

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

DIVISION OF WATER RIGHTS

ORDER WR 2021-0059-EXEC

In the Matter of Administrative Civil Liability for Failure to File Annual Water Division
and Use Report(s)

upon

Ciro Toma

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of two Administrative Civil Liability Complaints (ACLCs) to Ciro Toma (Respondent). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights' Prosecution Team (Division Prosecution Team) and the Respondent have agreed to settle these matters in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

The Respondent holds Water Right License 13783 (Application A025528) and Water Right License 455 (Application A002575).

The Respondent must, pursuant to regulations enacted by the State Water Board, submit a report online through the Board's website documenting the Respondent's water diversion and use (Annual Report) under License by April 1 of each following calendar year. (Cal. Code Regs., tit. 23, §§ 847 & 929). The Respondent was required to file the Annual Report for the 2019 water year by April 1, 2020.

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On February 21, 2020, the Division of Water Rights (Division) issued two notices to the Respondent reminding him of the requirement to submit the 2019 Annual Reports by April 1, 2020, as required pursuant to the California Code of Regulations. The notices provided instructions on how to access the Report Management System to submit the Annual Reports and notified the Respondent to contact the Division by phone or email with any questions regarding the reporting process.

On June 1, 2020, the Division mailed the Respondent a Notice of Deficiency for each Water Right License. The Notices of Deficiency requested the deficient Annual Reports be submitted and warned the Respondent of the potential for enforcement if the required Annual Reports were not submitted.

On January 15, 2021, the Assistant Deputy Director for the Division of Water Rights, acting under delegated authority, issued two ACLCs to the Respondent for failing to file the required Annual Reports. The ACLCs recommended an administrative civil liability in the amount of \$2,000 per violation. The ACLC packages each included an Expedited Settlement Offer letter. The letters offered to settle the violations alleged in the ACLCs in the amount of \$500 per violation if the Respondent filed the 2019 Annual Reports and returned the signed Acceptance of Expedited Settlement Offer and Waiver of Right to Hearing and Reconsideration.

On January 21, 2021, the Respondent submitted the Annual Reports for License 13783 (A025528) and License 455 (A002575).

On February 2, 2021, the Respondent timely requested a hearing before the State Water Board to contest the allegations contained in the ACLCs.

On April 21, 2021, the State Water Board, Administrative Hearings Office issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACLCs to be held on June 8, 2021.

On April 29, 2021, the Division Prosecution Team received the signed Acceptance of Expedited Settlement Offer and Waiver of Right to Hearing and Reconsideration for License 13783 (A025528) and License 455 (A002575).

The Respondent and the Division Prosecution Team agree to settle all matters identified in the ACLCs issued to the Respondent on January 15, 2021, via settlement agreement in lieu of a hearing.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Division Prosecution Team executed the settlement agreement, dated May 20, 2021 and attached hereto (Settlement Agreement). The general terms of the settlement are that Respondent:

- (1) Waives the right to a hearing on the ACLCs, waives the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement and incorporated herein; and

(2) Is subject to administrative civil liability in the amount of \$1,000 payable no later than 30 days after the execution date of this Order, to be deposited into the Water Rights Fund pursuant to Water Code section 1551.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Respondent is approved. The Respondent must, no later than 30 days after this Order is issued, perform all of the following actions:

1. Pay \$1,000 as payment in full of the administrative civil liability ACL related to the violations alleged in the ACLCs. Payment shall be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund". Properly execute and deliver payment to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit – Failure to File
1001 I Street, 14th Floor
Sacramento, CA 95814

The administrative civil liability, if not paid, will be recoverable as provided in Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

July 13, 2021

Date



Eileen Sobeck
Executive Director
State Water Resources Control Board

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Ciro Toma (the “Respondent”) and the State Water Resources Control Board (State Water Board), Division of Water Rights’ Prosecution Team (the “Prosecution Team”), referred to hereinafter jointly as the Parties. This Agreement is executed this day May ____, 2021.

