
State Water Resources Control Board

NOTICE OF TRANSMITTAL OF PROPOSED ORDER

The State Water Resources Control Board
Administrative Hearings Office
held a Public Hearing on May 26, 2021
on the administrative civil liability complaint to

E W Merritt Farms Gp

for alleged failure to file an
annual water diversion and use report for 2019 diversions under
water-right License 4995 (Application 12288)

On April 19, 2021, the Administrative Hearings Office (“AHO”) of the State Water Resources Control Board (“State Water Board” or “Board”) issued a Notice of Public Hearing regarding the Administrative Civil Liability Complaint (ACL Complaint) issued by the Board’s Division of Water Rights against EW Merritt Farms Gp (“Respondent”). On April 28, 2021, the AHO issued a Notice of New Hearing Start Time.

As stated in the April 19 notice, this hearing considered whether the Board should impose administrative civil liability on Respondent for alleged failure to file the required Annual Diversion and Use Report for 2019 diversions under water-right License 4995 (Application 12288). The applicable statutes, hearing issues and hearing schedule are described in detail in the April 19 and April 28 notices.

On May 26, 2021, the AHO held its public hearing on this ACL Complaint by Zoom teleconference.

The AHO has prepared its final proposed order and transmitted it to the Clerk of the Board. Copies of this proposed order and the AHO’s transmittal memorandum are enclosed.

Date: August 20, 2021

SIGNATURE ON FILE
Megan S. Knize, Hearing Officer

Enclosures:

- August 20, 2021 memorandum from Megan Knize to Jeanine Townsend
- August 20, 2021 proposed order

SERVICE LIST

E. W. Merritt Farms, Respondent
11188 Road 192
Porterville, CA 93257
sreid.merrittfarms@gmail.com
(by U.S. Mail & e-mail)

Julé Rizzardo, Assistant Deputy Director
Division of Water Rights
State Water Resources Control Board
Jule.Rizzardo@Waterboards.ca.gov

Andrew Tauriainen, Staff Counsel
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Brian Coats, Senior WRC Engineer
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Brian.Coats@Waterboards.ca.gov

(unless noted, all transmittals by e-mail
only)



State Water Resources Control Board

MEMORANDUM

TO: Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
(via e-mail, Jeanine.Townsend@waterboards.ca.gov)

FROM: Megan S. Knize, Hearing Officer
Administrative Hearings Office

DATE: August 20, 2021

SUBJECT: Proposed Order on Administrative Civil Liability Complaint against
E.W. Merritt Farms Gp, Water Right License 4995 (Application 12288)

Enclosed with this memorandum is the proposed order for this matter. The Administrative Hearings Office (“AHO”) prepared this proposed order pursuant to Water Code section 1114, subdivision (c)(1). The AHO is transmitting this proposed order to the Board for action under Water Code section 1114, subdivision (c)(2)(A).

The administrative record for this matter may be accessed at the following FTP site: <https://ftp.waterboards.ca.gov/>, selecting “Water-Right Enforcement – Annual Reports” and then clicking on the icon for the folder for the “E.W. Merritt Farms License 4995 (Application A012288)” matter. Anyone may obtain the password to access this FTP site by sending an e-mail request to AdminHrgOffice@Waterboards.ca.gov with “Request for AHO FTP password” in the subject line.

Encl.

cc w/encl.: Eileen Sobeck, Executive Director
State Water Resources Control Board
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Michael Lauffer, Chief Counsel
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Brian Coats, Senior WRC Engineer
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E. W. Merritt Farms, Respondent
11188 Road 192
Porterville, CA 93257
(via e-mail, sreid.merrittfarms@gmail.com)

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

ORDER WR 2021-____

In the Matter of the Administrative Civil Liability Complaint
against

E W Merritt Farms Gp
Water Right License 4995 (Application 12288)

SOURCE: Unnamed stream, tributary to Lewis Creek

COUNTY: Tulare

ADMINISTRATIVE CIVIL LIABILITY ORDER

BY THE BOARD:

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) as a proposed order prepared by a Hearing Officer of the Board's Administrative Hearings Office (AHO), pursuant to Water Code section 1114, subdivision (c)(1). Pursuant to Water Code section 1114, subdivision (c)(2)(A), the Board adopts the AHO's proposed order in its entirety.

