

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

Division of Water Rights

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**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

In the Matter of Violation of an Emergency Regulation  
for Failure to Submit Information of Water Diversion and Use by

«NAME»

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SOURCE: «Dutch Bill Creek; Green Valley Creek; Mark West Creek or Mill Creek» Watershed

COUNTY: Sonoma

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. «Name» (Recipient) is/are alleged to have failed to provide information required under State Water Resources Control Board (State Water Board) [Order WR-2015-0026-DWR](#)<sup>1</sup> (Information Order) issued pursuant to California Code of Regulations, title 23, section 876, an emergency regulation adopted pursuant to Water Code section 1058.5.
2. California Water Code section 1846, subdivision (a)(2), provides that any person or entity violating an emergency regulation or order adopted by the State Water Board pursuant to Water Code section 1058.5 may be liable in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs. Water Code section 1846, subdivision (c) provides 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 State Water Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board [Resolution No. 2012-0029](#) authorizes the Deputy Director for Water Rights 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 for Water Rights has redelegated this authority to the Assistant Deputy Directors for Water Rights pursuant to State Water Board Resolution No. 2012-0029.

**BACKGROUND**

4. The State of California is in a state of severe, extended drought. (See Drought Emergency Proclamation No. 1-17-2014; Proclamation of a Continued State of Emergency April 25, 2014; Executive Order B-28-14; Executive Order B-29-15; Executive Order B-36-15; United States Drought Monitor 2015.) The Russian River watershed is experiencing severe drought conditions, and has been in an abnormally dry or drought state since 2012. (United States Drought Monitor 2015.)

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<sup>1</sup> Order WR 2015-0026-DWR, *Order for Additional Information in the Matter of Diversion of Water from Dutch Bill Creek, Green Valley Creek, Portions of Mark West Creek, and Mill Creek Watersheds, as defined in California Code of Regulations, title 23, section 876(c)(1)*, dated August 24, 2015.

5. As water supplies are severely limited in the current drought, there is a need for more comprehensive, current information on water diversion and use than is currently available. (See e.g. Wat. Code § 1058.5; Executive Order B-29-15, para. 10; Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River Digest (June 19, 2015) and Informational Order Emergency Regulations Digest (March 17, 2015).)
6. The Central California Coast (CCC) coho salmon is currently listed as endangered under the California and federal Endangered Species Acts, and the National Marine Fisheries Service (NMFS) has determined that the species is one of eight endangered species in its jurisdiction nationwide considered to be the most at risk of extinction. (NMFS *Species in the Spotlight: Survive to Thrive. Recovering Threatened and Endangered Species FY 2013-2014 Report to Congress*, May 2015.) The California Department of Fish and Wildlife (CDFW) and NMFS have identified four tributaries to the Russian River – Dutch Bill Creek, Green Valley Creek, portions of Mark West Creek and Mill Creek – as high priority to prevent the extirpation of coho salmon from the Russian River watershed. CCC steelhead is also a federally-listed threatened species in the Russian River watershed, and the four aforementioned tributaries.
7. The ongoing drought places juvenile CCC coho salmon and CCC steelhead in Russian River tributaries in a perilous situation, potentially affecting the survival of these species. CCC coho salmon have a three year life cycle, and the extended dry conditions have affected all three year-classes. Coho salmon and steelhead depend on pools with suitable temperatures and dissolved oxygen concentrations to grow during the summer months and then migrate to the ocean in the late fall through spring. Minimal water is needed to maintain acceptable conditions for these species to survive.
8. In a letter dated May 28, 2015, the CDFW and NMFS recommended that the State Water Board develop emergency regulations for the four watersheds to: (1) issue informational orders to determine the extent of current surface and subsurface diversion operations in each watershed; and (2) immediately implement conservation measures to limit the amount of water extracted from the watersheds.
9. On June 17, 2015, as requested by CDFW and NMFS, the State Water Board adopted 23 Cal. Code Regs. section 876, an emergency regulation to help protect flows for federal- and state-listed anadromous fish in four priority Russian River tributary watersheds: Dutch Bill Creek, Green Valley Creek, portions of Mark West Creek, and Mill Creek (hereinafter, section 876 is referred to as the “Emergency Regulation”). Following Office of Administrative Law (OAL) approval, the Emergency Regulation went into effect on July 6, 2015, and will remain in effect for 270 days, until April 1, 2016, unless extended or repealed. The Emergency Regulation requires: (1) enhanced water conservation in critical areas of the four watersheds; and (2) information on water use if requested by the State Water Board.
10. The State Water Board has conducted extensive outreach regarding the Emergency Regulation and its water conservation and informational order provisions.
  - (A) On June 5, 2015, the agenda for the June 16 to June 17, 2015 State Water Board meeting was posted to the State Water Board website, which included the Russian River Tributaries Emergency Regulation item (Item 12). This agenda was also sent by email to subscribers on the State Water Board Meetings email subscription list on June 5, 2015.
  - (B) Between June 8 and June 15, 2015, the State Water Board mailed letters to all landowners in, and suppliers of water from the four priority watersheds, as defined in section 876, subsection (c)(1), of the proposed rulemaking and the date of the State Water Board meeting. A copy of the letter and a fact sheet were posted to the State Water Board website on June 8, 2015.
  - (C) On June 9, 2015 the proposed Emergency Regulation language was posted to the State Water Board website.
  - (D) On June 10, 2015, an email notice of the consideration of the proposed Emergency Regulation and Resolution was distributed via email to subscribers on the State Water Board General Regulations, Water Rights Regulation, Russian River Frost Regulation and Drought Updates email subscription lists. The proposed Resolution was posted to State Water Board’s website on June 10, 2015.