RECITALS

1. Respondent is the Primary Owner of record for Water Right License 13783 (Application A025528) and Water Right License 455 (Application A002575).
2. The State Water Board has adopted regulations requiring the reporting of water diversion and use under permits and licenses. For water right license holders these reports are Annual Water Diversion and Use Reports (Annual Reports). Electronic reporting using the Report Management System (RMS) in the Electronic Water Rights Information System – eWRIMS – database has been required since 2009. The regulation specifying annual water right licensee reporting requirements is codified at Title 23, Division 3, Chapter 2.7, Article 2, sections 847 and 929 of the California Code of Regulations.
3. On February 21, 2020, the Division of Water Rights (Division) issued two notices to the Respondent reminding him of the requirement to submit the 2019 Annual Reports by April 1, 2020, as required pursuant to the California Code of Regulations. The notices provided instructions on how to access the RMS system to submit the Annual Reports and notified the Respondent to contact the Division by phone or email with any questions regarding the reporting process.
4. The Respondent failed to submit the 2019 Annual Reports for License 13783 (A025528) and License 455 (A002575) by the April 1, 2020 deadline.
5. On June 1, 2020, the Division mailed out two deficiency letters to the Respondent requesting the deficient Annual Reports be submitted and warned of the potential for enforcement with administrative civil liability should the violation persist.
6. On January 15, 2021, the Division issued two Administrative Civil Liability Complaints (ACLs) under Water Code section 1055, alleging that the Respondent failed to submit the 2019 Annual Reports for License 13783 (A025528) and License 455 (A002575) by the April 1, 2020, deadline in violation of California Code of Regulations, title 23, section 929. Each ACL recommended a liability amount of \$2,000. Included in each ACL package was a confidential Expedited Settlement Offer letter. The letters offered to settle each violation in the amount of \$500, contingent upon the Respondent filing the 2019 Annual Reports and returning the signed Acceptance of Expedited Settlement Offer and Waiver of Right to Hearing and Reconsideration.
7. On January 21, 2021, the Respondent submitted the 2019 Annual Reports for License

13783 (A025528) and License 455 (A002575).

8. On February 2, 2021, the Respondent requested a hearing before the State Water Board, Administrative Hearing Office on the two ACLCs.
9. On April 21, 2021, the State Water Board, Administrative Hearings Office issued a Notice of Public Hearing, scheduling a hearing on the allegations in the ACLCs to be held on June 8, 2021.
10. On, April 29, 2021, the Prosecution Team received the signed Acceptances of Expedited Settlement Offer and Waivers of Right to Hearing and Reconsideration for License 13783 (A025528) and License 455 (A002575).
11. In lieu of a hearing on these matters, the Parties agree to settle the alleged violations, identified in the two ACLCs issued to the Respondent, through this Settlement Agreement (Agreement).
12. This Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

STIPULATIONS

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties do hereby agree to settle the ACLCs as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Agreement, this Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Administrative Civil Liability.** Respondent shall be subject to administrative civil liability in the amount of \$1,000 for the two violations alleged in the ACLCs. This amount is consistent with the Expedited Settlement Offers, which required payment of \$500 for each late report.
4. **Administrative Civil Liability Payment.** Respondent will pay \$1,000 to the State Water Board in satisfaction of the ACLCs. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water Code section 1551.

