

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between Darrell Sousa (Respondent) and the State Water Resources Control Board (State Water Board), acting by and through the Assistant Deputy Director of the Division of Water Rights (Division). The Assistant Deputy Director and Respondent are jointly referred to herein as the Parties.

**RECITALS**

1. Pursuant to authority delegated by the State Water Board in Resolution 2012-0029, and subsequently redelegated from the Deputy Director for Water Rights, the Assistant Deputy Director for Water Rights issued a Draft Cease and Desist Order to Respondent on November 16, 2022. The Draft Cease and Desist Order is included as Attachment 1 to this Agreement.
2. The Draft Cease and Desist Order concerns allegations of Respondent's failure or threatened failure to comply with the Klamath River Watershed Drought Emergency Regulations adopted by the Board pursuant to Water Code section 1058.5 on August 17, 2021. (Cal. Code Regs., tit. 23, §§ 875 et seq.) Specifically, the Draft Cease and Desist Order alleges that Respondent owns and operates a groundwater well (identified as SG005956) subject to the Emergency Regulations on Siskiyou County Assessor's Parcel Number 019-661-120-000.
3. The violations and threatened violations alleged in the Complaint are subject to cease and desist authority under Water Code section 1831.
4. On December 9, 2022, Respondent requested a hearing before the State Water Board, Administrative Hearings Office. The Administrative Hearings Office has scheduled a hearing for April 20, 2023.
5. The Parties agree to settle the Draft Cease and Desist Order without an administrative hearing or civil litigation by presenting this Agreement and a proposed order to the Executive Director of the State Water Board, as the Board's delegee, for adoption as an order by settlement authorized under Government Code section 11415.60.
6. This Agreement will become effective when the Executive Director issues an order approving the settlement, provided that the Parties concur in any substantive changes to the approving order proposed by the Executive Director.

## STIPULATIONS

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties agree to settle the violations alleged in the Complaint as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Agreement, this Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Required Corrective Actions.** The parties stipulate and agree that Respondent has undertaken certain corrective actions during the settlement negotiation period. If Respondent resumes activities subject to the Emergency Regulations, Respondent will undertake the following corrective actions to demonstrate compliance:
  - i. Within thirty (30) days of the date of the Order Approving this Settlement Agreement, Respondent shall develop, and submit to the Division, a compliance plan that addresses record keeping to determine compliance with the human health and safety limit. Respondent's agreement to utilize the forms contained in Attachment 2 to this Agreement will be sufficient to satisfy this requirement. Should Respondent choose to develop an independent compliance plan, such plan shall, at a minimum, address record keeping of the following information for each sale or distribution:
    - a. the amount of water
    - b. the dates the water is sold or distributed and delivered,
    - c. the number of households and persons served,
    - d. the place of use for the water, and
    - e. the purpose of use for the water.
  - ii. Within thirty (30) days of the date of the Order Approving this Settlement Agreement, Respondent must install and maintain working measurement devices on the groundwater well and on the filling station pump to keep an accurate count of how much groundwater is being diverted, sold, or distributed. Measurement information shall be recorded at a minimum frequency of weekly and shall be provided to the Division upon request.

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- iii. Appropriative groundwater diversions for human health and safety may resume under one of the following conditions: 1) Upon implementation of a compliance plan that demonstrates Respondent's diversions are no greater than 55 gallons per person per day; or 2) If greater than 55 gallons per person per day are being requested, upon the Deputy Director's approval of a petition pursuant to the California Code Regulations, title 23, section 878.1(b)(2), and implementation of a compliance plan.
4. **Termination of Corrective Actions Requirement.** The requirement to implement the corrective actions described in Stipulation 3 shall terminate upon the earlier of: 1) the expiration of the Emergency Regulations (Cal. Code Regs., tit. 23, §§ 875 et seq.); or 2) the rescission or cancellation of any Governor drought proclamations applicable to Siskiyou County.
5. **Stipulation to Request Cancellation of Hearing.** Respondent will work with the Division of Water Rights Prosecution Team to jointly submit this Agreement and proposed order to the Administrative Hearings Office, request a notice of cancellation of the hearing be issued, and withdraw the hearing request.
6. **Stipulation to Cease and Desist Order.** The Parties jointly stipulate and agree that the terms of this Agreement, particularly the corrective action described under Stipulation 3, shall be enforceable as a Cease and Desist Order issued in accordance with Water Code section 1831, and shall resolve the allegations contained in the Draft Cease and Desist Order issued on November 16, 2022.
7. **Enforcement of this Settlement Agreement.** Failure to comply with the corrective actions described under Stipulation 3 may result in additional enforcement, including imposition of administrative civil liability pursuant to Water Code section 1845.
8. **State Water Board Authority.** This 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.
9. **Waiver of Reconsideration.** Respondent waives his right to request reconsideration of the State Water Board Executive Directors' Order approving this Agreement, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in that Order.

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10. **Independent Judgment.** Each Party represents and declares that in executing this 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 Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
11. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedential decision of the State Water Board.
12. **Additional Documents.** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
13. **Entire Agreement.** This 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. Each Party represents that it has not relied on any inducements, promises, or representations made by the other party other than those contained in this Agreement.
14. **Mutual Agreement.** The Parties have agreed to the language in this Agreement. This Agreement shall not be construed against the party that drafted this Agreement or any portion of this Agreement.
15. **Counterparts.** This 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.
16. **Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
17. **Section Headings.** The Parties intend that the paragraph headings of this 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 Agreement.
18. **Effective Date.** This Agreement shall become effective immediately upon issuance of the State Water Board Executive Director's Order Approving the Agreement.
19. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of

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the State of California.

20. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
21. **No Waiver of Other Requirements.** Nothing in this Agreement shall excuse the Respondent from meeting any other applicable requirement, legislation, regulation, or other authority.

**IT IS SO STIPULATED.**

State Water Board, Division of Water Rights' Prosecution Team

ORIGINAL SIGNED BY:

*Julé Rizzardo, Assistant Deputy Director  
Division of Water Rights*

Dated: April 7, 2023

Respondent

ORIGINAL SIGNED BY:

*Darrell Sousa*

Dated: April 6, 2023

Attachment 1: Draft Cease and Desist Order