

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

DIVISION OF WATER RIGHTS

ORDER WR 2022-0026-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Failure to Submit Upper Russian River Curtailment Certification
Response by

Deborah McLear-Gary

Water Right ID A028653

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 (ACL Order or Order) to **Deborah McLear-Gary** (Diverter). On October 20, 2021, the Division issued the Diverter an Administrative Civil Liability Complaint (ACLC), which is hereby incorporated by reference as part of this ACL Order.

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

1. On June 15, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 877 through 879.2 (Emergency Regulations).
2. Section 877.3 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 (a) of the Emergency Regulations states “all water right holders issued a curtailment order under [Article 24] are required, within seven days, to submit under penalty of perjury a certification of one or more” of the applicable actions.¹
4. On August 2, 2021, the Division’s Deputy Director issued Curtailment Orders to all water rights within the Upper Russian River watershed.

¹ Applicable actions taken in response to the curtailment order are specified in the California Code of Regulations, title 23, section 879, subdivision (a)(1) through (a)(5).

5. On September 28, 2021, the Division sent the Diverter a Notice of Violation notifying the Diverter that the Online Curtailment Certification Form had not been received within seven days of the issuance of the Curtailment Order in violation of the Emergency Regulations. The Diverter was warned of the potential for enforcement with monetary penalties should the violation persist.
6. On October 20, 2021, the Division issued the Diverter an ACLC. The ACLC alleged the Diverter failed to submit their Curtailment Certificate Response by October 15, 2021 in violation of section 879 of the Emergency Regulations. The ACLC recommended a penalty of \$1,000.
7. The ACLC was mailed to the Diverter via Delivery Confirmation. The Division confirmed with the United States Postal Service that the ACLC was delivered to the Diverter's address of record on December 11, 2021.
8. The Diverter did not request a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).
9. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing administrative civil liability when a Complaint has been issued and no hearing has been requested in the period provided by Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights. This authority was redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.
10. 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 ACL Order to the Diverter assessing administrative civil liability in the amount proposed in the October 20, 2021 ACLC.
11. 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.
12. In this case, the recommended administrative civil liability of \$1,000 is based on the relevant circumstances alleged in the ACLC. 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 ACLC 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 ACLC 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 – 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: January 7, 2022