

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

DIVISION OF WATER RIGHTS

ORDER 2022-0160-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Failure to Submit Online Curtailment Certification Form by

Eugene Drake

Claim of Water Right S000030

The Assistant Deputy Director of the Division of Water Rights (Division), through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability Order (Order) to Eugene Drake (Diverter). On June 6, 2022, the Division issued the Diverter an Administrative Civil Liability Complaint (Complaint), which is hereby incorporated by reference as part of this Order.

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. On August 3, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 876.1 through 879.2 (Emergency Regulations). The Emergency Regulations were reviewed by the Office of Administrative Law and went into effect on August 19, 2021.
2. Section 876.1 subdivision (b) of the Emergency Regulations authorizes the Deputy Director of the Division of Water Rights to issue curtailment orders to water right holders, requiring the curtailment of water diversion and use.
3. Section 879 subdivision (c)(1) of the Emergency Regulations states: “all water right holders issued a curtailment order pursuant to section 876.1 are required, by the deadlines specified in the initial order but no sooner than seven calendar days of the date of the [curtailment] order, to submit under penalty of perjury a certification that they will continue to take actions to comply with section 876.1 which includes monitoring the State Water Board’s drought webpage or subscribe to the State Water Board’s Delta Drought email distribution list.
4. On August 20, 2021, the Deputy Director issued an order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed (Curtailment Order).

5. The Curtailment Order required submission of Sacramento-San Joaquin Water Right Curtailment Certification online forms (Curtailment Certification) by September 3, 2021, for each water right.
6. The Diverter failed to file the Online Curtailment Certification form for the subject water right(s) by September 3, 2021.
7. On May 6, 2022, the State Water Board Division of Water Rights sent the Diverter a Notice of Violation (NOV) notifying the Diverter that the Online Curtailment Certification Form had not been received. The NOV gave the Diverter until May 20, 2022 (14 days from the NOV issuance date) to correct the violation to avoid formal enforcement action.
8. On June 6, 2022, 17 days after the NOV response due date, Division staff verified the Diverter had not submitted the Online Curtailment Certification form and issued a Complaint to the Diverter for not submitting the Online Curtailment Certification form. The Complaint assessed a \$1,000 fine and extended an opportunity to contest the fine by requesting a hearing within 20 days of receiving the Complaint.
9. United States Postal Service Tracking confirms the Complaint was received on June 9, 2022.
10. As of July 8, 2022, 9 days after the 20-day deadline to request a hearing, Division staff have not received a request for hearing from the Diverter.
11. Water Code section 1846, subdivision (a)(2) 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:...a regulation or order adopted by the Board."
12. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. Water Code section 1055, subdivision (b), Resolution No. 2012-0029, and subsequent redelegation memorandums authorize the Assistant Deputy Director of the Permitting and Enforcement Branch to issue an Order to the Diverter assessing administrative civil liability in the amount proposed in the June 6, 2022 Complaint.
13. Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
14. In this case, the recommended administrative civil liability of \$1,000 is based on the relevant circumstances alleged in the Complaint. In consideration of these circumstances, the State Water Board has determined that the administrative civil liability of \$1,000 is appropriate.

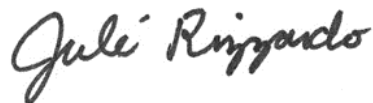
IT IS HEREBY ORDERED THAT:

1. The attached Complaint is incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including those specifically identified in the Complaint pursuant to Water Code section 1055.3.
3. Diverter shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$1,000 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section – Sac/SJ Curtailment Certification
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of the Diverter's obligations under this Order constitutes full and final satisfaction of liability for the alleged violation specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The State Water Board is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if the Diverter fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



*Julé Rizzardo, Assistant Deputy Director
Permitting and Enforcement Branch
Division of Water Rights*

Dated: July 8, 2022