5. **Actions to be Taken by Respondent.** To settle the alleged violations, Respondent within 30 days of the Executive Director's Order approving this Settlement Agreement agrees to the following:
- a) Pay \$1,000 as payment in full of the administrative civil liability related to the violations alleged in the ACLCs. Payment shall be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund". Properly execute and deliver payment to:

State Water Resources Control Board
Division of Water Rights
Attention: Enforcement Unit – Failure to File
1001 I Street, 14th Floor
Sacramento, CA 95814
 - b) Respondent will work with the Prosecution Team to jointly submit this Agreement to the Administrative Hearings Office prior to the scheduled hearing date and request a notice of cancellation of the hearing be issued.
6. **Satisfaction of Administrative Civil Liability Complaint.** Respondent's full payment under paragraph 4 and completion of the terms and conditions under paragraph 5 will constitute a complete and final satisfaction of the administrative civil liability described in the ACLCs, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the ACLCs.
7. **Enforcement of this Settlement Agreement.** The administrative civil liability required in paragraph 5, if not paid, will be recoverable as provided in Water Code section 1055.4.
8. **Board Authority.** This Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in this Agreement shall excuse Respondent from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
9. **Waiver of Reconsideration.** Respondent waives his rights to request reconsideration of the State Water Board Executive Directors' Order approving this Agreement, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in that Order.
10. **Successors.** This Agreement is binding on any successors or assigns of the Parties.
11. **Independent Judgment.** Each Party represents and declares that in executing this Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Agreement by any representations or statements regarding any matters made by other parties hereto or by any person

representing them.

12. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
13. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
14. **Entire Agreement.** This Agreement reflects and represents the entire agreement between and among the Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each Party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Agreement.
15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
16. **Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
17. **Section Headings.** The parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
18. **Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
19. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
20. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
21. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondent or his employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

IT IS SO STIPULATED

State Water Board, Division of Water Rights' Prosecution Team

By: _____
Jule Rizzardo
Division of Water Rights

5/20/21

Date

Respondent
By: 
Ciro Toma

5/20/21

Date

Exhibit 1: ACL Complaints



State Water Resources Control Board

January 15, 2021

Certified Mail No. 7003 1680 0000 2969 9554

Ciro L Toma
41 Summit St
Jackson, CA 95642

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2019 WATER DIVERSION AND USE REPORT

To Whom It May Concern:

Receipt of this letter and the attachments contained herein constitutes legal service to
Ciro L Toma of the enclosed Administrative Civil Liability Complaint and provides notice
of the intent of the State Water Resources Control Board (State Water Board), Division
of Water Rights (Division), to assess a monetary penalty for violating State Water Board
regulations.

You have 20 days to act or you may face additional fines and enforcement actions. This
matter requires your immediate attention.

VIOLATION DESCRIPTION:

Ciro L Toma is required to annually file Water Diversion and Use Report¹ by April 1 of
each year and has failed to do so. State Water Board regulations require Water
Diversion and Use Reports to be filed by April 1 of the succeeding year for every water
right on file with the State Water Boards (See Title 23, Chapter 2.7, Article 1, Section
907 et. seq. of the California Code of Regulations)

MAXIMUM AND PROPOSED PENALTY FOR VIOLATION:

The maximum penalty allowed by law for this type of violation is \$500 per day for every
day that a report has not been submitted. The State Water Board can impose a fine for
failing to submit the report by the deadline of up to \$144,500 (289 days at \$500/day per
water right).

The State Water Board is required to consider all relevant circumstance prior to issuing
a monetary penalty. The Division reviewed the relevant circumstances of the case and
has determined that the appropriate proposed liability for failure to file your report by
April 1, 2020, is \$2,000 per report. You have failed to submit one Water Diversion and
Use Reports. The total proposed liability is \$2,000.

¹ Progress Reports by Permittee for permits, and Reports of Licensee for licenses.

Ciro L Toma

RIGHT TO A HEARING:

You may contest the allegations in the Administrative Civil Liability Complaint by requesting a formal hearing before the State Water Resources Control Board, Administrative Hearings Office. If you choose to contest these allegations you must submit a written request by mail, postmarked no later than 20 days after receipt of this letter, to:

State Water Resources Control Board
Attn.: Administrative Hearings Office – DWR Failure to File 2019
P.O. Box 100
Sacramento, CA 95812-0100

FAILURE TO RESPOND WITHIN 20 DAYS:

If you do not request a formal hearing by submitting a written request to attend a formal hearing before the State Water Board, Administrative Hearings Office then the State Water Board will immediately issue a monetary penalty of \$2,000.

