

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

**ORDER WR 2023-0007-EXEC**

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In the Matter of Violation of Emergency Curtailment Order and Measurement

Regulations by

**FARMERS DITCH COMPANY**

**ORDER APPROVING SETTLEMENT AGREEMENT**

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**BY THE EXECUTIVE DIRECTOR<sup>1</sup>**

**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

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<sup>1</sup> 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



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Eileen Sobeck  
Executive Director

February 27, 2023

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Date

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between Farmer’s Ditch Company (“FDC”) and the State Water Resources Control Board (“State Water Board” or “Board”), Division of Water Rights Prosecution Team, referred to hereinafter jointly as the Settling Parties.

### **RECITALS**

1. 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.
2. 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 watersheds.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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 (ACLC), and Draft Cease and Desist Order (“CDO”) to FDC.
10. 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.
11. 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.
12. 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.
13. This Agreement will be submitted to the Administrative Hearings Office for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board’s Executive Director issues an order approving settlement.

### **STIPULATIONS**

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Settling Parties do hereby agree to settle the ACLC and Draft CDO 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. **Penalty Amount.** Farmers Ditch Company shall pay a total of \$16000 as directed under Paragraph 4 to resolve all violations alleged in the ACL Complaint. This amount may be reduced by the amount spent on installation, maintenance, and data hosting costs of an appropriate measuring device upon presentation to the State Water Board with satisfactory evidence (i.e. paid invoices or receipts), but in no event shall the amount be less than \$4500.

The Penalty Amount is an appropriate resolution to the violations alleged in the ACLC based on consideration of the relevant circumstances as stated in the ACLC, as well as: FDC's timeliness in returning to compliance, FDC's genuine misunderstanding of the Board's livestock watering prohibition, the relatively minor harm caused by the violations, the extensive commitments FDC has made to return to compliance, and the settlement purpose of this agreement.

4. **Administrative Civil Liability Payment Schedule.** The Penalty Amount shall be remitted according to the following schedule:

- 1) \$2000 within 30 days of the Effective Date of this Settlement Agreement.
- 2) \$1500 within 60 days of the Effective Date of this Settlement Agreement.
- 3) \$1000 within 90 days of the Effective Date of this Settlement Agreement.
- 4) The balance of the amount due, less the amount paid for installation, maintenance, and data hosting costs of an appropriate diversion measurement device, shall be payable within 180 days of the Effective Date of this Settlement Agreement.

Payment must be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund". Properly execute and deliver payment to:

State Water Resources Control Board  
Division of Water Rights  
Attention: Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

5. **Satisfaction of Administrative Civil Liability Complaint.** FDC's full payment of the Penalty Amount as required under Paragraph 4 will be a complete and final satisfaction of the administrative civil liability described in the ACLC, and 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 ACLC.

6. **Draft Cease and Desist Order.** The Settling Parties agree to settle the Draft CDO as follows:

- a. FDC shall, in compliance with the telemetry requirements in the State Board's

Measurement and Monitoring Regulations, install and maintain a diversion measurement device that is capable of recording diversion amounts in 15-minute increments, and publish daily data on a publicly available website at least once a week. The installation shall occur within 180 days of the Effective Date of this Settlement Agreement. Prior to the installation of the diversion measurement device, FDC shall maintain records of any surface water diversions, and provide those records upon request to the Division.

- b. FDC shall, within 30 days of the Effective date of this Settlement Agreement, submit a plan to return all water that leaks through FDC's diversion headgate back to Scott River. FDC shall implement this plan within 180 days of the Effective Date of this Settlement Agreement. If implementation of this plan is delayed due to the need to obtain necessary permits, FDC will immediately notify the State Board, and begin providing monthly status updates, on the first of the month, until project implementation is complete.
  - c. FDC shall, within 30 days of the Effective date of this Settlement Agreement, begin providing semi-annual status updates on the design and implementation of the point of diversion relocation project that is already underway, per an agreement with the California Department of Fish and Wildlife. Status reports are required until the project is completed.
  - d. FDC shall, within 30 days of the Effective date of this Settlement Agreement, provide a plan to upgrade or repair FDC member's alternative livestock watering systems, to ensure that they may be utilized if and when the prohibition on inefficient livestock watering, or curtailments apply. FDC shall implement this plan within 210 days of the effective date of this Settlement Agreement. In the event that FDC members determine that backup power systems such as solar are necessary to provide alternate power in the event of power outages the Board agrees to exert best efforts to help find funding sources to offset the substantial cost of these systems.
7. **Enforcement of this Settlement Agreement.** The terms and conditions of the Settlement Agreement and the implementing Order shall be treated as a final cease and desist order issued by the State Water Board pursuant to chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board.
8. **Request for Executive Director Approval and Postponement of Hearing.** Upon execution of this Settlement Agreement by each of the Settling Parties, the Settling Parties shall submit this Settlement Agreement and a proposed order approving this Settlement Agreement to the Administrative Hearings Office, and shall jointly request that: 1) the AHO bring the Settlement Agreement and proposed order to the Executive Director for consideration and approval; 2) the AHO postpone the hearing in this matter indefinitely pending the Executive Director's approval of this Settlement Agreement.



9. **Hearing Requests.** FDC's request for hearing on the ACLC and Draft CDO shall be deemed withdrawn upon approval of this Settlement Agreement by the State Water Board's Executive Director.
10. **Time is of the Essence.** Time is of the essence and the Settling Parties shall submit this Settlement Agreement and proposed implementing order to the Executive Director before noon on February 10, 2023, and sooner if possible.
11. **Waiver of Reconsideration.** FDC waives the right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
12. **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. Nothing in this Agreement shall excuse FDC from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority. Nothing in this agreement shall effect or prejudice any future proceedings regarding property or water rights under Decree 30662 of the Siskiyou County Superior Court.
13. **Successors.** This Agreement is binding on any successors or assigns of the Settling Parties.
14. **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.
15. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
16. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
17. **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.
18. **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.

19. **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.
20. **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 Settlement Agreement.
21. **Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
22. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
23. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
24. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by FDC or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

**IT IS SO STIPULATED**

State Water Board, Division of Water Rights' Prosecution Team

By: \_\_\_\_\_  
 Julé Rizzardo  
 Division of Water Rights  
 \_\_\_\_\_  
 Date

Farmers Ditch Company

By: \_\_\_\_\_  
 Sam Thackeray  
 President, Farmers Ditch Company  
 \_\_\_\_\_  
 Date

24. State Water Board Is Not Liable. Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by FDC or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Respondent or its employees, agents, representatives, or contractors in carrying out activities pursuant to this Agreement.

**IT IS SO STIPULATED**

State Water Board, Division of Water Rights' Prosecution Team

By: *Jule Rizzardo* 02/09/2023  
Julé Rizzardo Date  
Division of Water Rights

Farmers Ditch Company  
By: *S. Thackeray* 2/9/2023  
Sam Thackeray Date  
President, Farmers Ditch Company