2.0 LEGAL AND PROCEDURAL BACKGROUND

2.1 Administrative Civil Liability Complaint

On January 15, 2021, Julé Rizzardo, an Assistant Deputy Director of the Board's Division of Water Rights (Division), issued an Administrative Civil Liability Complaint (ACL Complaint) to E W Merritt Farms Gp (Respondent)¹, holder of water-right License

¹ On first reference, we write the Respondent's name as "E W Merritt Farms Gp," as this is the way the Prosecution Team referred to Respondent in its January 15, 2021 ACL Complaint. For subsequent references, we will use "EW Merritt Farms."

4995.² The Division sent the ACL Complaint to “E W Merritt Farms Gp,” at 22211 Road 260, Lindsay, CA 93247. (2021-01-15 E W Merritt Farms ACL Complaint; see also Exh. PT-4.³) Ms. Rizzardo issued this ACL Complaint under the authority the Board’s Executive Director delegated to the Deputy Director for Water Rights. The Deputy Director subsequently redelegated this authority to the Assistant Deputy Director.

The ACL Complaint contained the following allegations: (a) Respondent is the owner of record of water-right License 4995; (b) Respondent must, under Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations, file an Annual Diversion and Use Report before the required deadline of April 1 of each year electronically on forms available at the State Water Board’s website; (c) Respondent failed to file the Annual Diversion and Use Report for its 2019 diversions and use by the April 1, 2020 deadline; (c) on June 1, 2020, the Division sent Respondent a Notice of Deficiency, which notified Respondent that the Division had not received Respondent’s Annual Diversion and Use Report for 2019; (d) the Notice of Deficiency informed Respondent that the failure to file an Annual Diversion and Use Report is a violation of a Board regulation (title 23, section 929) for which a civil liability of \$500 may be assessed for each day that the report is not submitted after the April 1, 2020 deadline; and (e) as of January 15, 2021, Respondent had not filed the 2019 Annual Diversion and Use Report.

The ACL Complaint stated that the total maximum potential liability for Respondent’s failure to file the Annual Diversion and Use Report was \$144,500, based on an alleged violation for 289 days and the maximum penalty of \$500 per day under Water Code section 1846 (289 x \$500 = \$144,500). The ACL Complaint stated that, having taken into consideration all relevant circumstances, the Division’s Prosecution Team recommended the imposition of \$2,000 in administrative civil liability. (2021-01-15 E W Merritt Farms ACL Complaint.)

² A predecessor to the State Water Board, the State Water Rights Board, issued the license on water-right Application 12288 on March 24, 1958.

³ Hearing documents, which include materials in the administrative record and the parties’ exhibits, are available for review on the State Water Board’s FTP site in the file folder for this matter.

The ACL Complaint stated that Respondent could request a hearing on the complaint, and that any request for hearing had to be delivered to, or received by mail by, the AHO within 20 days of the date Respondent was served with the ACL Complaint.

2.2 Respondent's Submittal of 2019 Annual Diversion and Use Report

On February 2, 2021, Respondent electronically submitted its 2019 Report of Licensee (Annual Diversion and Use Report) for License 4995 to the Division's electronic Water Rights Information Management System Report Management System (eWRIMS RMS).

2.3 Respondent's Request for Hearing

Respondent sent a letter with a January 30, 2021 postmark to the AHO requesting a hearing on the ACL Complaint. The return address of this letter was "E.W. Merritt Farms" and the address was 11188 Road 192, Porterville, CA 93257. (2021-01-30 Merritt Farms to AHO mailing envelope.) The hearing request form inside the envelope provided a space for contact information. Respondent listed the mailing address in Porterville, above, and provided an e-mail address. (2021-02-26 Hearing Request Form (E. W. Merritt Farms).) Under the form's heading for "Requested Methods for Future Communications", the Respondent checked the boxes for e-mail and U.S. mail. The AHO acknowledged this hearing request via e-mail on February 26, 2021 and by letter on March 2, 2021.

2.4 Administrative Hearings Office Proceedings

Water Code section 1112, subdivision (a)(1), provides that, subject to some exceptions not applicable here, a hearing officer from the AHO shall preside over a hearing on a complaint issued under Water Code section 1055.

