

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

DIVISION OF WATER RIGHTS

ORDER WR 2024-0042-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Failure to File Supplemental Statement of Water Diversion and Use
for the 2022 through 2023 Reporting Year

J David Mendenhall

Diversions Reported Under Statement S002070

Initial Amount of Diversion: 300.00 Acre-Feet
San Luis Rey Watershed, San Diego County

1.0 INTRODUCTION

The Assistant Deputy Director of the Division of Water Rights (“Division”), through authority delegated by the State Water Resources Control Board (“State Water Board”), issues this Administrative Civil Liability Order (“Order”) to J David Mendenhall (“Respondent”). On July 2, 2024, the Division issued the Respondent an Administrative Civil Liability Complaint (“Complaint”), which is incorporated by reference as part of this Order.

2.0 LEGAL AND PROCEDURAL BACKGROUND

1. Water Code section 5101 states, in part, “Each person who...diverts water shall file with the board a statement of their diversion and use...For diversions after September 30, 2021, the statement...shall be filed before February 1.”¹

¹ Recent statutory changes amended Annual Water Diversion and Use Report deadlines. Effective September 24, 2021, Senate Bill (AB) 155 amended, among other things, the deadline to submit initial and supplemental statements of diversion and use as required under Water Code sections 5101 and 5104.

2. Water Code section 5104 states, in part, “Supplemental statements shall be filed annually...For diversions after September 30, 2021, the supplemental statement...shall be filed before February 1.”
3. Title 23, Chapter 2.7 of the California Code of Regulations (“Water Diversion and Use Report Regulations”) identifies requirements for mandatory filing of reports to the State Water Resources Control Board (“State Water Board”). Specifically, Article 2, section 920 of the Water Diversion and Use Report Regulations states that Supplemental Statements of Water Diversion and Use (“Supplemental Statement”) shall be filed electronically with the State Water Board annually, detailing the amount of water diverted and used within the prior twelve-month reporting period.
4. Title 23, Chapter 2.7, Article 2, 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.”
5. Statement ID S002070 has a claimed amount of 300.00 acre-feet in the initial statement filed June 29, 1967.
6. The Respondent failed to file their supplemental statement for the subject claim before February 1, 2024.
7. On April 8, 2024, the Division sent a Notice of Violation (“NOV”) via United States Postal Service informing the Respondent that the State Water Board had not received the required supplemental statement. The NOV informed the Respondent that if they filed the delinquent supplemental statement by May 8, 2024, then the Division would not issue an Administrative Civil Liability Complaint (ACLC).
8. The NOV informed the Respondent that failure to submit the supplemental statement is a violation of the Water Diversion and Use Report Regulations for which the potential civil liability of five hundred dollars (\$500) may be assessed for each day that the supplemental statement was not submitted after the deadline.
9. On July 2, 2024, the Division issued the Respondent an ACLC. The ACLC alleged the Respondent failed to file the supplemental statement for water diversion and use before February 1, 2024 for the 2022-2023 water year (October 1, 2022 through September 30, 2023). The ACLC recommended a penalty of \$3,000 and extended an opportunity to contest the penalty by requesting a hearing within 20 days of receiving the Complaint.
10. The ACLC was mailed to the Respondent via GLS parcel service. The Division confirmed with the GLS that the ACLC was delivered to the Respondent’s address of record on July 29, 2024.
11. On August 15, 2024, the Respondent filed their delinquent statement.

12. The Respondent did not request a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).
13. 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.
14. 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 Respondent assessing administrative civil liability in the amount proposed in the Complaint.
15. 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.
16. In this case, the recommended administrative civil liability of \$1,500 is based on consideration of the relevant circumstances alleged in the ACLC and the fact that the Respondent did file their delinquent statement, albeit following the receipt of the ACLC. In consideration of these circumstances, the State Water Board has determined that the administrative civil liability of \$1,500 is appropriate.

ORDER

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. Respondent shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$1,500 to:

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

Or submit an online payment with a credit or debit card by the options provided on the State Water Board webpage, https://waterboards.ca.gov/make_a_payment/.

4. Fulfillment of the Respondent'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 Respondent fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



for

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

Dated: September 13, 2024