

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2022-0156-DWR**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

In the Matter of Failure to Submit Curtailment Certification Response by

**Rudd Farming**

Water Right A008581

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**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 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 June 6, 2022. 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 Rudd Farming (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.

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<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 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. Section 879 subdivision (d)(1) of the Emergency Regulations states “all water right holders issued a curtailment order pursuant to section 876.1 are required, by the deadlines specified in the initial order but no sooner than seven calendar days of the date of the curtailment order, to submit under penalty of perjury a certification that they will continue to take actions to comply with section 876.1 which includes monitoring the State Water Board’s drought webpage or subscribe to the State Water Board’s Delta Drought email distribution list. Water Code section 1846, subdivision (a)(2) states: “a person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs:...a regulation or order adopted by the Board.”
4. 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). The Curtailment Order required submission of a Sacramento-San Joaquin Water Right Curtailment Certification online forms (Curtailment Certification) by September 3, 2021, for each water right.
5. On May 6, 2022, the State Water Board Division of Water Rights sent the Diverter a Notice of Violation (NOV) notifying the Diverter that the Online Curtailment Certification Form had not been received as of the date of the NOV. The Diverter was warned of the potential for enforcement with monetary penalties should the violation persist.
6. On June 6, 2022, the Division issued the Diverter an ACL Complaint. The ACL Complaint alleged the Diverter failed to submit their Curtailment Certificate Response by September 3, 2021, in violation of section 879 (d)(1) of the Emergency Regulations. The ACL Complaint 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 of Settlement Offer and Waiver of Right to Hearing and Reconsideration by June 30, 2022.

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.
10. In this case, the Diverter submitted the Online Curtailment Certification Form, and 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 check or money order payment of the full penalty of \$500 to:

State Water Resources Control Board: Division of Water Rights  
Enforcement Section – Sac-SJ 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



*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: July 8, 2022