- (E) On June 16, 2015 an email Notice of Proposed Rulemaking was distributed to subscribers on the State Water Board General Regulations, Water Rights Regulation, Russian River Tributaries Emergency Regulation and Drought Updates email subscription lists<sup>2</sup>. That same day the Notice of Proposed Rulemaking and the proposed rulemaking package were posted to the State Water Board website.
  - (F) On June 24, 2015, an email notice of submittal of the Russian River Tributaries Emergency Regulation to OAL was sent to members of the Russian River Emergency Regulation email subscription list. On July 6, 2015 an email notice of OAL approval was sent to members of the Russian River Tributaries Emergency Regulation email subscription list, which included a link to more detailed information and a notification that all individuals using water sourced from the critical areas of the four priority watersheds were required to immediately implement the enhanced water conservation measures.
  - (G) On June 19, 2015, the State Water Board mailed flyers to all landowners in and suppliers of water from the four watersheds to announce five information meetings the State Water Board held from July 6 to 9, 2015. In addition an email notice of the meetings was sent to the members of the Russian River Tributaries Emergency Regulation email subscription list. On July 4, July 5, and July 6, 2015, the State Water Board placed advertisements, both online and in print, for the July 6 through July 9 information meeting in the Sonoma Press Democrat. Evening meetings were held on July 6, 2015 in Occidental, July 7, 2015 in Healdsburg, July 8, 2015 in Forestville, and July 9, 2015 in Santa Rosa. An afternoon meeting was held in Santa Rosa on July 9, 2015.
  - (H) On August 21, 2015, the State Water Board sent an email notification to the members of the Russian River Tributaries Emergency Regulation email subscription list notifying parties that the Information Order would be issued in sequence beginning the week of August 24, 2015, starting with Dutch Bill Creek and then in alphabetical order to the remaining tributaries.
  - (I) On August 24, August 28, August 30, and September 2, 2015, the State Water Board placed advertisements in the Sonoma Press Democrat, both online and in print, announcing the issuance of the Information Order and reminding the community of the enhanced water conservation measures in effect in the critical areas of the four watersheds.
11. On August 24, 2015, the Deputy Director for Water Rights signed the Information Order. The State Water Board issued the Information Order to landowners in and suppliers of water from the four watersheds in batches by watershed. Each landowner and water supplier was mailed the Information Order and a personalized letter that included an Identification Code(s), Password, and instructions on how to comply with the Information Order. The letters were mailed to the Dutch Bill Creek watershed on August 26, 2015, Green Valley Creek watershed on August 31, 2015, portions of Mark West Creek watershed on September 15, 2015, and the Mill Creek watershed on September 18, 2015. The due dates for submittal of the information requested in the Information Order were determined to be 35 days following each mailing, with a nine day extension granted to the Dutch Bill Creek and Green Valley Creek watersheds because the Online Informational Order Form was temporarily unavailable. Accordingly, the due dates for the four watersheds were: October 9, 2015 for Dutch Bill Creek watershed; October 14, 2015 for Green Valley Creek watershed; October 20, 2015 for portions of Mark West Creek watershed; and October 23, 2015 for Mill Creek watershed.
12. Section 876, subdivision (e) of the Emergency Regulation included a provision that, if requested, the Deputy Director of the Division of Water Rights may grant additional time for the submission of information upon substantial compliance with the deadline and a showing of good cause. The State Water Board received two formal requests for extension of time, both of which were granted.