On April 19, 2021, the AHO issued its Notice of Public Hearing in this matter. The AHO issued a Notice of New Hearing Start Time on April 28, 2021 and otherwise held its hearing as scheduled on May 26, 2021. Andrew Tauriainen of the Board's Office of Enforcement appeared as the attorney for the Division's Prosecution Team and Brian Coats, Senior Water Resource Control Engineer, and Lang Khang, Water

Resource Control Engineer, testified for the Prosecution Team. Sarah Reid appeared and testified for Respondent.

2.5 Authority to Assess Civil Liability

California Code of Regulations, title 23, section 929, requires holders of water-right licenses to submit Annual Diversion and Use Reports for each year's water diversions and use no later than April 1 of the following year. (See Wat. Code, §§ 1840-1841.)

Water Code section 1846 authorizes the State Water Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a Board regulation. Under these statutes, the Board may impose such administrative civil liability in an amount not to exceed \$500 per day for each day in which the violation occurs.

3.0 DISCUSSION

3.1 Administrative Civil Liability

It is undisputed that Respondent did not file its 2019 Annual Diversion and Use Report until February 2, 2021. This was after the April 1, 2020 deadline in California Code of Regulations, title 23, section 929, subdivision (b). The sole question here is what amount of civil liability, if any, should be imposed on Respondent for its late filing.

3.2 Statutory Factors

Water Code section 1055.3 and section 1848, subdivision (d), state that, in determining the appropriate amount of civil liability, the Board shall take into account "all relevant circumstances, including, but not limited to": (a) "the extent of harm caused by the violation," (b) "the nature and persistence of the violation," (c) "the length of time over which the violation occurs," and (d) "the corrective action, if any, taken by the violator."

3.3 Prosecution Team's Testimony and Arguments

3.3.1. Testimony of Brian Coats

During the hearing, Mr. Coats testified about the need for the annual reporting requirements and the ways in which the Division encourages voluntary compliance from water-right holders.

First, Mr. Coats described the legal requirements for water-right holders under California Code of Regulations, title 23, sections 925 and 929. These regulations require permittees and licensees to submit an Annual Diversion and Use Report for each year's diversions no later than April 1 of the following year. (Exh. PT-7, ¶ 4.) A failure to file the Annual Diversion and Use Report may be a violation of licensee terms. (*Id.*) The Division needs information from timely water use data so the Board can "make fully informed planning decisions and the public maintains confidence in the water rights system." (Exh. PT-7, ¶ 5; see also 2021-05-26 Recording of Hearing (Recording) 16:05-16:21.) Mr. Coats also stated that the State Water Board has required water-right holders to submit their reports electronically through eWRIMS RMS since 2009. (Exh. PT-7, ¶¶ 4.)

Mr. Coats explained that, on February 21, 2020, Data Management Unit (DMU) staff mailed letters to all water-right holders reminding them of the April 1, 2020 deadline to submit 2019 Annual Diversion and Use Reports. (Exh. PT-7, ¶ 6.) The letter sent to Respondent lists the address of 22211 Road 260 in Lindsay. (*Id.*, citing Exh. PT-1.) The letter contains the words "ACTION REQUIRED" along with instructions for reporting 2019 water use and lists three resources for assistance: an e-mail address, phone number, and link to a "help" page on the State Water Board's webpage. Mr. Coats explained that DMU keeps a record of undeliverable mail, he does not know if DMU has a record that the envelope containing the letter to Respondent that DMU sent February 21, 2020 was returned as undeliverable, and surmised that based on the letters and the ACL Complaint sent to the Lindsay address, the address was valid. (Recording 31:45-32:23.)

Mr. Coats then stated that on June 1, 2020, Division staff issued a letter to the Respondent. (Exh. PT-7, ¶ 9.) The address of this letter was 22211 Road 260 in Lindsay. The letter contained the words "NOTICE OF DEFICIENCY" and instructions for how to prevent the Division from issuing an ACL Complaint. This letter also listed the Division's phone number and an e-mail address and stated for those who contact the Division's Enforcement Section with questions or concerns, "Division staff will contact you shortly". (*Id.*, citing Exh. PT-3.) Mr. Coats explained that the Division keeps

a record of undeliverable mail and has no record the envelope containing the letter to Respondent the Division sent on June 1, 2020 was returned as undeliverable. (Recording 32:47-34:15.)

