

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Failure to Comply with Scott Watershed Information Order

**David Collenberg**

Water Right IDs: S000774, S019640, and SG003207

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. David Collenberg (Diverter) is alleged to have violated Title 23, Division 3, Chapter 2, Article 24, section 875.8 of the California Code of Regulations.
2. 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).)
3. The Division of Water Rights sent an Information Order for Water Use in the Scott River Watershed (“Information Order”) (Order WR 2022-0172-DWR) to the Diverter on October 14, 2022. The Respondent was served the Information Order on November 14, 2022.
4. The Information Order required the Diverter to submit a Scott 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 October 28<sup>th</sup>, 2022.
5. 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.
6. 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.

7. 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**

8. The Diverter is the owner of record for Water Right IDs S000774, S019640, and SG003207. These Water Right IDs divert and use water from the Scott River. These water rights are subject to the Emergency Regulation.
9. According to paragraph 2 of the Information Order, "By October 28, 2022, each recipient of this Order who diverts water for use on their land parcel(s) shall submit, under penalty of perjury, the information described in this paragraph." The Information Order Form further stated, "You must submit this form within 14 days from issuance of the Order. This corresponds to a submission date of October 28, 2022."
10. The Diverter failed to submit the Information Order Form(s) for the subject water rights by the October 28, 2022, deadline stated in the Information Order.
11. Violation of the Information Order shall be subject to enforcement and any applicable penalties pursuant to Water Code sections 1058.5 and 1846.

### **PROPOSED CIVIL LIABILITY**

12. 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.
13. The Diverter 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:

"Failure to meet the requirements of this article or of any order issued there under constitutes:

  - (1) a violation subject to civil liability pursuant to Water Code section 1846, and
  - (2) an infraction pursuant to Water Code section 1058.5, subdivision (d). Each of these can carry a fine of up to five hundred dollars (\$500) for each day in which the violation occurs."
14. Each day after the deadline that the Form is not filed is a day of violation of the Emergency Regulation.

15. As of the date of this ACL Complaint, the violation continued unabated for 70 days. The maximum liability for the violation alleged is \$35,000 (70 days x \$500/day).
16. 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.
17. 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. 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 public trust resources and senior downstream users. Inaccurate and missing data ultimately harm other water users, the environment, or both. This includes the data the Diverter has failed to submit.
18. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Diverter knowingly and intentionally refused to submit the Information Order Form.

- a. On July 5 and August 19, 2022, Division enforcement staff conducted reconnaissance visits to the Scott watershed. From public roads, staff noticed irrigation at the diverter's place of use and water flowing in a ditch the diverter has a water right for.
  - b. On August 10, 2022, Division enforcement staff inspected the Diverter's property based on information indicating that the Diverter had been irrigating in violation of State Water Board curtailment orders. The Diverter accompanied Division enforcement staff during the inspection.
  - c. On September 2, 2022, the Division of Water Rights issued a Notice of Violation to the Diverter via email, with the subject line "Notice of Violation for Failure to Comply with Curtailment Order and SB-88." The Diverter responded to that email the same day. The Diverter was therefore aware that Division enforcement staff believed he was violating an order of the State Water Board.
  - d. On November 10 and November 12, 2022, a process server unsuccessfully attempted to serve the Information Order on the Diverter. Then, on November 14, 2022, the process server served the Information Order on the Diverter by posting it on the Diverter's front door. Although the door was open, nobody came to the door. When the Information Order disappeared from the front door, aggressive dogs appeared; likely released in response to the Information Order's service of process.
  - e. The Information Order clearly stated that the Information Order was due no later than October 28, 2022. It included a cover letter providing points of contact if the Diverter had any questions. Division enforcement staff are not aware of any communication or inquiry from the Diverter indicating any effort to submit the Information Order Form.
19. In considering the length of time over which the violation occurred, the Information Order Form was due by October 28, 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 70 days.
20. 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 Diverter indicating any attempt to submit the Information Order Form.
21. In considering other relevant circumstances, the Division issued the Information Order to obtain information necessary to assess whether the Diverter has diverted and used water in violation of the Emergency Regulations. The Diverter's complete failure to respond to the Information Order has impeded and obstructed the Division's investigation and avoided additional potential penalties for further violations of the Emergency Regulations.

22. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Diverter 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 \$5,000 in administrative civil liability (Proposed Liability).

### **RIGHT TO HEARING**

23. The Diverter may request a hearing on this matter before the State Water Board. 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).

24. 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 the Board. The Board 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.

25. At the hearing, the Board 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.

26. If the Diverter 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

Robert P. Cervantes, For  
Julé Rizzardo, Assistant Deputy Director  
Division of Water Rights

Dated: January 6, 2023