

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to Comply with Cease and Desist Order WR 2025-0006

David Collenberg

Water Right IDs: S000774 and S019640

YOU ARE HEREBY GIVEN NOTICE THAT:

1. David Collenberg (Respondent) is alleged to have violated the terms of Cease and Desist Order WR 2025-0006 (Order), issued to the Respondent on April 2, 2025. The Order requires the Respondent to, among other things:
 - a. Install a measurement device(s) at the points of diversion for Statement Numbers S000774 and S019640 that complies with the measurement and reporting regulations in Title 23, Chapter 2.7, Article 2, sections 932 through 938 of the California Code of Regulations¹, within 30 days from the date of the Order.
 - b. Cease all diversions from Oro Fino and Kidder Creek under Statement Numbers S000774 and S019640 until a measurement device(s) has been installed in accordance with the Order.
 - c. Submit a report of water measuring device to the State Water Resources Control Board (State Water Board or Board) with the first water use report submitted after installation of the device.
 - d. Maintain, and provide to the Division of Water Rights (Division) upon request, records of all water diversions from Oro Fino and Kidder Creek.

¹ On August 5, 2025, the State Water Board adopted revised language to 23 CCR §§931-938 and sent it to OAL for approval. As of the date of this ACL Complaint, OAL has not yet issued a determination. Citations to the California Code of Regulation are therefore referencing the version of the regulation in existence when the CDO was adopted.

2. Water Code section 1845, subdivision (b)(1)(A) states, in relevant part, “a person or entity who violates a cease and desist order...if the violation occurs ... during a period for which the Governor has issued a proclamation of state of emergency... based on drought conditions” may be liable in an amount not to exceed “ten thousand dollars (\$10,000) for each day in which the violation occurs.”
3. Water Code section 1055, subdivision (a) provides that 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 pursuant to Water Code section 1845. The Executive Director delegated this authority to the Deputy Director for Water Rights by memorandum dated May 17, 1999. The Deputy Director redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement branch by memorandum dated August 27, 2008.

ALLEGATIONS

4. The Respondent is the owner on record for diversions identified in State Water Board records as Water Right IDs S000774 and S019640. These Water Right IDs relate to the diversion and use of water from Oro Fino and Kidder Creeks, which are tributaries to the Scott River. Water diverted from Kidder Creek is conveyed to the Respondent's property via the Friden Ditch (Ditch). The Respondent is the only water right holder on the Ditch.
5. In 2023, the Respondent reported a diversion to storage of 1,350 acre-feet for S000774 and 440 acre-feet for S019640, for a total of 1,790 acre-feet. These diversions are subject to the State Water Board's monitoring and measurement regulations.
6. Pursuant to Executive Order N-3-24, the Scott River watershed remains in a state of emergency due to drought. The Executive Order recognized the drought's continuing significant impacts upon water supplies in the Scott, Shasta, and Klamath River watersheds.
7. The Scott River is an essential habitat for various salmonid species, including Chinook and Coho Salmon, as well as Steelhead Trout. The river's cold water is vital for spawning and rearing these fish, which are not only ecologically important but also culturally significant to local Indigenous tribes, such as the Karuk, Quartz Valley, and Yurok. The State Water Board first adopted Drought Emergency Regulations for the Scott and Shasta River watersheds in 2021. The Drought Emergency Regulations provide curtailment authority throughout the Klamath River watershed and establish minimum instream flows. The regulations were renewed in July 2022, and then readopted in February 2024 and January 2025.
8. Per the Order, the Respondent is required to cease all diversions from Oro Fino and Kidder Creeks until he installs water measuring devices at the points of diversion for each diversion covered by Water Right IDs S000774 and S019640. The Order directed the Respondent to install the devices by May 2, 2025.

9. As of the date of this Complaint, the Respondent is in violation of the following two (2) terms of the Order:
 - a. The Respondent has not installed water measuring devices at his points of diversion in violation of Ordered Paragraph 1; and
 - b. The Respondent has been consistently irrigating his crops over the course of the current growing season in violation of Ordered Paragraph 2.
10. Violations of the Order are subject to enforcement and applicable penalties pursuant to Water Code section 1845.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

11. Water Code section 1845 states that during a period of drought emergency, a person or entity may be liable for violation of a cease and desist order adopted by the State Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. Each provision of a cease and desist order that is violated may be counted as a separate violation.
12. Each day after the compliance deadline that measuring devices are not installed is a day of violation of the Order.
 - a. As of August 15, 2025, no measuring devices have been installed at the Respondent's points of diversion. This violation has continued unabated for 105 days. The maximum liability for the alleged violation is \$1,050,000 (105 days x \$10,000/day).
13. Each day in which a diversion occurs without a measuring device installed is a day of violation of the Order.
 - a. As of August 15, 2025, Division staff estimate the Respondent has diverted water without a measuring device in violation of the Order for a *minimum* of 3 days. The maximum liability for the alleged violation is \$30,000 (3 days x \$10,000/day).
 - b. The days of violation alleged represent: 1) one day to encompass the period of time between May 2 and June 23, 2025; 2) one day for June 24, 2025 when Division staff documented active diversions flowing in Friden Ditch; 3) one day covering the days between June 25 and August 15, 2025.
14. The total maximum liability for these two (2) violations is \$1,080,000.