Mr. Coats further testified that while the Division does not need to conduct outreach to water-right holders, the Division nevertheless does so by sending, among other correspondence, e-mails and Twitter messages (Tweets) to water-right holders subscribed to the Division's reporting subscription service. (Exh. PT-7, ¶ 8; Recording 17:12-17:35.) The Division sent e-mails on May 21, 2020 and Oct. 2, 2020 to all parties subscribed at the time to the Division's reporting subscription service. (Exh. PT-7, ¶ 8; Recording 18:12-20:09.) Mr. Coats explained that the database is a "current list" that is overwritten from time to time, so it is difficult to determine which subscribers were on the list on any day in the past. (Recording 35:18-37:29.) Mr. Coats explained that the "reporting service is free of charge and available on the Division's webpage." (Recording 18:18-18:33.) He also explained the Division provided telephone assistance and e-mail service. (Recording 21:30-21:40.) Finally, the Division sent Twitter messages on October 5, 2020 and January 14, 2021 through the State Water Board's Twitter account to subscribers reminding them they could file Annual Diversion and Use Reports after the filing deadline and avoid penalties. (Exh. PT-7, ¶ 8; Recording 20:09-20:39.)

Mr. Coats testified that given the Division's "extensive outreach" and that the Respondent did not submit the 2019 Annual Diversion and Use Report until after the Division issued its formal complaint, the "only feasible tool to achieve compliance and deter future violations is imposing a substantial penalty" in the amount of \$2,000. (Exh. PT-7, ¶ 14.)

After testimony from Mr. Khang, Mr. Coats resumed his testimony to discuss the Water Code section 1055.3 and section 1848, subdivision (d) factors. (Recording 25:47-28:29.) Regarding the "extent of harm" factor, Mr. Coats testified that "the failure to provide this report undermines the Division's ability to use current data needed to make

confident availability determinations for permitting and curtailment notices during drought periods”. (Recording 26:09-26:28.)

For the “nature and persistence of the violation,” Mr. Coats explained that the Respondent failed to file its Annual Diversion and Use Report until Feb. 2, 2021 despite “numerous outreach methods” the Division undertook, including e-mails, Twitter messages and a formal notice of deficiency. (Recording 26:45-27:30.) Mr. Coats also explained that enforcement staff were available by e-mail and telephone to assist water-right holders with their filings. (*Id.*)

As for the length of time over which the violation occurred, Mr. Coats stated the violation lasted for 289 days, which was ten months from the initial due date. (Recording 27:31-27:56.) Respondent’s corrective action was to file the Annual Diversion and Use Report after receiving the ACL Complaint. (*Id.*)

3.3.2 Testimony of Lang Khang

Lang Khang discussed the Respondent’s ownership of this water right, the address change Respondent submitted on March 2, 2021, and the factors the Board should consider in imposing a penalty. First, Mr. Khang explained that the 2012 Grant Deed transferring title of the property to EW Merritt Farms shows that EW Merritt Farms acquired the property on January 31, 2012 and has been the owner of record and mail receiver since December 10, 2016. (Exh. PT-8, ¶ 4; Recording 23:17-24:08.)

Respondent filed a change of address form on March 2, 2021, changing the address of record to 11188 Road 192 Porterville, CA 93257. (Exh. PT-8, ¶ 16.)