If you have questions or concerns or prefer to settle this matter without a formal hearing, please leave a message with the Division Enforcement Section at (916) 341-5342 or by email at *DWR-Reporting@waterboards.ca.gov*. Division staff will contact you shortly.

Sincerely,



Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Administrative Civil Liability Complaint
2) Hearing Request Form

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to File Annual Diversion and Use Report(s)
for the 2019 Reporting Year

CIRO L TOMA

Water Right ID A025528 (License 13783)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Ciro L Toma (“Diverter”) 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 910 of the California Code of Regulations states that reports shall be filed electronically with the State Water Board annually, detailing the amount of water diverter and used within the twelve-month reporting period (Annual Diversion and Use Report).
3. Title 23, Chapter 2.7 Article 1, 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 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 Board may issue an Administrative Civil Liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed. (Water Code section 1055)
6. The Executive Director delegated this authority 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

7. In 2010, the State Water Board adopted regulations mandating electronic reporting of water diversion and use information. (California Code of Regulations; Title 23, Chapter 2.7, Article 1, section 907 et seq.)
8. The Diverter is the owner of record for Water Right ID A025528 (License 13783) (“subject water right”).

9. The Diverter must, pursuant to Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations, file the Annual Diversion and Use Report before the required deadline of April 1 of each year electronically on forms available at the State Water Boards website.
10. The Diverter failed to file the Annual Diversion and Use Report for the subject water right by the required deadline.
11. On or about June 1, 2020, the State Water Board Division of Water Rights sent Diverter a Notice of Deficiency, notifying Diverter that the Annual Diversion and Use Report for water year 2019 had not been received by the required deadline.
12. The Notice of Deficiency informed Diverter that failing to file an Annual Diversion and Use Report is a violation of a regulation adopted by the Board for which the potential civil liability of five hundred dollars (\$500) may be assessed for each day that each report was not submitted past the deadline.
13. As of January 15, 2021, Diverter has not filed the Annual Diversion and Use Report for the subject water right. The Annual Diversion and Use Report is now 289 days late.

PROPOSED CIVIL LIABILITY

14. 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.
15. Diverter violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations by failing to file an Annual Diversion and Use Report by the April 1, 2020 deadline for the subject water rights. Each day that Annual Diversion and Use Reports are not filed past the April 1, 2020 deadline is a day that the violation of the regulation occurs.
16. Each Annual Diversion and Use Report not filed electronically with the Board by the deadline represents a separate violation. Diverter failed to file one Annual Diversion and Use Report; constituting one violation of the regulation.
17. As of January 15, 2021, the violation continues unabated for 289 days. The maximum liability for each water right violation alleged is \$144,500 (289 days x \$500) The total maximum potential liability for the one violation is \$144,500.
18. 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, 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.

19. The water use and diversion regulations were adopted by the Board for the purpose of developing a publicly available database that allows the Board and the water user community access to the information and help make informed water management decisions. The value of the database is directly tied to the amount and accuracy of information the Board collects through compliance with the reporting regulations.
20. Water diversion and use information is critical to understanding and planning ahead 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.
21. The value of the data contained within the Annual Diversion and Use Report 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 during peak water use times of the year and ability to regulate the resources it is required to protect is diminished by the failure to submit the Annual Diversion and Use Report.
22. The Annual Diversion and Use Report was due by April 1, 2020, but has still not been filed with the State Water Board. The length of time over which this violation occurs is significant; the Annual Diversion and Use Report is now 289 days late. Moreover, no action has been taken to correct this violation despite the June 1, 2020 Notice of Deficiency putting Diverter on notice of the potential for formal enforcement action if the violation continued.
23. Having taken into consideration all relevant circumstances, including but not limited to the failure of Diverter to submit the Annual Diversion and Use Report, 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 \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

24. The Diverter 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, or received by mail by AHO within 20 days after the date that this notice is received as required by Water Code section 1055, subdivision (b).
25. If the Diverter requests a hearing, the Diverter will have an opportunity to contest the allegations in this complaint and the imposition of a fine by AHO. 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.
26. At the hearing, a Hearing Officer will consider whether to impose a monetary fine, 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.

