

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

<p>In the Matter of:</p> <p>RUDY OCAMPO, JR.</p> <p>Drinking Water Distribution Operator Certification Disciplinary Action</p>	<p>SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF AN ORDER IMPOSING OPERATOR CERTIFICATION DISCIPLINE</p> <p>PROPOSED ORDER DW 2024-XXXX-EXEC</p>
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Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of an Order Imposing Operator Certification Discipline (hereafter “Settlement Agreement”) is entered into and between the State Water Resources Control Board’s (“State Water Board”) Office of Enforcement (“OE”) Prosecution Team (“Prosecution Team”) and Rudy Ocampo, Jr. (“Respondent”) (collectively “Parties”). This Settlement Agreement is entered into by agreement of the Parties after the issuance of the Proposed Disciplinary Action in accordance with Government Code section 11415.60, subdivision (b).

Section II: RECITALS

- A. Respondent is the holder of Drinking Water Distribution Grade 5 Operator Certificate No. 41118 (“Certificate No. 41118”).
- B. To obtain Certificate No. 41118, Respondent submitted a D5 Distribution Operator Certification Application (Application) to the State Water Board’s Office of Operator Certification (“OOC”) dated April 19, 2024. On the Application, Respondent certified that he passed the Water Distribution Operator Certification – Grade D5 examination on April 5, 2024. He also attached to the Application a letter from the Drinking Water Operator Certification Program addressed to Respondent documenting a passing score on the Water Distribution Operator Certification – Grade D5 examination on April 5, 2024.
- C. Respondent did not take, and did not pass, the Water Distribution Operator Certification – Grade D5 examination on April 5, 2024, or on any other day.
- D. Respondent registered to take a D5 operator certification examination at a Prometric examination location in Anaheim, California on April 5, 2024. He studied for and was prepared to pass the examination that day. Due to a family medical issue the morning

of April 5th, Respondent did not appear for or take the examination.

- E. Respondent's father, Rudy Ocampo, Sr., is the Water Distribution Superintendent at a publicly owned water district in Southern California and is the holder of Drinking Water Distribution Grade 5 Operator Certificate No. 6774 ("Certificate No. 6774"). On April 5, 2024, Rudy Ocampo, Sr. went to the Prometric location and presented himself as Respondent, including providing Respondent's identifying documentation, to gain access to the examination and to take the examination as Respondent. Rudy Ocampo, Sr. took the D5 certification examination on April 5, 2024, posing as Respondent and passed the examination.
- F. Rudy Ocampo, Sr. told Respondent that he took and passed the examination on April 5, 2024, posing as Respondent. Both Respondent and Rudy Ocampo, Sr. knew and intended that Respondent would then use the passing grade on the examination to apply for and to obtain Certificate No. 41118.
- G. Based on Respondent's misrepresentations on the Application, and his submission of examination results for an examination taken by Rudy Ocampo, Sr. on April 5, 2024, OOC issued Certificate No. 41118 to Respondent.
- H. Respondent does not satisfy the eligibility criteria for certification as a D5 operator because he has not passed a Grade D5 operator examination.
- I. On May 3, 2024, OE received a complaint reporting that Rudy Ocampo, Sr. took the Water Distribution Operator Certification – Grade D5 examination on April 5, 2024, posing as Respondent. OE's Special Investigations Unit investigated the circumstances surrounding the complaint, including interviewing Respondent and Rudy Ocampo, Sr. Both admitted that Rudy Ocampo, Sr. took the examination on April 5, 2024, posing as Respondent, and that Respondent used the passing examination results to obtain Certificate No. 41118.
- J. On August 1, 2024, the Prosecution Team issued the Proposed Disciplinary Action – Revocation of Drinking Water Distribution Grade 5 Operator Certificate No. 41118 to Respondent pursuant to Health and Safety Code section 106877, subdivision (b). The Proposed Disciplinary Action alleges that Respondent engaged in dishonest conduct during an examination by allowing someone else to take and pass the examination on his behalf (Health & Saf. Code § 106877, subd. (b)(5)), and that Respondent submitted false and misleading information on his application for certification (Health & Saf. Code § 106877, subd. (b)(1)). OE recommended revocation of Certificate No. 41118. The Proposed Disciplinary Action provided Respondent an opportunity to request a hearing within 45 days to contest the proposed disciplinary action.
- K. Contemporaneous with issuing the Proposed Disciplinary Action, the Prosecution Team issued a separate Proposed Disciplinary Action – Revocation of Drinking Water Distribution Grade 5 Operator Certificate No. 6774 to Rudy Ocampo, Sr. pursuant to Health and Safety Code section 106877, subdivision (b), which similarly

