

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-023-DWR

ORDER APPROVING SETTLEMENT AGREEMENT

In the Matter of Failure to Submit Online Monthly Diversion Reports by

Mary Suzanne Foraker

Water Right A022333

BY THE DEPUTY DIRECTOR¹

This matter comes before the Deputy Director of the State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) following settlement negotiations regarding the alleged violation of California Code of Regulations, title 23, sections 876.1 through 879.2 (Emergency Regulations), as described in an Administrative Civil Liability Complaint (ACL Complaint) dated January 20, 2023. 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 Mary Suzanne Foraker (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 Division's Prosecution Team and the Diverter are collectively referred to as the Parties. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

¹ 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 876.1 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. On August 20, 2021, the Deputy Director issued an order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed ("Curtailment Order").
4. The Curtailment Order required monthly submission of previous diversions and projected diversions for parties with a prior annual diversion or potential diversion of 5,000 acre-feet or more. The Curtailment Order specified that both reports were due no later than the 10th of every month.
5. An ACL Complaint was issued to the Diverter on January 20, 2023, for not submitting six of their required monthly diversion reports.
6. The Diverter did not request a hearing within 20 days of receiving the ACL Complaint, in accordance with Water Code section 1055(b).
7. The ACL Complaint extended a settlement offer for a reduced fine of \$500 provided the past due reports were submitted along with continued compliance of the future reports through July 31, 2023.
8. The Diverter signed and accepted the settlement offer on February 24, 2023.
9. The Diverter has submitted the six past due reports and the required monthly reports through April 3, 2023.
10. On April 3, 2023, the Deputy Director issued an order rescinding the August 20, 2021, curtailment order which includes the March 2023 through July 2023 monthly reports identified in the Division's settlement order. As a result of the rescinded requirement for monthly reporting, submission of the March 2023 through July 2023 reports is no longer a condition of the settlement.
11. 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.

12. In this case, the Diverter submitted the six deficient monthly reports and ongoing monthly reports through April 4, 2023. The Prosecution Team and the Diverter agreed to settle ACL Complaint's allegations for an amount of \$500. In consideration of all relevant circumstances, the State Water Board has determined this an appropriate proposed penalty.

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 cashier's check or money order payment of the full penalty of \$500 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section – EDR Reporting
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



*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: April 26, 2023