional Settlement Offer.
9. The Diverter did not request a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).
10. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing administrative civil liability when a Complaint has been issued and no hearing has been requested in the period provided by Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to an Assistant Deputy Director. This authority was redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.
11. Water Code section 1055, subdivision (b), Resolution No. 2012-0029, and subsequent redelegation memorandums authorize the Assistant Deputy Director of the Permitting and Enforcement Branch to issue an ACL Order to the Diverter assessing administrative civil liability in the amount proposed in the February 18, 2021 ACLC.
12. Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by

the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.

13. In this case, the recommended administrative civil liability of \$750 is based on the relevant circumstances alleged in the ACLC. In consideration of these circumstances, the State Water Board has determined that the administrative civil liability of \$750 is appropriate.

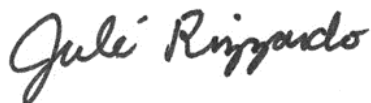
IT IS HEREBY ORDERED THAT:

1. The attached ACLC is incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including those specifically identified in the ACLC pursuant to Water Code section 1055.3.
3. Diverter shall remit, within 30 days of the date of this Order, a check or money order payment of the penalty of \$750 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section – Curtailment Certification
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of the Diverter's obligations under this Order constitutes full and final satisfaction of liability for the alleged violation specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The State Water Board is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if the Diverter fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



*Julé Rizzardo, Assistant Deputy Director
Permitting and Enforcement Branch
Division of Water Rights*

Dated: **March 22, 2022**