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<sup>2</sup> Pursuant to section 876, subdivision (g) of the Emergency Regulation, "Notice provided by email or by posting on the State Board's webpage is sufficient for all purposes related to notices and updates regarding the provisions of this section [Emergency Regulation]." All emails sent after the June 16, 2015 email were distributed via the "Russian River Tributaries Emergency Regulation" email subscription list. The June 10 and June 16, 2015 emails, the letters sent between June 8 and June 15, 2015, and the letters sent on June 19, 2015 informed individuals how to subscribe to the "Russian River Tributaries Emergency Regulation" email subscription list to receive updates regarding the Emergency Regulation.

13. On October 28, 2015 a reminder letter was mailed to all landowners and water suppliers in the Dutch Bill Creek and Green Valley Creek watersheds who had not responded to the Information Order as of October 25, 2015. On October 30, 2015, the same letter was mailed to all landowners and water suppliers in the Mark West Creek and Mill Creek watersheds who had not responded to the Information Order as of October 25, 2015. Recipients were notified that the State Water Board had no record of compliance with the Information Order and no record of a request for extension of time. The letter gave due dates (November 10, 2015 for Dutch Bill Creek and Green Valley Creek watersheds and November 13, 2015 for Mark West Creek and Mill Creek watersheds) for submission of the information requested in the Information Order, after which the State Water Board would begin issuing ACL penalties.
14. The State Water Board provided resources online to assist in completion of the Online Informational Order Form. Additionally, staff provided assistance to landowners and water suppliers or their agents over the phone, via email, and in person in August, September, October, and November 2015. A dedicated telephone hotline and e-mail address facilitated this assistance with emails and phone messages typically responded to within 24 hours, including weekends and holidays. As of December 1, 2015, State Water Board staff has responded to more than 1,600 emails, more than 2,900 phone calls, and held 18 days of in-person assistance in Santa Rosa. State Water Board staff provided Spanish language assistance to landowners as well.
15. Paper response forms were made available to landowners who met the following criteria: (1) did not have a computer or electronic device with internet capabilities at their home; (2) could not identify an individual to designate as an agent of record; (3) were limited in their mobility such that leaving their residence to access a computer and/or the internet would be prohibitively difficult; and (4) did not have a surface water diversion.

#### **ALLEGATIONS**

16. *(for landowners)* Recipient is the owner of assessor parcel number(s): «*Parcel Number(s) and Parcel Address*», as on record with the Sonoma County Assessor's Office.
16. *(for water suppliers)* Recipient is the supplier of water sourced at least in part from within the watersheds defined in California Code of Regulations, title 23, section 876, subdivision (c)(1). The Recipient is the water supplier for the following water system: Water System No. «*Water System No.*», as identified by the State Water Board's Division of Drinking Water.
17. As of December 13, 2015, Recipient has failed to provide information required under the Information Order, an order issued pursuant to regulations adopted pursuant to Water Code section 1058.5.
18. As the Recipient of the Information Order, the Recipient was required to provide specific information identified in the Order within thirty (30) days of the receipt of the Order, pursuant to section 876, subsection (e).
19. Recipient was required to submit the information required under the Information Order by a due date of «*Dutch Bill Creek watershed: October 9, 2015; Green Valley Creek watershed: October 14, 2015; Mark West Creek watershed: October 20, 2015; Mill Creek watershed: October 23, 2015*», thirty (30) days following receipt of the Information Order. The due date was calculated as thirty-five (35) days from the date the Information Order was mailed, and includes extensions for any period in which the Online Informational Order Form on the State Water Board's website was unavailable.
20. The circumstances described above indicate that the Recipient has failed to provide information required under the Information Order and is in violation of the Emergency Regulation.

