

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

YOU ARE HEREBY GIVEN NOTICE THAT:

1. J David Mendenhall (“Respondent”) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations.
2. 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
3. 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.”
4. 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 twelve-month reporting period.

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.

5. 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."
6. Water Code section 1846(a) 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.
7. The Executive Director for the State Water Board may issue an Administrative Civil Liability ("ACL") Complaint to any person or entity to whom administrative civil liability may be imposed.
8. The Executive Director delegated the authority to issue ACL complaints to the Deputy Director for the Division ("Deputy Director"). Pursuant to Resolution 2012-0029, the Deputy Director 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. The Deputy Director has redelegated this authority to the Assistant Deputy Director.

ALLEGATIONS

9. The Respondent, or Respondent's predecessor in interest, previously filed an Initial Statement of Water Diversion and Use report for Statement S002070 ("subject claim of right"), as required under Water Code section 5101.
10. The Respondent must, pursuant to Water Code section 5104, file a Supplemental Statement of Water Diversion and Use annually, before February 1 of each year.
11. The Respondent must, pursuant to section 920 of the Water Diversion and Use Report Regulations, file the Supplemental Statement of Water Diversion and Use electronically before February 1 of each year on forms available at the State Water Board's website.
12. Diversions reported under statement S002070 have a claimed amount of 300.00 acre-feet in the initial statement filed June 29, 1967.
13. The Respondent failed to file the Supplemental Statement of Water Diversion and Use for the subject claim of right before February 1, 2024.
14. 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 has not received the required supplemental statement. The NOV notified the Respondent that the Division would not issue formal enforcement for the delinquent supplemental statement if the Respondent timely submitted the statement by May 8, 2024.

15. 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.
16. As of June 14, 2024, the Respondent had not filed the Supplemental Statement of Water Diversion and Use for the subject claim of right. The supplemental statement was 135 days late.
17. On June 25, 2024, the Division sent the Respondent an ACL Complaint dated June 14, 2024, via USPS. However, immediately following the issuance of the Complaint, the Division became aware of a need to issue new reporting login credentials. This reissued ACL Complaint corrects those login credentials.

PROPOSED CIVIL LIABILITY

18. 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.
19. The Respondent violated section 920 of the Water Diversion and Use Report Regulations by failing to file a Supplemental Statement of Water Diversion and Use before the February 1, 2024 deadline for the claim of right. Each day after the deadline a Supplemental Statement of Water Diversion and Use is not filed is a day in which the violation occurs.
20. As of the June 14, 2024 ACL Complaint, the Respondent’s supplemental statement was not filed and was thus 135 days late. The maximum administrative civil liability is \$67,500 (135 days x \$500 per day x 1 statement).
21. 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, 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.
22. The Water Diversion and Use Report Regulations were adopted by the State Water Board for the purpose of developing a publicly available database. The information contained within the database allows the State Water Board and the water user community access to information that is necessary to make informed water management decisions. The value of the database is directly tied to the amount and accuracy of information the State Water Board collects through compliance with the Water Diversion and Use Report Regulations.

23. Water diversion and use information is critical to understanding and planning 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.
24. The value of the data contained within the supplemental statement corresponds 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 it is required to protect is diminished by the failure to timely submit the Supplemental Statements of Water Diversion and Use.
25. The Respondent's supplemental statement is past due. The length of time over which this violation has continued to occur is significant; the Supplemental Statement of Water Diversion and Use is now 135 days late. Moreover, as of the date of this Complaint, no action has been taken to correct this violation despite the April 8, 2024 NOV putting the Respondent on notice of the potential for formal enforcement action if the violation continued.
26. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Respondent to submit the supplemental statement, 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 \$3,000 total (\$3,000 per report x 1 statement) in administrative civil liability ("Proposed Liability").

RIGHT TO HEARING

27. The Respondent may request a hearing on this matter before the State Water Board, Administrative Hearings Office ("AHO"). Any such request for a hearing must be delivered to the AHO **within 20 days after the date that this complaint is received** as required by Water Code section 1055, subdivision (b).
28. If the Respondent requests a hearing, the Respondent will have an opportunity to contest the allegations in this complaint and the imposition of a liability by the AHO.
29. By requesting a hearing, the Respondent acknowledges that a hearing date and time will be assigned by the AHO. Following your request for a hearing, the AHO will notify you of your hearing date, time, and location. The hearing notice will be mailed not less than 10 days before the hearing date. If you reach a settlement prior to your hearing date, the hearing will be cancelled.

30. At the hearing, a Hearing Officer will consider whether to impose a monetary liability, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any State Water Board order imposing an ACL shall be final and effective upon issuance.

31. **If the Respondent 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

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

Dated: July 2, 2024