

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to Submit Monthly Diversion Reports
Initial Order Imposing Curtailment and Reporting Requirements

MARY SUZANNE FORAKER

Water Right ID(s) A022333

YOU ARE HEREBY GIVEN NOTICE THAT:

1. MARY SUZANNE FORAKER (“Respondent”) is alleged to have violated title 23, division 3, chapter 2, article 24, section 879 of the California Code of Regulations.
2. On May 10, 2021, Governor Gavin Newsom issued a Proclamation Declaring a State of Emergency (“Drought Proclamation”) in 41 counties, including those within the Sacramento-San Joaquin Delta watershed. The Drought Proclamation declared that the Sacramento-San Joaquin Delta watershed is facing substantial water supply and ecosystem challenges due to extreme drought. The Drought Proclamation orders the State Water Resources Control Board (“State Water Board” or “Board”) to consider “adopting emergency regulations to curtail water diversions when water is not available at water rights holders’ priority of right or to protect releases of stored water.”
3. On August 3, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 876.1 through 879.2 (“Emergency Regulations”). The Emergency Regulations were reviewed by the Office of Administrative Law and went into effect on August 19, 2021.
4. Section 879, subdivision (d)(2) of the Emergency Regulation authorizes the Deputy Director for the Division of Water Rights (“Division”) or authorized designee to require water right holders and claimants who have been issued an initial order under section 876.1 and whose water right or claim has a total authorized face value or recent annual reported diversion amount of one thousand acre-feet or more to report the following information by the date specified: (1) prior diversions, including direct diversions and diversions to storage, and (2) demand projections for subsequent months through October 1, 2022, including direct diversions and diversions to storage.
5. On August 20, 2021, an Initial Order imposing curtailment and reporting requirements was mailed to water right holders and claimants within the Delta

Watershed as authorized by the Emergency Regulations. Due to documented prior or potential water diversions exceeding 1,000 acre-feet per year for the subject water right or claim, MARY SUZANNE FORAKER was notified in the Initial Order of monthly reporting requirements through October 2022.

6. On August 12, 2022, the State Water Board renewed the Emergency Regulations extended through October 1, 2023 (Section 879 (c)(2)).
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 has delegated the authority to issue ACL complaints to the Deputy Director for the Division (“Deputy Director”). Furthermore, the State Water Board, pursuant to Resolution 2012-0029, has delegated authority to the Deputy Director for Water Rights 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. The Deputy Director has redelegated this authority to the Assistant Deputy Director.

ALLEGATIONS

9. The Respondent is the owner of record for Water Right ID(s) A022333
10. On August 20, 2021, the Deputy Director issued an Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed (“Curtailment Order”).
11. Pursuant to Emergency Regulation section 876.1, subdivision (b), the Division sent the Curtailment Order through United States Postal Service Certified Mail to the addresses listed in the Division’s electronic Water Rights Information Management System and through electronic mail to all parties enrolled in the State Water Board’s list-service. The Division also published the Curtailment Order and a list of all recipients on the State Water Board’s website on the same day that the Curtailment Order was issued. It is the responsibility of the water rights holders to join this email list-service to stay updated on current curtailment actions and requirements.
12. United States Postal Service confirms the August 20, 2021, Curtailment Order was delivered to the address on file on 8/27/2021, United States Postal Tracking #
13. The Curtailment Order required monthly submission of water diversion reports for the prior month’s actual use and next month’s projected water use. The deadlines for each report were the 10th of each month as specified in the letter transmitting the Curtailment Order. Updated deadlines for each report are posted on the Division’s Delta Drought webpage at: <https://www.waterboards.ca.gov/drought/delta/delta-watershed-enhanced-reporting.html>