Ciro L Toma

27. If the Diverter 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

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Dated: **January 15, 2021**

HEARING REQUEST FORM

Information Regarding Requests for Hearing

Please use this form to request a hearing. (If you do not want to request a hearing, you do not need to complete this form.)

If you want to request a hearing, please fill out the attached form and send it to the Administrative Hearings Office (AHO) by one of the following methods:

<u>Method</u>	<u>Contact Information</u>	<u>Deadline</u>
<u>Email</u>	AdminHrgOffice@Waterboards.ca.gov	Email must be dated on or before the date in the Administrative Civil Liability Complaint
<u>U.S. Mail</u>	State Water Resources Control Board Administrative Hearings Office P.O. Box 100 Sacramento, CA 95812-0100	Envelope must be postmarked on or before the date in the Administrative Civil Liability Complaint
<u>Courier</u>	Joe Serna Jr. CalEPA Building State Water Resources Control Board Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814	Delivery must be completed on or before the date in the Administrative Civil Liability Complaint

For e-mail transmittals, you may access a writable pdf version of this form at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/enforcement/ and email it to the AHO. Alternatively, you may fill out the second page of the attached form and e-mail a scanned copy to the AHO.

Subsequent Proceedings

After receiving your request for hearing, the AHO will send you an acknowledgment of receipt of your hearing request.

When the AHO schedules a hearing in this matter, the AHO will send you a Notice of Hearing, which will specify the hearing date and time, and provide information regarding how to participate in the hearing.

If you would like to discuss potential settlement of the Administrative Civil Liability Complaint, please contact the Division of Water Rights Enforcement Section using the contact information specified in the Division's letter that sent you the Administrative Civil Liability Complaint. Please do not contact the AHO to discuss potential settlement.

Questions

If you have questions about your hearing request or the hearing procedures, please send the AHO an email at AdminHrgOffice@Waterboards.ca.gov or call the AHO at (916) 341-6940 and leave a voicemail message.

Request for Hearing

I/we hereby request a hearing regarding the proposed Administrative Civil Liability Complaint.

My Contact Information:

Name: _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

Requested Methods for Future Communications:

I would like to receive future correspondence regarding my hearing request and the hearing on the Administrative Civil Liability Complaint through (check one or both):

- E-mail
- U.S. Mail



State Water Resources Control Board

January 15, 2021

Certified Mail No. 7003 1680 0000 2969 9561

Ciro Toma
41 Summit St
Jackson, CA 95642

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE 2019 WATER DIVERSION AND USE REPORT

To Whom It May Concern:

Receipt of this letter and the attachments contained herein constitutes legal service to
Ciro Toma of the enclosed Administrative Civil Liability Complaint and provides notice of
the intent of the State Water Resources Control Board (State Water Board), Division of
Water Rights (Division), to assess a monetary penalty for violating State Water Board
regulations.

You have 20 days to act or you may face additional fines and enforcement actions. This
matter requires your immediate attention.

VIOLATION DESCRIPTION:

Ciro Toma is required to annually file Water Diversion and Use Report¹ by April 1 of
each year and has failed to do so. State Water Board regulations require Water
Diversion and Use Reports to be filed by April 1 of the succeeding year for every water
right on file with the State Water Boards (See Title 23, Chapter 2.7, Article 1, Section
907 et. seq. of the California Code of Regulations)

MAXIMUM AND PROPOSED PENALTY FOR VIOLATION:

The maximum penalty allowed by law for this type of violation is \$500 per day for every
day that a report has not been submitted. The State Water Board can impose a fine for
failing to submit the report by the deadline of up to \$144,500 (289 days at \$500/day per
water right).

