

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

**ORDER WR 2022-0146-DWM**

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In the Matter of Violation of Annual Reporting Requirements by

**Robert R. Kirtlan**

**SETTLEMENT ORDER**

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**BY THE DELTA WATERMASTER<sup>1</sup>**

**1.0 INTRODUCTION**

This matter comes before the State Water Resources Control Board (State Water Board), acting by and through the Delta Watermaster (Watermaster), following the issuance of an Administrative Civil Liability Order (ACL Order) to Robert R. Kirtlan (Kirtlan). In accordance with the Settlement Agreement (attached hereto as Exhibit A) the Watermaster and Kirtlan have agreed to settle this matter. The issuance of this Settlement Order pursuant to the Settlement Agreement is authorized under Government Code section 11415.60.

**2.0 BACKGROUND**

Kirtlan filed initial Statements of Diversion and Use (S017079 and S017089) on June 29, 2010, as required under Water Code section 5101. Kirtlan must, pursuant to Water Code section 5014, file Supplemental Statements of Water Diversion and Use annually before July 1 of each year.

As recited in the Settlement Agreement, Kirtlan failed to timely submit the Supplement Statements of Water Diversion and Use during calendar year 2017 as

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<sup>1</sup> Pursuant to Water Code section 85230, the State Water board is authorized to delegate authority to the Delta Watermaster. State Water Resources Control Board Resolution No. 2018-0037 (Resolution) delegates certain authority to the Delta Watermaster. Section 1.12 of the Resolution authorizes the Delta Watermaster to formulate and issue decisions by settlement under Government Code section 11415.60 in matters raised by a complaint, or where a administrative civil liability order has been issued but a hearing has not been noticed.

required. Kirtlan failed to respond to multiple Notices of Deficiency, and multiple attempts by the Watermaster to provide compliance assistance. Kirtlan then actively avoided service of the administrative civil liability complaint (ACL Complaint) issued by the Watermaster for Kirtlan's failure to timely file the required Supplemental Statements of Diversion and Use, which, after numerous attempts, was effected by a process server. When Kirtlan failed to respond to the ACL Complaint, the Watermaster issued the ACL Order for the proposed amount in the ACL Complaint. When Kirtlan then failed to remit the amount due under the ACL Order within 30 days, the Watermaster sought a judgment in Yolo County Superior Court to collect the amount due under the ACL Order (Judgment). The Judgment was entered on December 5, 2019 and was thereafter recorded as a lien on the Kirtlan residence.

Kirtlan and the Watermaster have engaged in settlement negotiations and have agreed to settle the matters recited in the Settlement Agreement.

### **3.0 SETTLEMENT AGREEMENT**

The Settlement Agreement contains the following terms:<sup>2</sup>

- (1) Kirtlan shall remit to the State Water Board the full amount assessed in the ACL Order (\$25,000) plus approximately half of the interest accrued on that amount at the rate of 10% per annum for the roughly 19 months from entry of the Judgment (December 5, 2019) through the date of expected execution of the Settlement Agreement (Sept 10, 2021), according to the payment schedule outlined in paragraph 4 of the Settlement Agreement.

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<sup>2</sup> Recitation of terms in this Settlement Order is provided only as a convenient summary. The terms of the Settlement Agreement control in the event of ambiguity between this summary and the Settlement Agreement.

## SETTLEMENT ORDER

**IT IS HEREBY ORDERED THAT** the attached Settlement Agreement (Exhibit A) between Kirtlan and the Watermaster is approved and is incorporated by reference into this Settlement Order.

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

Approval of the Settlement Agreement has been delegated to the Watermaster by State Board Resolution No. 2018-0037, and approval shall not limit the authority of the Executive Director, Watermaster, or the Deputy Director for the Division of Water Rights, as delegated, to initiate any enforcement actions for the unauthorized diversion of water, for any future violations of the Water Code, or violation of the terms of the Settlement Agreement.

STATE WATER RESOURCES CONTROL BOARD



**Michael Patrick George**  
Delta Watermaster

Dated: April 26, 2022

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Robert R. Kirtlan (Kirtlan) and the State Water Resources Control Board (State Water Board) acting by and through the Delta Watermaster (Watermaster).

### RECITALS

1. Kirtlan filed initial Statements of Diversion and Use (S017079 and S017089) on June 29, 2010, as required under Water Code section 5101.
2. Kirtlan must, pursuant to Water Code section 5014, file Supplemental Statements of Water Diversion and Use annually before July 1 of each year.
3. Kirtlan must, pursuant to 23 CCR §920, file the Supplemental Statements of Water Diversion and Use electronically on forms available at the State Water Board's website annually before July 1 of each year.
4. On June 5, 2018 the State Water Board's Division of Water Rights (Division) sent a reminder notice to Kirtlan via an email listserv. This email reminded Kirtlan of the then-upcoming July 1, 2018 deadline for filing Supplemental Statements of Diversion and Use during calendar year 2017. Kirtlan failed to file 2017 Supplemental Statements by July 1, 2018 as required.
5. On July 13, 2018, a member of the staff of the Office of the Delta Watermaster called Kirtlan and left a voicemail message as another reminder regarding the by-then-passed July 1, 2018 reporting deadline.
6. On July 27, 2018, the Office of the Delta Watermaster mailed two Notices of Deficiency to Kirtlan (one for each of the delinquent 2017 Supplemental Statements) to the address on file with the State Water Board. The Notices of Deficiency reminded Kirtlan that the deadline had passed, but that he could avoid formal enforcement action by promptly submitting the 2017 Supplemental Statements.
7. On May 16, 2019, the Office of the Delta Watermaster sent an administrative civil liability complaint (ACL Complaint) via certified mail to Kirtlan at the address on file with the State Water Board, 34600 South River Road Clarksburg, CA 95612 (hereinafter "Kirtlan Residence"). The ACL Complaint was returned to the Office of the Delta Watermaster as unclaimed on June 4, 2019.
8. On May 28, 2019, Kirtlan filed the 2017 Supplemental Statements of Diversion and Use for S017079 and S017089.
9. On September 17, 2019, after numerous failed attempts, a Process Server effected service of the ACL Complaint by posting the ACL Complaint and related documents at the Kirtlan Residence and providing certified Proof of Service documentation to the Office of the Delta Watermaster.