15. In determining the appropriate amount of administrative civil liability, Water Code sections 1848, subdivision (d) and Water Code section 1055.3 both provide that the State Water Board shall consider all relevant circumstances, including, but not limited to, all of the following factors: 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.

Considerations for the Proposed ACL That Apply to All Violations

16. Extent of harm caused by the violations: The Respondent's actions harm the Board's ability to manage a watershed subject to a drought proclamation, endangers a sensitive habitat, potentially impacts numerous other water rights holders, and harms the efficient implementation of multiple State Water Board regulatory programs.
- a. California's recent droughts have shown the need for more timely and accurate statewide water diversion data. Older standards requiring estimated monthly totals reported in the annual reports submitted by water rights holders proved inadequate, especially during the 2012–2016 drought.
 - b. Water availability varies across regions and seasons, so accurate reporting helps to protect water rights, supports better forecasting and planning, ensures compliance with permits, and helps manage scarce water supplies effectively. This data also enables the State Water Board and local managers to find collaborative solutions and make informed decisions.
 - c. Failure to install water measuring devices at the Respondent's points of diversion impairs the State Water Board's ability to ensure all water rights holders in the watershed are diverting within the limits of their rights. Constant physical presence by Division staff in the watershed is not feasible. Accurate water diversion data in the Scott River watershed allows the State Water Board to make better decisions on when to curtail diversions and to develop more robust water availability forecasts. Absent high quality data the Board may curtail more senior water rights holders than is necessary to maintain minimum flows. Conversely, the Board may not curtail deep enough into the priority system, resulting in harm to the environment and downstream water rights holders.
17. Nature and persistence of the violations: In considering the nature and persistence of the violations, the Prosecution Team has considered the extensive efforts by Division staff to provide compliance assistance, whether the violation persisted, and Respondent's history of non-compliance with other regulatory requirements. The evidence shows the Respondent has knowingly and intentionally failed to comply with the Order.

- a. On May 6, May 8, and June 4, 2025, Division staff contacted the Respondent through text messaging to request an update on the measuring device installation and to obtain photo confirmation of the installed measuring devices. While the Respondent responded to the messages, acknowledging receipt, he did not provide updates or confirmation of device installation.
- b. On June 18, 2025, the Division sent the Respondent a reminder letter that the deadline for compliance with the Order has passed. The letter requested the Respondent to provide evidence of installed measuring devices by July 4, 2025. If no devices had yet been installed, the Respondent was given 30 days from the date of the letter to submit a compliance plan. The Respondent did not respond to this letter.
- c. Division staff have expended significant time and resources while attempting to assist the Respondent with compliance, even after the Order's deadline. The Respondent has repeatedly disregarded this ongoing outreach and remains noncompliant.
- d. As described in the Order, the Respondent was given ample opportunities to comply with the measurement and monitoring regulations prior to the adoption of the Order. Division staff attempted to work with the Respondent since 2022, answering questions, providing informational materials, and allowing numerous delays in favor of achieving compliance prior to initiating enforcement proceedings.
- e. In addition to this enforcement proceeding, the Respondent has a history of noncompliance with State Water Board regulations.
 - i. In 2020, the State Water Board adopted an ACL Order due to the Respondent's failure to file his annual diversion and use reports for the 2018 water year. As of the date of this Complaint, the penalty remains unpaid.
 - ii. In 2022, the State Water Board issued the Respondent an Informational Order regarding his diversions. The Respondent failed to respond. An ACL Complaint was issued and ignored by the Respondent resulting in a 2023 ACL Order. The Respondent failed to pay the penalty. In February 2024, the Division obtained a lien against the Respondent's properties for the unpaid penalty amount. As of the date of this Complaint, the penalty remains unpaid.

Factors Specific to Violation 1: Failure to Install Measuring Devices

18. In considering the extent of harm from violation 1, the Prosecution Team incorporates the factors outlined in Paragraph 16 herein.

19. In considering the nature and persistence from violation 1, the Prosecution Team incorporates the factors outlined in Paragraph 17 herein.

