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10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
11 STATE OF CALIFORNIA

12 In the Matter of:

13 RICHARD JENNINGS

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DECLARATION OF BRIAN COATS IN  
SUPPORT OF ADMINISTRATIVE CIVIL  
LIABILITY FOR VIOLATION OF STATE  
WATER BOARD ANNUAL DIVERSION  
REPORTING REGULATIONS

I, Brian Coats, declare as follows:

1. My testimony, herein provided, identifies my personal knowledge of the evidence, actions, and rationale for the State Water Resources Control Board (“State Water Board”) Division of Water Rights’ (“Division”) recommendation to issue an Administrative Civil Liability (ACL) order against Richard Jennings (“Diverter”).
2. I have been an employee of the State Water Board for the past 19 years. I am currently employed as a Senior Water Resource Control Engineer in the Division Enforcement Section. My statement of qualifications is offered into evidence as **Prosecution Team Exhibit WR-7.**<sup>1</sup>
3. My role in this enforcement action is to provide testimony regarding the Division Enforcement Section’s actions leading up to the issuance of the ACL Complaint, as well as the Prosecution Team’s proposed liability.

<sup>1</sup> Further references to Prosecution Team exhibits will be “WR-[Exhibit Number].”

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4. The Diverter is the primary owner of record for Licenses 53, 284 and 3101 along with Statements S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, S023092 and S023270 and is therefore required to comply with the applicable terms, conditions, and/or regulations. True and correct copies of the initial Statement of Diversion and Licenses for the above water rights are offered into evidence as **Exhibits WR-10a – WR-10t**. True and correct copies a query of the eWRIMS database for the above water rights identifying the contact information of the primary owner of record, are offered into evidence as **Exhibits WR-11a – WR-11t**.
5. Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations, states that water rights license holders are required to file reports of licensee annually by no later than April 1<sup>st</sup> after the close of the twelve-month reporting period.
6. Water Code section 5101 mandates that each person who diverts water must file an initial Statement of Diversion and Use by July 1 of each year, subject to several statutory exceptions. Those persons who divert water under a riparian claim of right, or an appropriative right that was initiated prior to Water Commission Act of 1914, are not exempt from this requirement and make up the bulk of “Statement filers” in the water rights system.
7. Water Code section 5104 states that all diverters who are required to file Initial Statements under Water Code section 5101 must file Supplemental Statements of Diversion and Use by July 1 of each year.
8. Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations requires Statement filers to submit the Supplemental Statement of Diversion and Use electronically by July 1 of each, for each claim of right.
9. In February of 2018, Eloise Berryman, Staff Services Manager I of the Division Data Management Unit (DMU), issued letters to all water rights holders who are required to file an annual diversion and use report electronically, reminding them of the annual reporting

1 requirement, and describing how to comply through submittal to the Report Management  
2 System. Each letter that Ms. Berryman sent listed all water rights held by a particular party  
3 and contained the unique eWRIMS usernames and passwords assigned to those water  
4 rights. The letters were addressed to the diverter listed as the primary owner in the  
5 eWRIMS database and mailed to the address listed in the eWRIMS database. A true and  
6 correct copy of the February 2018 letter is offered into evidence as **Exhibit WR-12**.

7 10. On or about July 27, 2018, Jeffrey Yeazell informed me that the Diverter failed to submit  
8 the 2017 Report of Licensee for Licenses 53, 284 and 3101 by the April 1, 2018, deadline  
9 as well as the 2017 Supplemental Statements of Diversion and Use for Statements S014780,  
10 S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789,  
11 S014790, S014791, S014792, S014793, S023091, S023092 and S023270 (“Reports”) by  
12 the July 1, 2018, deadline.

13 11. On July 27, 2018, I was directed by the Division Enforcement Chief, Kyle Ochendusko, to  
14 oversee the process of mailing out notices to all water right owners and claimants who were  
15 currently out of compliance with the regulation. I directed the Division administrative staff  
16 to mail Notices of Deficiency to the Diverter, warning of the potential for enforcement if  
17 the Reports were not submitted. The Notices of Deficiency were signed by Kyle  
18 Ochendusko. The Notices were addressed to the diverter listed as the primary owner in the  
19 eWRIMS database and mailed to the address for the diverter listed in the eWRIMS  
20 database. The Diverter is listed as the primary owner or agent on 20 separate water rights,  
21 and thus received 20 separate Notices of Deficiency. True and correct copies of the Notices  
22 of Deficiency are offered into evidence as **Exhibits WR-13a – WR-13t**.