10. Kirtlan did not request a hearing within 20 days of receipt of the ACL Complaint, as he had the right to do pursuant to Water Code section 1055(b).
11. Water Code section 1055(c) and State Water Board Resolution 2018-0037 authorize the Watermaster to issue an administrative civil liability order to Kirtlan assessing administrative civil liability in the amount proposed in the ACL Complaint when Kirtlan failed to request a hearing within 20 days of receipt of the ACL Complaint.
12. On October 10, 2019, the Watermaster issued an administrative civil liability order (ACL Order) to Kirtlan assessing administrative civil liability in the amount proposed in the ACL Complaint: \$25,000. Payment of that amount was due within 30 days following entry of the ACL Order.
13. More than 30 days after entry of the ACL Order and pursuant to Water Code section 1055.4, the Watermaster applied to the Clerk of the Yolo County Superior Court for a judgment to collect the administrative civil liability imposed by the ACL Order. On December 5, 2019, the Clerk of Yolo County Superior Court entered judgment on the ACL Order (Judgment).
14. On February 24, 2020, the Yolo County Recorder's Office recorded the Judgment and placed a lien on the Kirtlan Residence for the amount of the Judgment.
15. The Watermaster and Kirtlan have engaged in settlement negotiations and agree to settle the matters identified above through this Settlement Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Kirtlan and the Watermaster (together, Settling Parties) hereby agree to settle the ACL Order and the Judgment, on the bases identified below.

1. **Recitals Incorporated.** The preceding Recitals are hereby incorporated herein.
2. **Settlement Conditionally Confidential.** This Settlement Agreement will be approved and adopted by the Watermaster pursuant to Government Code section 11415.60 as Settlement Order and will become effective when the Watermaster issues an order approving the settlement (Settlement Order). The Watermaster will enter the Settlement Order within five business days of the Watermaster's receipt of the Settlement Agreement executed by Kirtlan and accompanied by a check made payable to the State Water Resources Control Board in the amount of \$10,000 as required under paragraph 4 of this Settlement Agreement. Until the Watermaster issues the Settlement Order, this Settlement 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 Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.

3. **Payment of Administrative Civil Liability and Satisfaction of the Judgment.** Kirtlan shall pay a total of \$27,187 (the Payment Amount) as directed herein. The Payment Amount represents the Administrative Civil Liability of \$25,000, plus approximately half of the interest accrued on that amount at the rate of 10% per annum for roughly 21 months since the entry of the Judgment (December 5, 2019) through the expected date of execution of this Settlement Agreement (Sept 10, 2021). [ $25,000 \times 10\% \times 1.75 \div 2 = 2,187$ ]
4. **Administrative Civil Liability Payment Schedule.** The Payment Amount shall be remitted according to the following schedule:
  - 1) \$10,000 remitted with Kirtlan's executed Settlement Agreement.
  - 2) \$8,000 payable 30 days after execution of this Settlement Agreement.
  - 3) \$900 on the first of the month for the ensuing nine months.
  - 4) A final payment of \$1087 to be made no later than September 10, 2022.The State Water Board will deposit each of the foregoing remittances in the Water Rights Fund pursuant to Water Code sections 1550, et seq.
5. **Satisfaction of ACL Order and Judgment.** Kirtlan's execution of this Settlement Agreement coupled with payment of the Payment Amount according to the above schedule will together constitute complete and final satisfaction of the ACL Order and the Judgment. Upon receipt of the final payment, the State Water Board will promptly notify the Yolo County Superior Court, and the Yolo County Recorder's Office that the Judgment has been satisfied. The State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the Recitals.
6. **Waiver of Reconsideration of Settlement Order.** Kirtlan waives the right to request reconsideration of the Settlement Order, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in the Settlement Order.
7. **Enforcement of this Settlement Agreement.** The Settlement Order shall constitute a cease and desist order pursuant to Water Code section 1831 for purposes of any subsequent violations of this Settlement Agreement, which would, accordingly, be enforceable by the Watermaster pursuant to Water Code section 1845.
8. **Independent Judgment.** Each Settling 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.

9. **No Precedent.** This Settlement Agreement involved unique facts and legal issues and shall not be used as a precedential decision of the State Water Board.
10. **Additional Documents.** Each Settling Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
11. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between the Settling Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each of the Settling Parties represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
12. **Mutual Agreement.** The Settling Parties have agreed to the language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
13. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed as an original, but all of which, together, shall constitute one and the same instrument.
14. **Reasonableness of Settlement.** The Settling Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
15. **Section Headings.** The Settling Parties intend that the section 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.
16. **Effective Date.** This Settlement Agreement shall become effective immediately upon issuance of the Settlement Order.
17. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the law of the State of California.
18. **Authorization.** Each Settling Party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

**19.No Waiver of Other Requirements.** Nothing in this Settlement Agreement or the Settlement Order shall excuse Kirtlan from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board.

Dated: September 9, 2021



Michael Patrick George  
Delta Watermaster

Dated: September 9<sup>th</sup>, 2021

  
Robert R. Kirtlan