

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Failure to File Annual Water Diversion and Use Report(s)  
for the 2021 through 2022 Reporting Year

Dustin D Fleming Trust  
Water Right ID(s) A016132

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Dustin D Fleming Trust (“Respondent”) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.
2. Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations states that water right holders shall file reports with the State Water Resources Control Board annually, by February 1, detailing the amount of water diverted and used within the twelve-month reporting period (“Annual Water Diversion and Use Report”).<sup>1</sup>
3. Title 23, Chapter 2.7, Article 2, section 908 of the California Code of Regulations states, “Failure to meet the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.”
4. Water Code section 1846(a) 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:...(2) a regulation or order adopted by the [State Water Board].” Civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
5. The Executive Director for the State Water Board may issue an Administrative Civil Liability (“ACL”) Complaint to any person or entity to whom administrative civil liability may be imposed.

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<sup>1</sup> Recent regulatory changes amended Annual Water Diversion and Use Report deadlines. Effective January 31, 2023, the Office of Administrative Law approved regulatory changes adopted by the State Water Board that, among other things, updates reporting deadlines in sections 925 and 929 of title 23 of the California Code of Regulations.

6. The Executive Director delegated the authority to issue ACL complaints to the Deputy Director for the Division of Water Rights (“Deputy Director”). Pursuant to State Water Board Resolution 2012-0029, the Deputy Director 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. The Deputy Director has redelegated this authority to the Assistant Deputy Director.

### **ALLEGATIONS**

7. The Respondent is the owner of record for Water Right ID(s) A016132 (“subject water right(s)”).
8. The Respondent must, pursuant to Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations (“Water Diversion and Use Report Regulations”), electronically file the Annual Water Diversion and Use Report for each water right they hold before the required deadline of February 1 of each year on forms available at the State Water Board’s website.
9. The Respondent failed to file their Annual Water Diversion and Use Report(s) for the subject water right(s) by the required deadline of February 1, 2023.
10. On August 11, 2023, the Division sent a Notice of Violation (“NOV”) via United States Postal Service informing the Respondent that the required annual report(s) have not been received and provided the Respondent with a 14-day extension. The NOV notified the Respondent that the Division would not issue formal enforcement for the outstanding Annual Water Diversion and Use Report(s) if the Respondent timely submitted the report(s) by August 25, 2023.
11. The NOV informed the Respondent that failure to submit the Annual Water Diversion and Use Report(s) is a violation of the Water Diversion and Use Report Regulations 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.
12. As of September 5, 2023, the Respondent has not filed the Annual Water Diversion and Use Report(s) for the subject water right(s). The report is now 216 days late.

### **PROPOSED CIVIL LIABILITY**

13. Water Code section 1846 states that a person or entity may be liable for a violation of a regulation adopted by the State Water Board in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
14. The Respondent violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations by failing to file an Annual Water Diversion and Use Report by the February 1, 2023 deadline for the subject water rights. Each day after the deadline that an Annual Water Diversion and Use Report is not filed is a day in which the violation occurs.

15. Each report not filed electronically with the State Water Board by the deadline is a separate violation of the regulation.
16. As of the date of this ACL complaint, the Annual Water Diversion and Use Report(s) have yet to be filed and are thus 216 days late. The maximum administrative civil liability is \$108,000 (216 days x \$500 per day x 1 report).
17. 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.
18. The Water Diversion and Use Report Regulations were adopted by the State Water Board for the purpose of developing a publicly available database. The information contained within the database allows the State Water Board and the water user community access to information that is necessary to make informed water management decisions. The value of the database is directly tied to the amount and accuracy of information the State Water Board collects through compliance with the Water Diversion and Use Report Regulations.
19. Water diversion and use information is critical to understanding and planning for limited water supplies, identifying water conservation opportunities, assuring compliance with the quantity and seasonal use limitations of existing water rights, protecting water right holders' priority of right, and providing for efficient management and use of water during times of shortages.
20. The value of the data contained within the annual report(s) 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 timely submit the Annual Water Diversion and Use Reports.
21. The Respondent's Annual Water Diversion and Use Report(s) is past due. The length of time over which this violation has continued to occur is significant; the Annual Water Diversion and Use Report(s) is now 216 days late. Moreover, as of the date of this Complaint, no action has been taken to correct this violation despite the August 11, 2023 NOV putting the Respondent on notice of the potential for formal enforcement action if the violation continued.

22. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Respondent to submit the Annual Water Diversion and Use 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 \$2,400 total (\$2400 per report x 1 report) in administrative civil liability ("Proposed Liability").

### **RIGHT TO HEARING**

23. The Respondent may request a hearing on this matter before the State Water Board, Administrative Hearings Office ("AHO"). Any such request for hearing must be delivered to the AHO **within 20 days after the date that this notice is received** as required by Water Code section 1055, subdivision (b).
24. If the Respondent requests a hearing, the Respondent will have an opportunity to contest the allegations in this complaint and the imposition of a liability by the AHO. The AHO 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.
25. At the hearing, a Hearing Officer will consider whether to impose a monetary liability, 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.
26. **If the Respondent 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: September 5, 2023