14. The Curtailment Order provided an Internet website address and the unique Login and Password for each water right or claim allowing diverters or their agents to complete the monthly reports.
15. On 12/9/2022, the Division sent the Diverter a Notice of Violation (“NOV”) notifying the Diverter that the required monthly report(s) have not been received and offering an opportunity to avoid a fine by submitting the identified deficient monthly report(s) and future required monthly reports. United States Postal Tracking # confirmed delivery on 12/13/2022 to the Respondent
16. The NOV informed the Diverter that failure to submit the monthly reports is a violation of the Emergency Regulations adopted by the State Water Board for which the potential civil liability of five hundred dollars (\$500) may be assessed for each day that the report was not submitted after the deadline.
17. As of January 20, 2023, Division staff has reviewed the monthly report summary for the subject water right or claim and determined that the Projected Demand monthly reports for November 2022, December 2022, January 2023 and February 2023 and the Prior Demand monthly reports for October 2022 and November 2022 have not been submitted by the required deadline.

PROPOSED CIVIL LIABILITY

18. Under Water Code section 1846, subdivision (a)(a), “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.”
19. The Respondent is alleged to have violated Section 879 of the Emergency Regulation by failing to file the monthly report, by the required deadline, for each of the six reports identified below. Each report not filed electronically with the State Water Board by the deadline is a separate violation of the Emergency Regulation. Furthermore, each day after the deadline that a report is not filed is a day of violation of the Emergency Regulation. The Respondent’s failure to submit the six reports results in a total maximum administrative civil liability of \$128,000.
 - a. The Respondent failed to submit the report for the November 2022 projected demand by the October 14, 2022, deadline. As of the date of this ACL complaint, the report is 98 days late, for a total maximum administrative civil liability of \$49,000 (98 days x \$500/day).
 - b. The Respondent failed to submit the report for the December 2022 projected demand by the November 15, 2022, deadline. As of the date of this ACL complaint, the report is 66 days late, for a total maximum administrative civil liability of \$33,000 (66 days x \$500/day).
 - c. The Respondent failed to submit the report for the January 2023 projected demand by the December 15, 2022, deadline. As of the date of this ACL

- complaint, the report is 36 days late, for a total maximum administrative civil liability of \$18,000 (36 days x \$500/day).
- d. The Respondent failed to submit the report for the February 2023 projected demand by the January 13, 2023, deadline. As of the date of this ACL complaint, the report is 7 days late, for a total maximum administrative civil liability of \$3,500 (7 days x \$500/day).
 - e. The Respondent failed to submit the report for the October 2022 prior demand by the December 9, 2022, deadline. As of the date of this ACL complaint, the report is 42 days late, for a total maximum administrative civil liability of \$21,000 (42 days x \$500/day).
 - f. The Respondent failed to submit the report for the November 2022 prior demand by the January 13, 2023, deadline. As of the date of this ACL complaint, the report is 7 days late, for a total maximum administrative civil liability of \$3,500 (7 days x \$500/day).
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, 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 State Water Board adopted the Emergency Regulations in response to the Governor's Declaration of a State of Emergency Due to Drought Conditions. Water supply shortages are occurring throughout the state. The monthly prior and projected water use reports is an essential component of the Curtailment Order. The monthly data is critical for developing water availability calculations and determining the timing and extent of curtailment decisions during times of drought or water shortage.
22. The value of the data contained within the monthly reports 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 monthly reports. Timely information availability is most important during drought, because water supplies are continually assessed.

23. The monthly reports are past due and have not been submitted. The length of time over which this violation has occurred is short but significant with respect to the reliance of the data for weekly curtailment decisions by the Division and the effect on the regulated community. Moreover, as of the date of this Complaint no action has been taken to correct this violation despite the 12/9/2022, Notice of Violation putting the Diverter on notice of the potential for formal enforcement action if the violation continued.
24. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Diverter to submit the monthly reports, the harm of the missing data to the State Water Board's effectiveness in regulating water diversions, 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 \$12,000 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 sent to the Board within 20 days after the date that this notice is received as required by 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, 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: January 20, 2023