Mr. Khang’s written testimony included a discussion of the Water Code section 1055.3 and section 1848, subdivision (d) factors, but he did not provide oral testimony about the factors. Regarding the “extent of harm” factor, Mr. Khang testified that information included in annual water-right licensee reports “is critical for administering water rights and managing water supply,” and that the “State Water Board and the public need to understand when, where, how, and why water is used to ensure that water is being put to beneficial use.” (Exh. PT-8, ¶ 11.) Mr. Khang testified that without this information, the Board is limited in its ability to issue accurate permits or grant petitions, determine

availability of water and the likelihood a diversion may cause harm, administer timely and accurate billings for water use, conduct efficient, fair and accurate drought management, develop instream flow requirements and protect public trust resources, build and calibrate water resource planning models, and respond to and evaluate complaints and alleged illegal diversions. (*Id.*) He testified that, on an aggregate basis, “these types of water right violations undermine the validity and transparency of the water rights system.” (*Id.*)

For the “nature and persistence of the violation,” Mr. Khang explained that the Division conducted “extensive outreach” to “the regulated community.” (Exh. PT-8, ¶ 12.) Respondent did not file the Annual Diversion and Use Report until the Division expended staff resources to prepare and issue the ACL Complaint. (*Id.*)

The violation lasted for 289 days, which was ten months after the initial due date. (Exh. PT-8, ¶ 13.) The Respondent’s corrective action was to file the Annual Diversion and Use Report “approximately 10 days after receiving the ACL Complaint.” (*Id.* ¶ 14.)

As for other considerations, Mr. Khang stated the Prosecution Team’s proposed civil penalty of \$2,000 “represents the equivalent of four days of violations,” and the Division believes this is the “minimum amount suitable to deter future noncompliance” by this water-right holder and others in similar situations. (Exh. PT-8, ¶ 15.) Mr. Khang emphasized that “although an exact cost estimate is not available, the Diverter’s failure to file caused the State Water Board to spend resources on outreach and compliance efforts to the Diverter, plus preparing this formal enforcement action, that could otherwise have been available for investigating claims of water theft, illegal diversions, and permit/license compliance surveillance and enforcement.” (*Id.*)

3.3.3 Prosecution Team’s Arguments

In closing, the Prosecution Team argued that EW Merritt Farms knew or should have known the Annual Diversion and Use Report was due on April 1, 2020. EW Merritt Farms appears to have received mail sent to 22211 Road 260 in Lindsay, the same address to which the Division sent the ACL Complaint in January 2021. The PT also argued that, under California Code of Regulations, title 23, sections 830, 831 and 915,

the holder of the water right has the burden to keep their addresses in the Division's files up to date. Finally, the PT stated that Ms. Reid indicated EW Merritt Farms still is using the pond and while the Annual Diversion and Use Reports were not timely filed, the fact that EW Merritt Farms filed these reports indicates EW Merritt Farms still is using the water associated with this water right. (Recording 1:48:15-1:51:48).

3.4 Respondent's Testimony and Arguments

During the hearing, Ms. Reid testified that EW Merritt Farms is a multi-property ranching operation that uses the land associated with License 4995 for grazing cattle. (Recording 1:13:10-1:13:53; 1:20:12-1:21:35.) Ms. Reid works in the headquarters of EW Merritt Farms, which is located about five miles away from the property associated with License 4995. (Recording 1:14:02-1:14:20; 1:18:02-1:19:05.)

EW Merritt Farms' 2019 Annual Diversion and Use Report noted that approximately 10 cows lived on this land, and during the hearing, Ms. Reid stated there could be between 25 and 100 cows present for short periods of time depending on the work being done with the cows. (2021-02-02 A012288 Report of Licensee for 2019⁴; Recording 1:26:06-1:30:37.) The authorized purposes of use in License 4995 are irrigation, recreation, and stockwatering. (1958-03-24 A012288 License for Diversion and Use of Water.)

The property contains what Ms. Reid described as a "catch pond" and a residence. (Recording 1:03:22-1:04:36; 1:30:20-1:31:52). When there is water in the pond, Ms. Reid explained, the cattle go in and drink the water. (Recording 1:12:20-1:12:35.) She also emphasized that EW Merritt Farms is not diverting water. (Recording 1:11:17-1:12:46; 1:30:00-1:31:52.) Ms. Reid believes the pond collects rainwater and she does not know where the water associated with this water right comes from.⁵ (Recording 1:11:17-1:12:55; 1:30:07-1:32:45.)

⁴ This report is saved in the folder called "Reports of Licensee" available on the FTP site as described in footnote 3.

⁵ License 4995 states that the source of the water is "an unnamed stream in Tulare County," which is a "tributary to Lewis Creek." (1958-03-24 A012288 License for Diversion and Use of Water.)