20. In considering the length of time over which the violation occurred:

- a. The Order required measuring device installation by May 2, 2025. As of August 15, 2025, there are no measuring devices installed at either point of diversion, resulting in 105 days of violation. The Prosecution Team has no evidence that the Respondent has complied with this requirement in the Order and therefore the violation is ongoing.

21. In considering any corrective action undertaken by the Respondent:

- a. No corrective action has occurred. Division staff are not aware of any plans of the Respondent's to install the measuring devices.

22. Taking into consideration the factors listed in Paragraphs 18-21 above, the Division proposes administrative liability in the amount of \$60,000 for Violation 1.

Factors Specific to Violation 2: Diverting Without Measuring Device(s) Installed

23. In addition to the factors discussed in Paragraph 16, in considering the extent of harm caused by Violation 2, the available evidence shows clear and measurable impacts caused by the Respondent's diversion of water.

- a. On June 24, 2025 Division staff conducted a reconnaissance inspection that included the Respondent's property. From a public road, staff were able to document diversions at the Respondent's point of diversion on Kidder Creek into Friden Ditch. Staff also documented that Kidder Creek was disconnected from the mainstem of the Scott River directly downstream of the Respondent's point of diversion. The Respondent is the major diverter located directly upstream of the creek disconnection. It is more likely than not that his unauthorized and unmeasured diversion contributed to the disconnection.

24. In addition to the factors discussed in Paragraph 17, in considering the nature and persistence of Violation 2, the available facts more than support a reasonable inference that the Respondent knowingly and intentionally refused to comply with the Order.

- a. The Order was adopted at the April 2, 2025 Board meeting. The Respondent was an active participant throughout the enforcement proceedings from the issuance of the draft cease and desist order through the hearing process. The terms of the final Order do not differ in any significant ways from the Division's proposed cease and desist order.

- b. The Order required compliance by May 2, 2025. Division staff contacted the Respondent four times after the Order deadline. Each time, staff reminded the Respondent that his devices needed to be installed and asked if he had any questions or need of assistance. The Respondent acknowledged the text messages but never provided the requested information.
- c. On July 19, July 21, August 4, and August 7, 2025, the Respondent published on social media posts indicating he was currently farming corn on his property. In a video posted on July 21, 2025, the Respondent stated that he had been irrigating corn and that turning off his water diversions would negatively affect the crop.

25. In considering the length of time over which the violation occurred:

- a. Staff have collected aerial imagery of the Respondent's property from the Sentinel-2 L2A satellite, covering the period from May 2, 2025, to August 15, 2025. The imagery shows consistently green fields and multiple crop cuttings during this timeframe.
- b. On June 24, 2025, staff conducted a reconnaissance inspection at the Respondent's point of diversion on Kidder Creek and observed active diversion with water flowing in Friden Ditch.
- c. While the Respondent has some water storage on his property, it is not enough to adequately irrigate all his fields over the span of several months. Even if the Respondent's reservoirs were full on May 2, 2025, to irrigate throughout the growing season, he would need to consistently divert water from one or both of his points of diversion.
- d. While the satellite imagery strongly suggests frequent, if not daily, diversions of water, it would be difficult to pin down a specific number of days of diversion. Instead, the Prosecution Team is proposing three (3) days of violation for diverting without a measuring device.

26. In considering any corrective action undertaken by the Respondent:

- a. The Respondent has not undertaken any corrective actions. Instead, he has continued to divert water to irrigate his crops and then post about his diversions and new plantings on social media.

27. Taking into consideration the factors listed in Paragraphs 23-26 above, the Division proposes administrative liability in the amount of \$30,000 for Violation 2.

28. Having considered all relevant circumstances and factors, including 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 \$90,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

29. The Respondent may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for hearing must be delivered to or received by mail by the Administrative Hearings Office within 20 days after the date that this notice is received in accordance with Water Code section 1055, subdivision (b).
30. If the Respondent does not request a hearing within 20 days of receipt of this Complaint, then the right to a hearing on the matter is waived. The Assistant Deputy Director for the Division of Water Rights, under delegated authority, may then issue a final Administrative Civil Liability Order assessing the proposed liability.
31. If the Respondent requests a hearing, the Respondent will have an opportunity to contest the allegations in this complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office. The Administrative Hearings Office will issue a notice setting the specific time and place for the hearing and describing the hearing process, not less than 10 days before the hearing date.
32. After any hearing, the Administrative Hearings Office will issue a proposed order recommending administrative civil liability or determining that a liability shall not be imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider the recommendation and may adopt a final order at a subsequent public meeting.

STATE WATER RESOURCES CONTROL BOARD



*Robert P. Cervantes, Acting Assistant Deputy Director
Division of Water Rights*

Dated: September 10, 2025