## PROPOSED CIVIL LIABILITY

21. Water Code section 1846, subdivision (a) provides that the State Water Board may administratively impose civil liability pursuant to Water Code section 1055 for violation of State Water Board regulations in an amount not to exceed \$500 per day of violation.
22. As of December 10, 2015, Recipient had not provided the information and had been past the due date for providing the information by 62 days. Therefore, Recipient is subject to a potential maximum civil liability in the amount of «*Dutch Bill Creek watershed: \$31,000 (62 days at \$500/day); Green Valley Creek watershed: \$28,500 (57 days at \$500/day); Dutch Bill Creek watershed: \$25,500 (51 days at \$500/day); Dutch Bill Creek watershed: \$24,000 (62 days at \$500/day)*» through that date.
23. In determining the appropriate amount of a civil liability, Water Code section 1846, subdivision (d), 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 the corrective action, if any, taken by the violator.
24. In this case, the information identified in the Information Order was due by «*Dutch Bill Creek watershed: October 9, 2015; Green Valley Creek watershed: October 14, 2015; Mark West Creek watershed: October 20, 2015; Mill Creek watershed: October 23, 2015*». Failure to provide the information in a timely manner harms the State Water Board's ability to accurately track and assess surface water and groundwater diversions and use, assess potential impacts of surface and groundwater diversions on surface flow, properly administer the state's water rights system, including implementation of the reasonable use and public trust doctrines, and effectively regulate the resources it is required to protect. Recipient has not yet complied with the Information Order. As described above, the need to protect the critical stream habitats for threatened and endangered salmonids in this ongoing drought is pressing, and the inability to have information on who is taking water from the system and for what purpose hampers the State Water Board's ability to appropriately balance fish needs with other needs, including health and safety, in the basin.
25. Having taken into consideration all relevant circumstances, including, but not limited to, Recipient's failure to submit the required information, the harm of the missing information to the State Water Board's effectiveness in regulating water diversions and adequately protecting threatened and endangered species, and staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Assistant Deputy Director for Water Rights recommends the imposition of \$2,500 in Administrative Civil Liability (Proposed Liability).

## CONDITIONAL SETTLEMENT OFFER

26. To promote resolution of the alleged reporting violation(s), the Assistant Deputy Director for Water Rights makes the following conditional settlement offer (Conditional Offer). Recipient can avoid further enforcement action on the issue of compliance with the Information Order and settle the alleged failure to provide information of water diversion and use violation by complying with the terms of the Conditional Offer and signing the "Acceptance of Conditional Settlement Offer and Waiver of Right to Hearing or Reconsideration" (hereinafter "Acceptance and Waiver") attached hereto as Attachment A.
27. The Conditional Offer requires the Recipient to: (1) comply with the Information Order by submitting the requested information electronically via the web through the Online Informational Order Form; and (2) waive the right to a hearing and reconsideration of the alleged violation(s). Providing incomplete data or data that are not true and correct to the best of Recipient's knowledge subjects Recipient to additional fines or nullifies the Conditional Offer.
28. To accept the Conditional Offer, you must sign and return the Acceptance and Waiver (Attachment A) and fulfill your obligations under the Information Order within 20 days of receipt of this ACL Complaint.
29. If there are extenuating circumstances that you would like to discuss you can contact Division of Water Rights with that information as soon as possible but no later than the 20 days from receipt of this ACL Complaint.

## RIGHT TO HEARING

30. Recipient may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that you receive this ACL Complaint. (Water Code, sec. 1055, subd. (b).)
31. If Recipient requests a hearing, Recipient will have an opportunity to be heard and to contest the allegations in this ACL Complaint and the imposition of an ACL by the State Water Board. Information regarding the hearing, including potential dates, is included in Attachment B, "Information You Need to Know If You Are Going to Request a Hearing."
32. If Recipient requests a hearing, the State Water Board will consider, based on evidence received at the hearing whether to impose the ACL, and, if so, whether to adjust the proposed ACL within the amount authorized by statute, including to an amount higher than that listed in paragraph 33, below. Any State Water Board order imposing an ACL shall be final and effective upon issuance. The hearing will consider the violations through December 10, 2015. Continued failure to submit the requested information electronically via the web through the Online Informational Order Form may result in additional penalties or enforcement action.
33. If Recipient does not remit the Acceptance and Waiver (Attachment A) and electronically file the necessary information, or request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order for the amount of \$2,500 for violations through December 10, 2015 and will seek recovery of the liability imposed as authorized by Water Code sections 1055 and 1055.4. Continued failure to submit the requested information electronically via the web through the Online Informational Order Form may result in additional penalties or enforcement action.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*