recommended revocation of Certificate No. 6774.

- L. On August 12, 2024, the Prosecution Team received an email from Respondent requesting a hearing on the Proposed Disciplinary Action. Rudy Ocampo, Sr. also submitted a request in writing for a hearing on the proposed revocation of Certificate No. 6774.
- M. Following these requests for a hearing, the Executive Director of the State Water Board assigned the matter to the State Water Board's Administrative Hearings Office (AHO). AHO Hearing Officer Sam Bivins scheduled a joint hearing on both proposed disciplinary actions for December 9, 2024.
- N. The Parties along with Rudy Ocampo, Sr. engaged in joint settlement negotiations and have agreed to settle each of their respective matters without an administrative hearing or civil litigation. This Settlement Agreement entered into by the Parties and a proposed Order is presented to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The related Settlement Agreement settling the Proposed Disciplinary Action against Rudy Ocampo, Sr. is memorialized separately by OE and Rudy Ocampo, Sr.
- O. This Settlement Agreement will become effective when the State Water Board, or its delegee, issues an Order approving the Settlement Agreement.

Section III: STIPULATIONS

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Parties do hereby agree to settle the Proposed Disciplinary Action as follows:

- 1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
- 2. **Confidentiality.** The Parties agree that all oral and written statements and agreements made during the course of settlement discussions are and remain confidential and will not be admissible as evidence in any administrative or judicial proceeding or hearing and will be fully protected by Evidence Code sections 1152 and 1154. If the Order approving the Settlement Agreement is not approved, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action pursuant to Government Code section 11415.60.
- 3. **Required Actions.** Respondent agrees to complete the following required actions, including if he chooses to participate in the Drinking Water Operator Certification Program (Health & Saf. Code § 106875, *et seq.*) in the future:

- a) Respondent shall immediately cease and desist from performing any duties or functions for which a D5 water distribution certificate is required under California law. Any future work as a certified distribution operator shall be performed in accordance with California law and after Respondent obtains a new certificate(s) in compliance with this Settlement Agreement.
- b) Respondent shall surrender Certificate No. 41118 to OOC by December 31, 2024, or 2 business days after issuance of the Order Approving Settlement Agreement, whichever is later. Respondent shall surrender the certificate by overnight mail delivery to OOC at State Water Resources Control Board, Drinking Water Operator Certification Program, 1001 "I" Street, 17th Floor, Sacramento, CA 95814. Immediately upon mailing the certificate, Respondent shall inform the Prosecution Team by email that he completed the mailing to OOC and attach to the email proof of mailing. Respondent's surrender of Certificate No. 41118 shall render it null and void and revoke Respondent's ability to maintain or operate any portion of a water distribution system and/or hold himself out as a currently certified drinking water distribution operator.
- c) Respondent shall not use or include on any future application(s) to become a certified distribution operator any past passing examination score that was earned prior to surrendering Certificate No. 41118. All future applications to become a certified distribution operator shall be supported by a passing score on an examination that was earned by Respondent after the surrender of Certificate No. 41118.
- d) After Respondent's surrender of Certificate No. 41118, Respondent may take the examination for and apply for a new distribution operator certificate at the Grade 1 or Grade 2 level, provided that Respondent complies with Paragraph 3(b)-(c) above. In applying for any Grade of distribution operator certificate after surrender of Certificate No. 41118, the following requirements and conditions must be satisfied by Respondent, in addition to satisfying Paragraph 3(c) above:
 - i. To obtain a distribution operator certificate at the Grade 1 or 2 level, Respondent must satisfy all the certification requirements set forth in California Code of Regulations, title 22, division 4, chapter 13 for that grade level.
 - ii. To obtain a distribution operator certificate at the Grade 3 level, Respondent must: (A) satisfy all the certification requirements set forth in California Code of Regulations, title 22, division 4, chapter 13