The State Water Board is required to consider all relevant circumstance prior to issuing
a monetary penalty. The Division reviewed the relevant circumstances of the case and
has determined that the appropriate proposed liability for failure to file your report by
April 1, 2020, is \$2,000 per report. You have failed to submit one Water Diversion and
Use Reports. The total proposed liability is \$2,000.

¹ Progress Reports by Permittee for permits, and Reports of Licensee for licenses.

Ciro Toma

RIGHT TO A HEARING:

You may contest the allegations in the Administrative Civil Liability Complaint by requesting a formal hearing before the State Water Resources Control Board, Administrative Hearings Office. If you choose to contest these allegations you must submit a written request by mail, postmarked no later than 20 days after receipt of this letter, to:

State Water Resources Control Board
Attn.: Administrative Hearings Office – DWR Failure to File 2019
P.O. Box 100
Sacramento, CA 95812-0100

FAILURE TO RESPOND WITHIN 20 DAYS:

If you do not request a formal hearing by submitting a written request to attend a formal hearing before the State Water Board, Administrative Hearings Office then the State Water Board will immediately issue a monetary penalty of \$2,000.

If you have questions or concerns or prefer to settle this matter without a formal hearing, please leave a message with the Division Enforcement Section at (916) 341-5342 or by email at DWR-Reporting@waterboards.ca.gov. Division staff will contact you shortly.

Sincerely,



Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Administrative Civil Liability Complaint
2) Hearing Request Form

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to File Annual Diversion and Use Report(s)
for the 2019 Reporting Year

CIRO TOMA

Water Right ID A002575 (License 455)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Ciro Toma ("Diverter") 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 910 of the California Code of Regulations states that reports shall be filed electronically with the State Water Board annually, detailing the amount of water diverter and used within the twelve-month reporting period (Annual Diversion and Use Report).
3. Title 23, Chapter 2.7 Article 1, 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 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 Board may issue an Administrative Civil Liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed. (Water Code section 1055)
6. The Executive Director delegated this authority 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

7. In 2010, the State Water Board adopted regulations mandating electronic reporting of water diversion and use information. (California Code of Regulations; Title 23, Chapter 2.7, Article 1, section 907 et seq.)
8. The Diverter is the owner of record for Water Right ID A002575 (License 455) ("subject water right").

9. The Diverter must, pursuant to Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations, file the Annual Diversion and Use Report before the required deadline of April 1 of each year electronically on forms available at the State Water Boards website.
10. The Diverter failed to file the Annual Diversion and Use Report for the subject water right by the required deadline.
11. On or about June 1, 2020, the State Water Board Division of Water Rights sent Diverter a Notice of Deficiency, notifying Diverter that the Annual Diversion and Use Report for water year 2019 had not been received by the required deadline.
12. The Notice of Deficiency informed Diverter that failing to file an Annual Diversion and Use Report is a violation of a regulation adopted by the Board for which the potential civil liability of five hundred dollars (\$500) may be assessed for each day that each report was not submitted past the deadline.
13. As of January 15, 2021, Diverter has not filed the Annual Diversion and Use Report for the subject water right. The Annual Diversion and Use Report is now 289 days late.

PROPOSED CIVIL LIABILITY

14. 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.
15. Diverter violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations by failing to file an Annual Diversion and Use Report by the April 1, 2020 deadline for the subject water rights. Each day that Annual Diversion and Use Reports are not filed past the April 1, 2020 deadline is a day that the violation of the regulation occurs.
16. Each Annual Diversion and Use Report not filed electronically with the Board by the deadline represents a separate violation. Diverter failed to file one Annual Diversion and Use Report; constituting one violation of the regulation.
17. As of January 15, 2021, the violation continues unabated for 289 days. The maximum liability for each water right violation alleged is \$144,500 (289 days x \$500) The total maximum potential liability for the one violation is \$144,500.
18. 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, 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.