Ms. Reid stated that EW Merritt Farms owns other properties and her nephew Jacob Shepard fills out the reporting forms associated with those water rights. (Recording 1:10:05-1:12:11; 1:13:37-1:14:39.) Ms. Reid believes her nephew submitted reporting forms for 2019 for the other water rights EW Merritt Farms owns. (*Id.*)

The mailing address for the residence on this property is 22211 Road 260, Lindsay, California, 93247. Over the past 10 years, two different parties (E W Merritt Farms staff members) have lived at this residence. (Recording 1:17:56-1:18:02.) Ms. Reid explained that she does not live at the residence that receives the mail for this water right and would not have a “tremendous amount of interaction” with the employee that would live there. (Recording 1:04:11-1:04:36.) She also stated she realizes “it’s not his responsibility to get the mail to me.” (*Id.*)

Ms. Reid then described how she receives mail addressed to 22211 Road 260 in Lindsay. She does not personally check the mail. (Recording 1:24:05-1:25:16.) When mail comes to the residence and someone is living there, Ms. Reid stated that the resident would bring the mail to the foreman who is Ms. Reid’s nephew, who would then bring it to the office where she would presumably pick it up. (Recording 1:18:23-1:19:26; 1:24:52-1:25:16.) Ms. Reid normally would see her nephew once a week or once every two weeks and noted she would “get the mail on a fairly timely basis.” (Recording 1:18:23-1:19:26.) She believes the mail associated with License 4995 was “thrown away” at the employee’s residence or the employee never received it. (Recording 1:19:13-1:19:34.) She admitted this is “not the best mail system” but agreed this is the mail system for delivering mail to her. (Recording 1:19:40-1:19:53.)

Ms. Reid explained that her father purchased the property in 2012, she was not part of the purchase transactions, and she did not realize the grant deed had an incorrect address: 22211 Road 260, Lindsay, California. (Recording 1:03:18-1:03:35; 1:15:33-1:16:45.) She also did not realize there was a water right associated with the property. (Recording 1:16:00-1:16:08.) She explained that she believed property bills and water rights fees were delivered 22211 Road 260 in Lindsay. (Recording 1:16:47-1:17:40; 1:23:03-1:23:52.) At that address, she recalled that she had received “random stuff”

over the years, once or twice a year at most, and most of it was from the Board of Equalization. (Recording 1:05:39-1:06:31; 1:21:05-1:24:34.)

Next, Ms. Reid explained that when she received the fee statement associated with this water right, she called the telephone number she saw on the correspondence and it was for staff at the Board of Equalization. She understood that they could not help her with the water right or the incorrect address. (Recording 1:08:08-1:09:31.) Ms. Reid explained that when she tried to update the address, it was “never a real clear process on how to get things changed”, she was not sure if there was a phone number on the correspondence from the State Water Board, and she felt that because many transactions occur electronically, “people my age fall through the cracks.” (Recording 1:20:11-1:21:22.)

Ms. Reid stated that she does not send Tweets, she does have an e-mail address but she does not know if the State Water Board has this address, and that she did not receive the Tweets or e-mails from the State Water Board, or the letters the Prosecution Team witnesses said were sent to EW Merritt Farms in February and June 2020. (Recording 1:07:21-1:08:00.)

Ms. Reid received the ACL Complaint dated January 15, 2021 from the resident who received it at the Lindsay address and delivered it to her. (Recording 1:14:48-1:15:26).

Following discussion of one of Prosecution Team exhibits, Ms. Reid expressed concern about whether she was current on her fees. She stated that if she was delinquent on fees, she wanted to resolve this. (Recording 1:40:08-1:44:12) She also expressed an interest in verifying whether staff members from Merritt Farms were included on the State Water Board’s LYRIS e-mail list. (Recording 1:40:35-1:41:14.)

In her closing comments, Ms. Reid apologized for “not keeping up with the times” regarding obligations for electronic filing. (Recording 1:52:37-1:52:46.) She stated that she understands why the annual reports must be submitted. She asked for leniency, said she will do better moving forward, and added that she has a staff member helping her with these reports. (Recording 1:51:55-1:54:21.)