23 12. On September 17, 2018, Kyle Ochendusko directed me to oversee the process of mailing  
24 out notices to all water right owners and claimants who were currently out of compliance  
25 with the regulation. I directed the Division administrative staff to mail final Notices of  
26 Deficiency, putting the Diverter on notice of imminent enforcement should the violations  
27 continue. The final Notices of Deficiency were signed by Kyle Ochendusko. The Notices  
28 were addressed to the Diverter listed as the primary owner in the eWRIMS database and  
mailed to the address for the Diverter listed in the eWRIMS database. The Diverter is listed  
as the primary owner or agent on 20 separate water rights, and thus received 20 separate

1 Final Notices of Deficiency. A true and correct copy of the Final Notices of Deficiency are  
2 offered into evidence as **Exhibit WR-14a – WR-14t**.

- 3 13. On October 19, 2018, with the violations still not rectified, Kyle Ochenduszko directed me  
4 to oversee the process of mailing out complaints to all water right owners and claimants  
5 who were currently out of compliance with the regulation. I directed the Division  
6 administrative staff to mail the Diverter an ACL Complaint signed by Assistant Deputy  
7 Director Julé Rizzardo via certified mail. The ACL Complaints were addressed to the  
8 Diverter listed as the primary owner in the eWRIMS database and mailed to the address for  
9 the Diverter listed in the eWRIMS database. The Diverter is listed as the primary owner or  
10 agent on 20 separate water rights, and thus received 20 separate ACLCs.
- 11 14. On October 19, 2018, the Division mailed: 3 ACL Complaints to “Richard Jennings” in  
12 Canby, CA; 17 ACL Complaints to “Richard L. Jennings” in Maxwell, CA; and 1 ACL  
13 Complaint to “M.J.M. Partnership” (Richard L. Jennings, Agent) in Maxwell, CA for  
14 failure to file annual diversion and use reports. In doing so, the Division relied upon the  
15 contact information that the Diverter provided to the State Water Board. The ACL  
16 Complaints included a cover letter explaining the violation, and an offer to settle the  
17 violation for \$500 per violation if the Diverter submitted the Reports within 20 days. True  
18 and correct copies of the ACL Complaints are offered into evidence as **Exhibits WR-1a –**  
19 **WR-1t**.
- 20 15. On November 15, 2018, the Division’s Hearings Unit received a Hearing Request from  
21 “Richard Jennings” with a Canby, CA return address. No identifying information was  
22 provided with the Hearing Request indicating that Mr. Jennings was requesting a hearing  
23 challenging the allegations of any particular ACL Complaint. A true and correct copy of the  
24 Hearing Request is offered into evidence as **Exhibit WR-2**.
- 25 16. On December 6, 2018, having not received a hearing request from “Richard L. Jennings”  
26 located in Maxwell, CA or from “M.J.M. Partnership” within 20 days from the receipt of  
27 the ACLCs, the Assistant Deputy Director for the Division issued 17 ACL Orders assessing  
28 the Proposed Liability in the ACL Complaints to Richard L. Jennings and M.J.M.

Partnership. True and correct copies of the issued ACL Orders are offered into evidence as **Exhibits WR-15a – WR-15n, and WR-15r – WR-15t.**

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17. The Division later learned that the Diverter’s Hearing Request submitted on November 15, 2018 was intended as a blanket hearing request that would cover the ACL Complaints issued to “Richard L. Jennings” as well as “M.J.M. Partnership”. Since the Diverter timely requested a hearing within 20 days of receipt of the ACL Complaints, the ACL Orders issued on December 6, 2018 were issued erroneously.
18. On March 13, 2019 the Division sent a letter informing the Diverter that the ACL Orders have no force and effect, as a hearing request was received within 20 days from receipt of the ACL Orders. A true and correct copy of the March 13, 2019 letter is offered into evidence as **Exhibit WR-16.**
19. As of today’s date only one of the twenty reports at issue in this hearing has been submitted. The Diverter submitted a Supplemental Statement of Diversion for Statement S014792, on November 27, 2018. The comment section of that report states, “leased to tenant no contact” and “No Diversion.” A true and correct copy of the Supplemental Statement of Diversion and Use for S014792 is offered into evidence as **Exhibit WR-17.**
20. Water Code section 1846 subdivision (a)(2) provides that a person may be liable for a violation of a regulation adopted by the Board in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
21. Water Code section 5107 provides that the State Water Board may administratively impose civil liability pursuant to Water Code section 1055 of up to one thousand dollars (\$1,000) for the failure to file a statement, plus five hundred dollars (\$500) per day for each additional day on which the violation continues beyond 30 days after notice of the violation.
22. As of October 19, 2018, (the day the ACL Complaint was issued) the appropriate diversion reports had not been submitted. Each day after the April 1<sup>st</sup> (licenses) and July 1<sup>st</sup> (statements) deadlines in which the diversion reports were not submitted is a day in which

1 the violation continued. The number of violation days elapsing between the appropriate  
2 deadline and the day that the ACL Complaint was issued is: 110 days for each of the 17  
3 statements and 201 days for each of the three licenses.

