CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

October 29, 2015

(sent via electronic mail and certified mail)
CERTIFIED MAIL
No. 7015 0640 0006 0950 4568

Mr. Brian Macy
General Manager
Indio Water Authority
83-101 Avenue 45
Indio, CA 92201
bmacy@indio.org

SUBJECT: ENFORCEMENT ACTION: ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO MEET WATER CONSERVATION STANDARD

Dear Mr. Macy:

On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation became effective on May 18, 2015. Among other things, the Emergency Regulation is designed to achieve the 25 percent statewide potable water usage reduction through February 2016 ordered by Governor Brown in his April 1, 2015 Executive Order.

The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." (Cal. Code Regs., tit. 23, § 865(c)(1).) The Indio Water Authority has failed to meet its conservation standard. Therefore, I am issuing you the enclosed Administrative Civil Liability Complaint (Complaint) under Water Code sections 1846 and1055. The proposed civil liability is based on the findings set forth in the enclosed Complaint.

If you have questions, or believe the allegations are erroneous, please contact Dr. Matthew Buffleben at (916) 341-5891, or by email at Matthew.Buffleben@waterboards.ca.gov. Your right to request a hearing to contest the allegations is also described in the Complaint.

Sincerely,

Christian M. Carrigan, Director
Office of Enforcement

Enclosure

cc: *(via email only)*

Ms. Caren Trgovcich
Chief Deputy Director
caren.trgovcich@waterboards.ca.gov

Mr. Eric Oppenheimer, Director
Office of Research, Planning and Performance
eric.oppenheimer@waterboards.ca.gov

Mr. Max Gomberg
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Dr. Matthew Buffleben, Chief
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Matthew.Buffleben@waterboards.ca.gov

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

OFFICE OF ENFORCEMENT

ADMINISTRAVITIVE CIVIL LIABILITY COMPLAINT

In the Matter of Urban Water Conservation
by
INDIO WATER AUTHORITY

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Indio Water Authority (IWA) is alleged to have failed to reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013, in violation of California Code Regulations, title 23, section 865(c)(9), adopted by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1058.5.

2. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars ($500) for each day the violation occurs. Water Code section 1846, subdivision (c), provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

3. Water Code section 1055, subdivision (a), provides that the Executive Director of the Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. State Water Board Executive Director Thomas Howard has delegated this authority to Chief Deputy Director Caren Trgovcich, who in turn has delegated the authority to issue a complaint for violation of California Code Regulations, title 23, sections 865(d)(1) to the Director of the State Water Board's Office of Enforcement, Cris Carrigan.

ALLEGATIONS

4. On January 17, 2014, Governor Edmund G. Brown Jr. (Governor Brown) issued Proclamation No. 1-17-2014 (Proclamation), declaring a State of Emergency to exist in California under the Emergency Services Act due to severe drought conditions. The Proclamation, among other things, called on all Californians to reduce their water usage by 20 percent.

5. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, based on the need to strengthen the state's ability to manage water and habitat effectively in drought conditions.

6. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions. The Executive Order calls on all Californians to redouble their efforts to conserve water, and directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban water usage through February 2016.

7. On May 5, 2015, the State Water Board adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation adds a new section to title 23 of the California Code of Regulations intended to safeguard urban water supplies in the event of continued drought, minimize the potential for waste and unreasonable use of water, and

achieve the 25 percent statewide potable water usage reduction ordered by Governor Brown in the Executive Order. The Emergency Regulation was approved by the Office of Administrative Law and became effective on May 18, 2015.

8. The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." California Code Regulations, title 23, section 865(c)(1).

9. Section 865(b)(2) requires urban water suppliers to prepare and submit a monitoring report to the State Water Board by the 15th of each month detailing the total amount of potable water produced compared to the amount produced in the same calendar month in 2013.

10. The drought conditions that formed the basis for the Executive Order and Emergency Regulations continue to exist and will likely continue to exist for the foreseeable future.

11. IWA has a conservation target, pursuant to Section 865(c)(9), of 32 percent savings over its water usage in 2013. As of the date of its last report, IWA is cumulatively 10.4 percent behind in meeting the applicable conservation standard, which translates to an estimated 300,816,000 gallons of water.

12. On August 7, 2015 the State Water Board Office of Enforcement issued a Notice of Violation and an Information Order pursuant to its authority outlined in Section 866(b) of the Emergency Regulations, to determine what actions IWA had taken to comply with its conservation standard. IWA responded to the Information Order on August 14, 2015.

13. Water Board staff reviewed the information provided by IWA in response to the Information Order and have been monitoring ongoing conservation efforts. There are significant deficiencies in IWA's conservation program including: failure to update their water rate structure to include a water conservation incentive, as well as a failure to issue penalties for water users who waste water or violate the local ordinance.

14. Water Board staff reviewed the urban supplier monthly reports and used two metrics asses the nature and persistence of the water conservation standard violations: 1) monthly and cumulative performance in meeting the numeric conservation standard, and 2) the total volume of water produced by the water supplier above the applicable conservation standard. These metrics were analyzed together to compile a single ranking. IWA was identified as a water supplier whose violation of the regulation was one of the most severe.

15. The circumstances described above indicate that IWA has violated section 865(c)(9) by failing to reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013, or for a total of 122 days from the effective date of the Emergency Regulation on June 1, 2015 and the September 30, 2015 date tabulated in its last report.

PROPOSED CIVIL LIABILITY

16. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars ($500) for each day the violation occurs.

17. The evidence provided by IWA in the monthly reports that are submitted in compliance with Section 865(b)(2) demonstrates that IWA is in ongoing violation of the Conservation Order, beginning on June 1, through at least September 30th – a total of 122 days.

18. The maximum civil liability for the alleged violations is $61,000.

19. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board 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 taken by the violator.

20. In this case, IWA has consistently failed to meet its conservation standard, even after a Notice of Violation was issued by the State Water Board. IWA has issued no penalties to its customers, and as such has failed to enforce its own water restrictions put in place to meet the conservation standard. IWA's violation of the emergency regulation has spanned four months, and is ongoing with little to no change in behavior, regardless of the enforcement actions taken by the State Water Board.

21. Although not required under Water Code section 1055, State Water Board staff evaluated IWA's ability to pay the proposed civil liability. Water Board staff reviewed IWA's ability to satisfy immediate financial obligations by reviewing its financial reports and found the budgetary reserve is more than enough to pay the proposed civil liability.

22. Having taken into consideration the factors described above, the Director for the Office of Enforcement recommends an ACL for violating the emergency regulation of $61,000. The recommended penalty is based on the circumstances known to this time: IWA continued failure to meet its conservation standard despite repeated warnings during extreme ongoing drought conditions, IWA's ability to pay, and the need to provide a strong disincentive for continued violation by IWA, its ratepayers and any similarly-situated parties.

RIGHT TO HEARING

23. IWA may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)

24. If IWA requests a hearing, IWA will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.

25. If IWA requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code. Any State Water Board order imposing an ACL shall become final and effective upon issuance.

26. If IWA does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch 1001 I Street, 18th Floor,
Sacramento, CA 95814

27. If IWA does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4, may issue a Cease and Desist Order subjecting IWA to up to $10,000 in civil liabilities for each day of non-compliance, or may see any other remedy authorized by law..

STATE WATER RESOURCES CONTROL BOARD

Christian M. Carrigan, Director
Office of Enforcement

Dated: 10/29/2015