

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2022-0063-DWR**

---

**ORDER APPROVING SETTLEMENT AGREEMENT**

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

**James Funsten**

Water Right A023766

---

**BY THE DEPUTY DIRECTOR<sup>1</sup>**

This matter comes before the Deputy Director of the State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) following the settlement negotiations regarding the alleged violation of California Code of Regulations, title 23, sections 877 through 879.2 (Emergency Regulations) as described in an Administrative Civil Liability Complaint (ACLC) dated October 20, 2021. In accordance with the attached Acceptance of Settlement Offer and Waiver of Right to Hearing and Reconsideration (Acceptance and Waiver), the Division's Prosecution Team (Prosecution Team) and James Funsten (Diverter) have agreed to settle this matter. The Diverter has accepted the Division's Settlement Offer and waived their right to contest the violations alleged in the ACL Complaint at a hearing before the State Water Board, Administrative Hearings Office. The Diverter also waived their right to request reconsideration of an order by the State Water Board resolving the violations alleged in the ACL Complaint.

The Prosecution Team and the Diverter are collectively referred to as the Parties. Assistant Deputy Director Julé Rizzardo, Division of Water Rights, through authority delegated by the State Water Board, hereby issues an Order to Diverter. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

---

<sup>1</sup> State Water Board Resolution 2012-0061 delegates authority to the Executive Director to "issue a decision or order by settlement of the Parties under Government Code section 11415.60." The Executive Director further delegated the authority to issue a decision or order by settlement of the parties under the Government Code when no hearing has been requested to the Deputy Director of the Division of Water Rights by memorandum dated November 4, 2020.

**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 877.2 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.<sup>2</sup>
4. On August 10, 2021, the Division’s Deputy Director issued Curtailment Orders to all water rights within the Lower Russian River watershed.
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 Diverter did not request a hearing within 20 days of receipt of the ACL Complaint, in accordance with Water Code section 1055(b).
8. The Diverter filed the Online Curtailment Certification Form and returned the signed Acceptance and Waiver by December 31, 2021.
9. California 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 violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.

---

<sup>2</sup> 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).

10. In this case, the Diverter submitted the Online Curtailment Certification Form, and accepted the Prosecution Team's Settlement Offer. In consideration of these relevant circumstances, the State Water Board has determined that the appropriate proposed penalty is \$500.

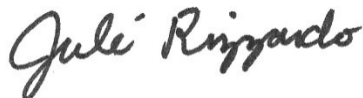
**IT IS HEREBY ORDERED THAT:**

1. The attached Acceptance and Waiver is fully 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 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 \$500 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 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  
Division of Water Rights*

Dated: January 21, 2022