

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

DIVISION OF WATER RIGHTS
ORDER WR 2024-0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Violations for Failure to Comply with Diversion Measurement and Reporting Regulations

DAVID COLLENBERG

Diversions Reported Under Water Right IDs S000774 and S019640

SOURCE: Oro Fino and Kidder Creek tributary to Scott River

COUNTY: Siskiyou

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease-and-Desist Order (“CDO”) requiring David Collenberg (the Diverter) to cease and desist from an ongoing, or a threatened, violation of Title 23 of the California Code of Regulations, Section 932.

Water Code section 1831, subdivision (d)(4), states, in part, that the State Water Board is authorized to issue a Cease-and-Desist Order when it determines that any person is violating or threatening to violate any term or condition of a permit, license, certification, or registration issued under this division.

BACKGROUND INFORMATION

1. David Collenberg is the owner of water right statements S000774 and S019640 which allows for the diversion of water for Irrigation and Stockwatering uses. Statement S000774 claims both riparian and pre-1914 as water right types and diverts water from Oro Fino Creek tributary to Scott River. Statement S019640 is a pre-1914 claim, diverts water from Kidder Creek tributary to Scott River. In 2021, statements S000774 and S019640 reported a combined direct diversion and use of over 1000 AF.
2. Division staff sent the Diverter a Notice of Violation (“NOV”) on September 2, 2022,

through United States Postal Service Certified Mail and electronic mail after staff documented potential curtailment violations on two separate reconnaissance trips. Staff also reviewed the Diverter's Supplemental Statement of Water Diversion and Use and found that the Diverter has failed to submit information regarding their measuring device. This failure constitutes a violation of the California Code of Regulations (CCR) Section 920 (c)(6). The Diverter responded via electronic mail regarding the potential curtailment violations but did not acknowledge or address the measuring regulation violation.

3. On March 15, 2024, Division staff sent an electronic mail requesting updates on the Diverter's measuring devices and instructed the Diverter to contact staff immediately to resolve the issue. The Diverter responded to the electronic mail; however, he did not address the question about his measuring devices. As of April 26, 2024, he has not contacted the Division regarding the measurement requirements.
4. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Diverter knowingly and intentionally refused to provide information regarding his measuring devices. The Diverter has persistently disregarded communications from the Division.
 - a. On October 19, 2018, the Division issued an Administrative Civil Liability Complaint ("ACLC") to the Diverter for failure to file Annual Diversion and Use Report(s) for the 2016 and 2017 reporting years.
 - b. On October 19, 2019, the Division issued an ACLC to the Diverter for failure to file Annual Diversion and Use Report(s) for the 2018 reporting year.
 - c. On October 14, 2022, the Division issued Information Order WR 2022-0172-DWR to the Diverter. The Diverter failed to respond to this Order.
 - d. On January 6, 2023, the Division issued an ACLC for failure to comply with Scott Watershed Information Order to the Diverter. The Diverter did not to request a hearing.
 - e. On March 17, 2023, the Division issued an Administrative Civil Liability Order, Order WR 2023-0011-DWR to the Diverter. The Diverter failed to pay the ACLC penalty.
 - f. On April 24, 2023, the Division delivered Administrative Civil Liability Order via a process server. The process server encountered an aggressive dog when attempting delivery.
 - g. The Diverter failed to submit the Supplemental Statement of Water Diversion and Use for the year 2023 by the annual deadline.

APPLICABLE LAW AND ALLEGATIONS

5. The Diverter must, pursuant to CCR section 932, install and maintain a measuring device/s or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage.

6. The Diverter must, pursuant to CCR section 933 subdivisions (b)(1)(B)(i) and (b)(2)(A), install measuring device/s capable of recording the required information on an hourly or more frequent basis and submit the data from each measuring device to the board as required by chapter 2.7 of division 3 of this title, and within 30 days of any request or order by the board.
7. The Diverter must, pursuant to CCR section 937, subdivisions (a)(2), submit a report of water measuring device to the State Water Board with the first water use report submitted after installation of the device.
8. As April 26, 2024, the Diverter has not filed the required measurement information for the subject claim of water right(s).

IT IS HEREBY ORDERED, pursuant to CCR sections 1831 through 1836 that:

1. Cease all diversions until the Diverter installs a measurement device(s) to ensure compliance with measurement and reporting regulations required in Title 23, Chapter 2.7, Article 2, Section 932 through 938 of the California Code of Regulations.
2. The Diverter must, pursuant to CCR section 937, subdivisions (a)(2), submit a report of water measuring device to the State Water Board with the first water use report submitted after installation of the device.
3. The Diverter must maintain, and provide to the Division upon request, records of all water diversions from Oro Fino and Kidder Creek.

Notice and Opportunity for Hearing

This draft CDO serves as notice pursuant to Water Code section 1834 that a violation is occurring or threatening to occur. You may request a hearing no later than 20 days after receipt of this CDO. Unless a written request for a hearing is delivered to or received by mail by the State Water Board within 20 days after receipt of the notice, the State Water Board may adopt the CDO, based on the statement of facts and information set forth herein, without a hearing.

Consequences of Non-Compliance

In the event the Diverter fails to comply with the requirements of this Order, it shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO may be referred to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a):

Upon the failure of any person to comply with a cease-and-desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon

request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

Failure to comply with this Order may subject the Diverter to civil liability in an amount not to exceed \$10,000 for each day on which the violation occurs pursuant to Water Code section 1845, subdivision (b)(1)(A).

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board or other entities from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, administrative civil liability under Water Code section 1846, the authority to bring enforcement against the Diverter for infractions under Water Code section 1058.5, subdivision (d), and Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse the Diverter from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

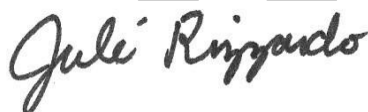
Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse the Diverter from meeting any additional regulatory requirement that may be imposed by other local, state, or federal regulatory entities for corrective actions taken by the Diverter to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), title 14 of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD



*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: April 26, 2024