19. The water use and diversion regulations were adopted by the Board for the purpose of developing a publicly available database that allows the Board and the water user community access to the information and help make informed water management decisions. The value of the database is directly tied to the amount and accuracy of information the Board collects through compliance with the reporting regulations.
20. Water diversion and use information is critical to understanding and planning ahead 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.
21. The value of the data contained within the Annual Diversion and Use Report 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 during peak water use times of the year and ability to regulate the resources it is required to protect is diminished by the failure to submit the Annual Diversion and Use Report.
22. The Annual Diversion and Use Report was due by April 1, 2020, but has still not been filed with the State Water Board. The length of time over which this violation occurs is significant; the Annual Diversion and Use Report is now 289 days late. Moreover, no action has been taken to correct this violation despite the June 1, 2020 Notice of Deficiency putting Diverter on notice of the potential for formal enforcement action if the violation continued.
23. Having taken into consideration all relevant circumstances, including but not limited to the failure of Diverter to submit the Annual Diversion and Use Report, 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 \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

24. The Diverter 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, or received by mail by AHO within 20 days after the date that this notice is received as required by Water Code section 1055, subdivision (b).
25. If the Diverter requests a hearing, the Diverter will have an opportunity to contest the allegations in this complaint and the imposition of a fine by AHO. 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.
26. At the hearing, a Hearing Officer will consider whether to impose a monetary fine, 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.

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27. If the Diverter 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

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Dated: **January 15, 2021**

HEARING REQUEST FORM

Information Regarding Requests for Hearing

Please use this form to request a hearing. (If you do not want to request a hearing, you do not need to complete this form.)

If you want to request a hearing, please fill out the attached form and send it to the Administrative Hearings Office (AHO) by one of the following methods:

<u>Method</u>	<u>Contact Information</u>	<u>Deadline</u>
<u>Email</u>	AdminHrgOffice@Waterboards.ca.gov	Email must be dated on or before the date in the Administrative Civil Liability Complaint
<u>U.S. Mail</u>	State Water Resources Control Board Administrative Hearings Office P.O. Box 100 Sacramento, CA 95812-0100	Envelope must be postmarked on or before the date in the Administrative Civil Liability Complaint
<u>Courier</u>	Joe Serna Jr. CalEPA Building State Water Resources Control Board Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814	Delivery must be completed on or before the date in the Administrative Civil Liability Complaint

For e-mail transmittals, you may access a writable pdf version of this form at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/enforcement/ and email it to the AHO. Alternatively, you may fill out the second page of the attached form and e-mail a scanned copy to the AHO.

Subsequent Proceedings

After receiving your request for hearing, the AHO will send you an acknowledgment of receipt of your hearing request.

When the AHO schedules a hearing in this matter, the AHO will send you a Notice of Hearing, which will specify the hearing date and time, and provide information regarding how to participate in the hearing.

If you would like to discuss potential settlement of the Administrative Civil Liability Complaint, please contact the Division of Water Rights Enforcement Section using the contact information specified in the Division's letter that sent you the Administrative Civil Liability Complaint. Please do not contact the AHO to discuss potential settlement.

Questions

If you have questions about your hearing request or the hearing procedures, please send the AHO an email at AdminHrgOffice@Waterboards.ca.gov or call the AHO at (916) 341-6940 and leave a voicemail message.

Request for Hearing

I/we hereby request a hearing regarding the proposed Administrative Civil Liability Complaint.

My Contact Information:

Name: _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

Requested Methods for Future Communications:

I would like to receive future correspondence regarding my hearing request and the hearing on the Administrative Civil Liability Complaint through (check one or both):

- E-mail
- U.S. Mail