

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

**DIVISION OF WATER RIGHTS**

**ORDER 2023-0044-DWR**

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**ADMINISTRATIVE CIVIL LIABILITY ORDER**

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(s) A016132

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**1.0 INTRODUCTION**

The Assistant Deputy Director of the Division of Water Rights (“Division”), through authority delegated by the State Water Resources Control Board (“State Water Board”), issues this Administrative Civil Liability Order (“Order”) to Dustin D Fleming Trust (“Respondent”). On September 5, 2023, the Division issued the Respondent an Administrative Civil Liability Complaint (“Complaint”), which is incorporated by reference as part of this Order.

**2.0 LEGAL AND PROCEDURAL BACKGROUND**

1. 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, before 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>
2. 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.”

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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.

3. 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.
4. 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.
5. 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.
6. On September 5, 2023, the Division issued an Administrative Civil Liability Complaint (ACLC). The ACLC alleged the Respondent failed to file the Annual Water Diversion and Use Report(s) for the 2021-2022 water year (October 1, 2021 through September 30, 2022). The ACLC recommended a penalty of \$2,400 and extended an opportunity to contest the penalty by requesting a hearing within 20 days of receiving the Complaint.
7. The ACLC was mailed to the Respondent via certified mail. The Division confirmed with the United States Postal Service that the ACLC was delivered to the Respondent’s address of record on September 12, 2023.
8. On September 17, 2023, Respondent filed their delinquent report.
9. The Respondent did not request a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).
10. 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.
11. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. 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 Order to the Respondent assessing administrative civil liability in the amount proposed in the Complaint.

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 \$900 is based on consideration of the relevant circumstances alleged in the ACLC and the fact that the Respondent did file their delinquent report, albeit following the receipt of the ACLC. In consideration of these circumstances, the State Water Board has determined that the administrative civil liability of \$900 is appropriate.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The attached Complaint 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 Complaint pursuant to Water Code section 1055.3.
3. The Respondent shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$900 to:

State Water Resources Control Board  
Division of Water Rights  
Attn: Enforcement Section – Failure to File 2021-2022  
P.O. Box 2000  
Sacramento, CA 95812-2000

4. Fulfillment of the Respondent'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 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  
Division of Water Rights

Dated: October 27, 2023