for Grade 3; and (B) have held a Grade 2 distribution operator certificate issued by the State Water Board after the effective date of the Order approving the Settlement Agreement for a minimum of one year.

iii. To obtain a distribution operator certificate at the Grade 4 level, Respondent must (A) satisfy all the certification requirements set forth in California Code of Regulations, title 22, division 4, chapter 13 for Grade 3; and (B) have held a Grade 3 distribution operator certificate issued by the State Water Board after the effective date of the Order approving the Settlement Agreement for a minimum of one year.

iv. To obtain a distribution operator certificate at the Grade 5 level, Respondent must (A) satisfy all the certification requirements set forth in California Code of Regulations, title 22, division 4, chapter 13 for Grade 3; and (B) have held a Grade 4 distribution operator certificate issued by the State Water Board after the effective date of the Order approving the Settlement Agreement for a minimum of two years. To illustrate, if Respondent complies with this Settlement Agreement and obtains a distribution operator certificate at the Grade 2 level on January 31, 2025, and thereafter applies in succession for a Grade 3, Grade 4 and Grade 5 certificate in compliance with this agreement, then the first possible date that Respondent could obtain a new Grade 5 certificate would be January 31, 2029.

e) Respondent may use operator experience as well as specialized training and education earned prior to surrender of Certificate No. 41118 when applying for a distribution operator certificate at any Grade level.

4. **Representation and Warranty**. Respondent represents and warrants that the facts personally known by him that are set forth in Section 1, Recitals, are true and correct. In reliance thereon, OE waives the right to seek monetary penalties pursuant to Health and Safety Code section 10678, subdivision (c), in connection with the examination misconduct on April 5, 2024, and Respondent's application for Certificate No. 41118.

5. **Public Notice**. The Parties understand and agree that this Settlement Agreement and the Order Approving Settlement Agreement will be noticed for a twenty one (21)-day public review period prior to consideration by the State Water Board, or its delegee. If significant new information is received that reasonably affects the

propriety of presenting the Settlement Agreement and Order to the State Water Board, or its delegee for adoption, the head of the Prosecution Team may unilaterally declare this Settlement Agreement void and decide not to present it to the State Water Board, or its delegee. Respondent agrees that he may not rescind or otherwise withdraw his approval of the Settlement Agreement. The Parties agree that the procedure contemplated for public review of the Settlement Agreement is lawful and adequate. In the event procedural objections are raised prior to the Order Approving Settlement Agreement becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

6. **If the Settlement Agreement Does Not Take Effect:** In the event that this Settlement Agreement does not take effect because the Order approving it is not adopted by the State Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Administrative Hearings Office to determine whether the Respondent's certification should be revoked, or may continue to pursue settlement. Pursuant to Paragraph 2, the Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a) Objections related to prejudice or bias of the Administrative Hearing Officer and any of the State Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Administrative Hearing Officer, State Water Board members, or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b) Laches or delay or other equitable defenses based on the time period that the Settlement Agreement or decision by settlement may be subject to administrative or judicial review.