3.5 Analysis

As discussed above, Water Code section 1055.3 and section 1848, subdivision (d), direct the Board, in determining the amount of civil liability, to consider “all relevant circumstances, including, but not limited to,” the following factors: (a) “the extent of harm caused by the violation,” (b) “the nature and persistence of the violation,” (c) “the length of time over which the violation occurs,” and (d) “the corrective action, if any, taken by the violator.”

3.5.1 Extent of Harm Caused by the Violation

The State Water Board agrees with the Prosecution Team that timely filings of annual water-right reports, including licensee reports like the one involved in this hearing, are necessary for the Division and the Board to timely administer California’s water-rights system. This is particularly true in periods of drought. The Board also agrees that violations of the report-filing requirements, including failures to file annual reports by the applicable deadlines, undermine the validity and transparency of the water-rights system. Even though the water-right license involved in this hearing is for a pond on an unnamed stream, the cumulative effects of all late filings of annual water-right reports are significant.

3.5.2 Nature and Persistence of Violation

Since becoming the record owner of License 4995, Respondent appears not to have filed its reports on time, though the Prosecution Team did not argue this should be a consideration in determining the appropriate administrative civil liability amount.

Ms. Reid indicates that she now understands the importance of prompt attention to her mail and the importance of making timely filings. Respondent submitted the 2020 Annual Diversion and Use Report before the April 1, 2021 deadline.

3.5.3 Length of Time Over Which the Violation Occurred

Respondent filed its 2019 Annual Diversion and Use Report on February 2, 2021, which was 289 days after the April 1, 2020 deadline.

3.5.4 Corrective Action

Respondent corrected the violation by filing the Annual Diversion and Use Report for 2019 on February 2, 2021.

3.5.5 Other Relevant Circumstances

Ms. Reid expressed interest in confirming that EW Merritt Farms' fee accounts were current and that members of EW Merritt Farms' staff would be subscribed to the State Water Board's Lyris list. She explained she has a staff member whose job it is to file these reports, and she expressed regret for the imperfect mail delivery system and her unfamiliarity with online filing that caused the late filing of the 2019 Annual Diversion and Use Report. She promised to exercise more diligence in the future.

3.5.6 Conclusion Regarding Amount of Liability

Under Water Code section 1846, subdivision (a)(2), the maximum civil liability the Board may impose here is \$144,500. The amount is based on a maximum liability of \$500 for each day on which a violation occurs and the ACL Complaint's allegation of 289 days of violations between April 1, when Respondent's 2019 Annual Diversion and Use Report was due, and January 15, 2021, when the ACL Complaint was issued.

The ACL Complaint states that, having taken into consideration all relevant circumstances, the Prosecution Team recommends imposition of \$2,000 in administrative civil liability.

The Board concludes that \$2,000 is the appropriate civil liability amount here. Ms. Reid explained that she failed to file this report because of the mail transfer system she uses and apologized for not being familiar with electronic filing systems. She did not suggest a lower penalty amount. Ms. Reid offered no other explanation of personal hardship that might cause the Board to consider a different administrative civil liability amount. Consistent with the testimony of the Prosecution Team's witnesses, the penalty amount of \$2,000 is necessary and sufficient to "achieve compliance and deter future violations." (Exh. PT-7, ¶14.)

4.0 CONCLUSION

Respondent is required to pay administrative civil liability in the amount of \$2,000 for its failure to file its 2019 Annual Diversion and Use Report by the April 1, 2020 deadline.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board imposes administrative civil liability of \$2,000 on Respondent.
2. Respondent shall remit, within 30 days of the date of this Order, a check or money order payable to the State Water Resources Control Board in the amount of \$2,000, and shall transmit it to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P. O. Box 2000
Sacramento, CA 95812-2000

3. Fulfillment by Respondent of its obligations under this Order will constitute full and final satisfaction of Respondent's liability for the violations described in this Order. The State Water Board retains its right to take further enforcement actions for any future violations.

4. If Respondent does not make the payment described in paragraph 2 above by the deadline specified in that paragraph, then this Order authorizes the Assistant Deputy Director for the State Water Board's Division of Water Rights to seek recovery of the administrative civil liability imposed, pursuant to Water Code section 1055.4.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on _____, 2021.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board