

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

ORDER WR 2023-0007-EXEC

In the Matter of Violation of Emergency Curtailment Order and Measurement

Regulations by

FARMERS DITCH COMPANY

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (“State Water Board”) following the issuance of an Administrative Civil Liability (“ACL”) Complaint and Draft Cease and Desist Order (“CDO”) to Farmers Ditch Company (“FDC”). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights Prosecution Team (“Prosecution Team”) and FDC have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

Farmers Ditch is an approximately 11-mile-long, unlined ditch that has been in operation since 1870. FDC actively diverts water from the Scott River through a headgate for the purpose of conveying water to the properties along the ditch that have an adjudicated pre-1914 appropriative water right.

On May 10, 2021, the Governor issued Executive Order N-10-21 declaring a state of emergency based on drought conditions in the Scott River and Shasta River

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

watersheds.

On August 17, 2021, the State Water Board adopted an emergency regulation, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Klamath River Watershed (Emergency Regulation). The minimum instream flow requirements were established to protect fall-run Chinook salmon and threatened Southern Oregon/Northern California Coast coho salmon.

The Deputy Director of the Division of Water Rights issued a Curtailment Order on September 9, 2021, ordering FDC to cease all diversions unless an exception applied. Diversions under the Curtailment Order could continue for limited exceptions, including to meet the minimum necessary amounts for livestock watering, and only if the diversion was the only source of water for those needs and was conveyed without seepage losses. This curtailment was in effect from September 9, 2021, to October 24, 2021, and again from December 1, 2021, to January 4, 2022.

Section 875.7 of the Emergency Regulation prohibits the diversion of surface water more than ten times the amount necessary for livestock watering. This prohibition on inefficient livestock watering was in place from September 1, 2021, to January 31, 2022.

Title 23, Chapter 2.8, Sections 931-938 of the California Code of Regulations (hereinafter Measurement and Monitoring Regulations) dictate requirements for measurement devices upon certain diversions. These regulations were approved by the Office of Administrative Law on March 21, 2016.

Section 932(a) of the Measurement and Monitoring Regulations states that specified classes of diverters “shall install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage.” Section 933(b) of the Measurement and Monitoring Regulations sets in place additional reporting requirements on diversions for water rights holders who divert more than 30 cfs at

any point between June 1 – September 30. Diverters who fall into this category must report their diversions via telemetry.

On January 7, 2022, the Deputy Director of the Division of Water Rights issued an Information Order to FDC, requiring the submission of information regarding livestock watering diversions, including the amount diverted, the purpose of use, and the quantity of livestock. FDC responded to the Information Order on April 12, 2022.

On September 16, 2022, based on the information contained in the Information Order responses, the Assistant Deputy Director for the Division of Water Rights issued an Administrative Civil Liability Complaint, and Draft Cease and Desist Order to FDC.

The ACLC and Draft CDO allege violations of the Curtailment Order, the prohibition on inefficient livestock watering, and the Measurement and Reporting Regulations. The ACLC recommended a civil liability of \$96,000, and the draft CDO would order FDC to comply with the limits on diversion set by the Emergency Regulations, comply with the Measurement and Reporting Regulations, and repair or upgrade the headgate for Farmers Ditch to prevent leaks.

FDC submitted a request for a hearing on the ACLC and draft CDO on October 13, 2022. On December 12, 2022, the State Water Board's Administrative Hearings Office ("AHO") issued a Notice of Public Hearing. The hearing on the allegations in the draft CDO and ACLC is set to be held on March 9, 2023.

The Settling Parties have engaged in settlement negotiations and agree to settle the matters identified in the ACLC and Draft CDO through this Settlement Agreement in lieu of hearing.

3.0 SETTLEMENT AGREEMENT

The Settling Parties executed the Settlement Agreement attached hereto. The general terms of the settlement are that the Division Prosecution Team will deem the ACL Complaint and draft CDO satisfied and will not pursue further enforcement of any of the violations alleged therein if FDC (1) waives the right to reconsideration

of this Order; (2) implements the compliance actions described in Paragraph 6 of the Settlement Agreement to ensure compliance with the Emergency Regulations; and (3) pays an administrative civil liability of \$16,000.00 as described in Paragraph 4 of the Settlement Agreement within 180 days following the issuance of this Order.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and FDC is approved and is incorporated by reference into this Order.

This Order constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD



Eileen Sobeck
Executive Director

February 27, 2023

Date