

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

Robert C Pedotti

Water Right IDs A013466, A018851

Face Values of Diversions: 565.00 and 669 Acre-Feet per Year
Pit River Watershed, Modoc County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Robert C Pedotti (“Respondent”) is alleged to have violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.
2. Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations states that water right holders shall file reports with the State Water Resources Control Board (“State Water Board”) annually, before February 1, detailing the amount of water diverted and used within the twelve-month reporting period (“Annual Water Diversion and Use Report”).¹
3. 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.”
4. 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.

¹ Recent regulatory changes amended Annual Water Diversion and Use Report deadlines. Effective January 31, 2023, the Office of Administrative Law approved regulatory changes adopted by the State Water Board that, among other things, updates reporting deadlines in sections 925 and 929 of title 23 of the California Code of Regulations.

5. 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.
6. The Executive Director delegated the authority to issue ACL complaints to the Deputy Director for the Division of Water Rights (“Deputy Director”). Pursuant to State Water Board 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

7. The Respondent is the owner of record for Water Right IDs A013466 and A018851 (“subject water rights”).
8. The Respondent must, pursuant to Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations (“Water Diversion and Use Report Regulations”), electronically file the Annual Water Diversion and Use Report for each water right they hold before the required deadline of February 1 of each year on forms available at the State Water Board’s website.
9. Water Right A013466 has a face value of 565.00 acre-feet per year as declared in the license issued on June 2, 1961. Water Right A018851 has a face value of 669.00 acre-feet per year as declared in the license issued on March 17, 1972.
10. The Respondent failed to file the Annual Water Diversion and Use Reports for the subject water rights before the required deadline of February 1, 2024.
11. On April 8, 2024, the Division sent a Notice of Violation (“NOV”) via United States Postal Service informing the Respondent that State Water Board has not received the required annual reports. The NOV notified the Respondent that the Division would not issue formal enforcement for the delinquent Annual Water Diversion and Use Reports if the Respondent timely submitted the reports by May 8, 2024.
12. The NOV informed the Respondent that failure to submit the Annual Water Diversion and Use Reports are 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 report was not submitted after the deadline.
13. As of June 14, 2024, the Respondent had not filed the Annual Water Diversion and Use Reports for the subject water rights. The reports were 135 days late.
14. 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

15. 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.
16. The Respondent violated Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations by failing to file an Annual Water Diversion and Use Report before the February 1, 2024 deadline for the subject water rights. Each day after the deadline that an Annual Water Diversion and Use Report is not filed is a day in which the violation occurs.
17. Each report not filed electronically with the State Water Board by the deadline is a separate violation of the regulation.
18. As of the June 14, 2024 ACL Complaint, the Annual Water Diversion and Use Reports were not filed and were thus 135 days late. The maximum administrative civil liability is \$135,000 (135 days x \$500 per day x 2 reports).
19. 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.
20. 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.
21. 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.
22. The value of the data contained within the annual report 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 Annual Water Diversion and Use Reports.

23. The Respondent's Annual Water Diversion and Use Reports are past due. The length of time over which this violation has continued to occur is significant; the Annual Water Diversion and Use Reports are 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.
24. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Respondent to submit the Annual Water Diversion and Use Reports, 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 \$6,000 total (\$3,000 per report x 2 reports) in administrative civil liability ("Proposed Liability").

RIGHT TO HEARING

25. 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).
26. 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.
27. 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.
28. 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.

29. 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