

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to Comply with Shasta River Watershed Information Order

Dean Murphy Moua

Water Right ID: SG005957

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Dean Murphy Moua ("Respondent") is alleged to have violated Title 23, Division 3, Chapter 2, Article 24, section 875.8 of the California Code of Regulations.
2. On August 17, 2021, the State Water Resources Control Board (State Water Board" or "Board") adopted an emergency regulation, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Klamath River Watershed (hereinafter "Regulation" or "Emergency Regulation"). The Regulation went into effect on August 30, 2021, when it was approved by the Office of Administrative Law and filed with the Secretary of State. State Water Board Resolution No. 2021-0029 adopted the Regulation and describes the need for the Regulation and its intent. The Board updated and readopted the Regulation on June 21, 2022, effective July 29, 2022.
3. Under the Emergency Regulation, the Deputy Director for the Division of Water Rights ("Division") may issue an information order to some or all landowners in the Scott River and Shasta River watersheds, requiring them to provide information related to diversion and use of water relevant to implementing the regulation. (Cal. Code Regs., tit. 23, sec. 875.8.) The Emergency Regulation requires the Deputy Director, in determining whether to impose information orders, to consider the need for the information and the burden of producing it and take reasonable efforts to avoid requiring duplicative reporting of information the State Water Board already possesses. (Cal. Code Regs., tit. 23, §875.8, subd. (a).)
4. The Division of Water Rights sent an Information Order for Appropriative Groundwater Rights in Shasta River Watershed ("Information Order") (Order WR 2022-0176-DWR) to the Respondent on December 8, 2022. The Information Order was delivered to the Respondent on December 16, 2022.

5. The Information Order required the Respondent to submit a Shasta River Watershed Information Order Form (“Information Order Form” or “Form”) within 14 calendar days of the Information Order’s issuance for each requested water right. The Information Order Form was due no later than December 30, 2022.
6. Under Water Code section 1846, subdivision (a)(2), “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.
7. Civil liability may be imposed under Water Code section 1846 pursuant to Water Code section 1055. 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 delegated authority to issue an ACL Complaint to the Deputy Director for Water Rights. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights 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. This authority has been redelegated to the Assistant Deputy Director.

ALLEGATIONS

9. The Respondent is the owner of an alleged appropriative groundwater well on Siskiyou County Assessor’s Parcel Number 020-010-450. The Division issued Water Right ID SG005957 for the Respondent’s appropriative groundwater well, which is used to divert and use water from the Shasta River Watershed. The appropriative groundwater well is subject to the Emergency Regulation.
10. According to paragraph 3 of the Information Order, “the recipient of this Order must submit, under penalty of perjury, the information described in the enclosed Information Order Form(s).” The Information Order Form further states, “You must submit this form within 14 days from issuance of the Order.” This corresponds to a submission date of December 30, 2022.
11. The Respondent received the Information Order through certified mail on December 16, 2022. As of the date of this Complaint, the State Water Board has not received the Information Order Response Form(s).
12. The Respondent failed to submit the Information Order Form(s) for the subject water rights by the December 30, 2022, deadline stated in the Information Order.
13. Violation of the Information Order shall be subject to enforcement and any applicable penalties pursuant to Water Code section 1846.

PROPOSED CIVIL LIABILITY

14. Water Code section 1846 states that a person or entity may be liable for a violation of a regulation or order adopted by the State Water Board in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
15. The Respondent is alleged to have violated the Emergency Regulation by failing to submit a Form within 14 calendar days of issuance of the Information Order as required by Emergency Regulation section 875.9 (b), which states that “Failure to meet the requirements of this article or of any order issued there under constitutes... a violation subject to civil liability pursuant to Water Code section 1846...”
16. Each day after the deadline that the Form is not filed is a day of violation of the Emergency Regulation. As of the date of this ACL Complaint, the violation has continued unabated for 56 days. The maximum liability for the alleged violation is \$28,000 (56 days x \$500/day).
17. In determining the appropriate amount of a civil liability, Water Code sections 1848, subdivision (d) and Water Code section 1055.3 both provide that the State Water Board shall consider all relevant circumstances, including, but not limited to, all of the following factors: 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. In considering the extent of harm caused by the violation:
 - a. The Emergency Regulations were adopted by the State Water Board in response to Governor Newsom’s Declaration of a State of Emergency due to extreme drought conditions. Water supply shortages are occurring throughout the state. The Information Order Form is an essential component required by the Information Order to obtain data relevant for determining compliance with the Emergency Regulations.
 - b. The Emergency Regulations were adopted “To prevent the diversion of water that would unreasonably interfere with an emergency minimum level of protection for commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead.” (Cal. Code Regs., tit. 23, §875, subd. (a).)
 - c. The value of the data contained within the Information Order Form to the public and the State Water Board 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 the Emergency Regulation intends to protect is diminished by the failure to submit the Information Order Form.