4 23. Pursuant to Water Code section 1846, liability may be imposed each day that the violation  
5 continued; 110 days for statements and 201 days for the licenses. Thus, the maximum  
6 liability that the State Water Board may impose under Water Code 1846 is \$55,000 (110  
7 days x \$500/day) per Statement and \$100,500 (201 days x \$500/day) per license or  
8 \$1,236,500 for all 17 Statements and three Licenses owned by the Diverter and subject to  
9 the ACL Complaints.

10 24. Pursuant to Water Code section 5107, daily liabilities do not accrue until 30 days after the  
11 diverter has been notified. In this case, the Diverter was notified initially about their failure  
12 to file the Supplemental Statement on July 27, 2018, when the first Notice of Deficiency  
13 was mailed. The number of days between August 26, 2018 (30 days after July 27, 2018)  
14 and the day that the ACL Complaint was issued is 50 days. Thus, the maximum liability  
15 that the State Water Board may impose under Water Code 5107 is \$26,000 per Statement  
16 not submitted (\$1,000 + 50 days x \$500/day) or \$442,000 for all 17 Statements owned by  
17 the Diverter and subject to the ACL Complaints.

18 25. In determining the appropriate amount of a civil liability under Water Code section 1846,  
19 Water Code section 1848 requires that the State Water Board consider all relevant  
20 circumstances, including, but not limited to, the extent of harm caused by the violation, the  
21 nature and persistence of the violation, the length of time over which the violation occurs,  
22 and the corrective action, if any, taken by the violator.

23 26. In determining the appropriate amount of a civil liability under Water Code section 5107,  
24 California Water Code section 5107 subdivision (e) requires that the State Water Board  
25 consider all relevant circumstances, including, but not limited to, the extent of harm caused  
26 by the violation, the nature and persistence of the violation, the length of time over which  
27 the violation occurs, and the corrective action, if any, taken by the violator.  
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- 1 27. In this case, the Reports were due by either April 1, 2018 (licensed rights) or July 1, 2018  
2 (statement filings). One of the 20 outstanding reports was submitted late with the  
3 remaining 19 reports not submitted leading to significant harm. The value of the data to the  
4 public and the State Water Board is tied to its timely submittal, and therefore an increased  
5 time lapse between the deadline and the date that the report is ultimately submitted results  
6 in increased harm to the regulatory program. The State Water Board's forecasting of water  
7 availability during peak water use times of the year, and ability to regulate the resources it  
8 is required to protect is diminished by the failure to submit the Report on time. The length  
9 of time over which the violation has occurred despite repeated attempts to contact the  
10 Diverter is significant.
- 11 28. Moreover, it appears that the Diverter is aware of his obligation to submit diversion and use  
12 reports for his water rights, as he has successfully filed the reports for all his water rights by  
13 the appropriate deadline in the past. True and correct copies of the diverters past diversion  
14 and use reports is offered into evidence as **Exhibits WR-23a – WR-23t**.
- 15 29. Having taken into consideration all relevant circumstances, the Division recommends the  
16 imposition of \$30,000 in administrative civil liability; \$1,500 per violation (Proposed Total  
17 Liability).
- 18 30. Authentication of Exhibits from the Enforcement File: I have reviewed the enforcement and  
19 permit file for this matter. The Prosecution Team Exhibits contain true and correct copies of  
20 the following from the Enforcement file:
- 21 1. **Exhibits WR-3a – WR-3t** – Division of Water Rights File for Statements S014780,  
22 S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788,  
23 S014789, S014790, S014791, S014792, S014793, S023091, S023092, S023270, and  
24 Licenses 53, 284 and 3101, - Submitted by reference by the Prosecution Team, pursuant  
25 to the Hearing Notice, section 6 subdivision (b), California Code of Regulations, title 23,  
26 section 648.3. Available at the SWRCB Records Unit.
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1 I declare under penalty of perjury to the laws of the State of California that the foregoing is true  
2 and correct. Executed March 18, 2019, at Sacramento, California.

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5 BRIAN COATS, P.E.

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