7. **Stipulation to Request Cancellation of Hearing.** Except in the instance where the Settlement Agreement is not approved by the State Water Board, or its delegee, the Respondent waives any further hearing regarding the Proposed Disciplinary Action and agrees to withdraw his request for a hearing before the Administrative Hearings Office currently scheduled to commence on December 9, 2024. Respondent and the OE Prosecution Team agree to jointly submit this executed Settlement Agreement to the State Water Board, or its delegee and request that a notice of cancellation of the hearing be issued by the Administrative Hearings Office.
8. **Stipulation to Revocation for Breach of Agreement.** If Respondent fails to perform any act required by Paragraph 3 above or otherwise breaches this agreement, Respondent stipulates to revocation of his then-existing distribution operator certificate and waives his right to request a hearing on the revocation or to petition for reconsideration of the revocation action. Revocation applies to whatever Grade of distribution operator certification held by Respondent on the date of his breach of this agreement, including but not limited to Certificate No. 41118.
9. **State Water Board Authority.** This Settlement Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law.
10. **Waiver of Reconsideration and Waiver of Petition and Right to Appeal.** Except in the instance where the Settlement Agreement is not approved by the State Water Board, or its delegee, the Respondent waives his right to request reconsideration of the Order approving this Settlement Agreement and waives his right to petition for writ of administrative mandate in the California Superior Court and/or any California appellate level court.
11. **Independent Judgment.** Each Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge, and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
12. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedential decision of the State Water Board.
13. **Additional Documents.** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.

14. **Entire Agreement**. This Settlement Agreement reflects and represents the entire agreement between and among the Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten.
15. **Mutual Agreement**. The Parties have agreed to the language in this Settlement Agreement. This Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
16. **Counterparts**. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
17. **Reasonableness of Settlement**. The Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
18. **Section Headings**. The Parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify, or otherwise aid in the interpretation of this Settlement Agreement.
19. **Effective Date**. This Settlement Agreement shall become effective immediately upon issuance of the Order approving the Settlement Agreement.
20. **Choice of Law**. This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
21. **No Waiver of Other Requirements**. Nothing in this Settlement Agreement shall excuse Respondent from meeting any other applicable requirement, legislation, regulation, or other authority.

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22. **Notices.** Notices required and sent under the Settlement Agreement shall be provided in writing by both email and physical mail as follows, until otherwise directed by the party. (A) **For the Prosecution Team:** Bryan Elder, Supervising Water Resources Control Engineer, State Water Resources Control Board, Office of Enforcement, 801 K Street, Suite 2300, Sacramento, CA, 95814; Bryan.Elder@waterboards.ca.gov. (B) **For Respondent:** Rudy Ocampo, Jr., P.O. Box 10072, Westminster Ca 92685; rudyjr_ocampo@aol.com.

IT IS SO STIPULATED.

State Water Board, Office of Enforcement Prosecution Team

By: Signed original available upon request

Bryan Elder, PE
Supervising Water Resource Control Engineer

Date

By: Signed original available upon request

Rudy Ocampo, Jr.
Respondent

Date

**FINDINGS AND ORDER OF THE
STATE WATER RESOURCES CONTROL BOARD**

Having considered the allegations and the Parties' stipulations, the State Water Board finds that:

1. This Order incorporates Paragraphs 1 through 22 by reference as if set forth fully herein.
2. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), of title 14 of the California Code of Regulations.
3. The Settlement Agreement and Stipulation for Entry of an Order Imposing Operator Certification Discipline (Settlement Agreement) between the State Water Board Office of Enforcement Prosecution Team and the Respondent is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order. Respondent must comply with all terms and conditions of the Settlement Agreement, including the requirement for Respondent to surrender Certificate No. 41118 to State Water Board's Office of Operator Certification and cease performing any duties or functions for which a water distribution certificate is required. If Respondent chooses to participate in the Drinking Water Operator Certification Program (Health & Saf. Code § 106875, *et seq.*) in the future, he must satisfy all the certification requirements set forth in California Code of Regulations, title 22, division 4, chapter 13, as well as all terms and conditions of the Settlement Agreement.

IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

Date: _____

Eric Oppenheimer
Executive Director
State Water Resources Control Board