- d. Inaccurate and incomplete data prevents the State Water Board from developing the realistic supply and demand calculations it needs to implement the Emergency Regulations. With inaccurate data, the State Water Board may curtail more water users than necessary, curtail water users longer than necessary, or both. The reverse is also true. The State Water Board would not curtail deeply enough and harm senior downstream users and environmental resources the Emergency Regulations are intended to protect. Inaccurate and missing data ultimately harm other water users, the environment, or both. This includes the data the Respondent has failed to submit.
19. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Respondent knowingly and intentionally refused to submit the Information Order Form.
- a. The Respondent is aware a drought is occurring, aware of the Emergency Regulations, and aware of the State Water Board's enhanced regulatory efforts. They also have a recent history of failing to comply with Board orders. The Respondent received a curtailment order under the Emergency Regulations in September 2021. The Respondent did not respond to the original curtailment order, so the Division issued an ACL Complaint for Failure to Submit Online Curtailment Certification Form for Water Right SG005957 on February 18, 2022. The Respondent subsequently submitted the Curtailment Certification Form on February 22, 2022. The Division withdrew the ACL Complaint because the Respondent submitted the Curtailment Certification Form.
 - b. On August 5, 2022, Division staff notified the Respondent of a citizen complaint alleging that the Respondent is diverting thousands of gallons of groundwater and using water haulers to deliver to other properties. This letter asked the Respondent to provide information on the quantity of water diverted, where it is used, and the purpose of use. The respondent hired attorney, Samuel C. Williams, to respond to the Division's request for information. By letter dated August 25, 2022, Mr. Williams responded but did not provide the information that Division staff asked for. The Information Order was then issued on December 16, 2022. After the Information Order, Mr. Williams notified the Division that he no longer represents the Respondent.
 - c. The Information Order clearly stated that the Information Order Form was due no later than December 30, 2022. It included a cover letter providing points of contact if the Respondent had any questions. Division enforcement staff are not aware of any communication or inquiry from the Respondent indicating any effort to submit the Information Order Form.

20. In considering the length of time over which the violation occurred, the Information Order Form was due by December 30, 2022, but has still not been filed with the State Water Board. As of the date this ACL complaint was issued, the violation has occurred over a period of 56 days. This should be considered a moderate length of time for a violation, but still significant given critical watershed conditions and the investigatory impedance it caused Division staff by not having the data required in the Information Order.
21. In considering corrective action undertaken by the violator, no corrective action has occurred. The Information Order Form has not been submitted. Division enforcement staff are not aware of any communication or other inquiry from the Respondent indicating any attempt to submit the Information Order Form.
22. In considering other relevant circumstances:
- a. The Division issued the Information Order to obtain information necessary to assess whether the Respondent has diverted and used water in violation of the Emergency Regulations. The Respondent's complete failure to respond to the Information Order has impeded and obstructed the Division's investigation.
 - b. The Respondent has a prior history of violations, having been issued a prior Administrative Civil Liability Complaint on February 18, 2022, for a violation occurring in January 2022. This recent violation, which occurred during drought, is an aggravating factor warranting a significantly higher penalty.
23. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Respondent to submit the Form, the harm of the missing data to the State Water Board's effectiveness in regulating water diversions during a drought, 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 \$10,000 in administrative civil liability ("Proposed Liability"). This Proposed Liability is, however, based on currently available information. Should this matter go to hearing, the Prosecution Team may recommend a different administrative civil liability based on evidence and testimony submitted at the hearing.

RIGHT TO HEARING

24. The Respondent may request a hearing on this matter before the State Water Board's Administrative Hearings Office. Any such request for hearing must be delivered to or received by mail by the Board within 20 days after the date that this notice is received in accordance with Water Code section 1055, subdivision (b).

25. If the Respondent requests a hearing, the Respondent will have an opportunity to contest the allegations in this complaint and the imposition of a fine by the Board. The Administrative Hearings Office 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.
26. At the hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that a liability shall not be imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider adopting the order at a subsequent public meeting. Any Board order imposing an ACL shall be final and effective upon issuance.
27. If the Respondent does not request a hearing within 20 days of receipt of this Complaint, 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

ORIGINAL SIGNED BY:

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

Dated: February 24, 2023