

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Lance Batistich (“Respondent”) and the State Water Resources Control Board (“State Water Board” or “Board”), Division of Water Rights Prosecution Team (the “Prosecution Team”), referred to hereinafter jointly as the Parties. This Agreement is executed on last date of the signatures below.

### RECITALS

1. 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.
2. On August 17, 2021, the State Water Resources Control Board (“State Water Board” or “Board”) adopted emergency regulations, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Authority in the Klamath River Watershed. The Emergency Regulations provide curtailment authority throughout the Klamath River watershed and establish minimum instream flow requirements and information order authority in the Scott River and Shasta River watersheds. The minimum instream flow requirements were established to protect fall-run Chinook salmon and threatened Southern Oregon/Northern California Coast coho salmon. The Emergency Regulations went into effect on August 30, 2021, when they were approved by the Office of Administrative Law and filed with the Secretary of State. The State Water Board adopted the Emergency Regulations and described the need for the Emergency Regulations and their intent. Resolution No. 2021-0029 adopted the Emergency Regulations and describes the need for the Emergency Regulations and their intent.
3. On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. The updated regulations contain a provision that extends previously issued curtailment orders under the amended regulation. (Cal. Code Regs., tit. 23, § 875, subd. (d)(3).)
4. The Emergency Regulations prohibit inefficient surface water diversion for livestock watering to protect the fall-run for Chinook and Coho salmon. Inefficient surface water diversions are defined as diverting “more than ten times the amount of water needed to support the number of livestock and reasonable water quantities set forth in Article 5, section 697...,” as measured at the point of diversion. (Cal. Code Regs., tit. 23, § 875.7, subd. (a).) For the 2021-2022 season, this prohibition operated from September 1, 2021, until January 31, 2022.
5. When curtailments are in place, diversions for the purpose of stockwatering are limited to those which do not result in seepage losses and will not exceed reasonable stockwatering amounts as set forth in Article 5, section 697. (Cal. Code Regs., tit. 23, §§875.3, subd. (a), (b).)

6. Title 23, Chapter 2.8, Sections 931–938 of the California Code of Regulations dictate requirements for measurement devices upon certain diversions. Section 932, subdivision (a) 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.” These regulations were adopted by the Office of Administrative Law on March 21, 2016.
7. The Respondent is the Primary Owner of record for Water Right IDs S025829, S025819, S025820, S025830, and S028076. Statements S025819, S025820, and S025830 divert water from Oro Fino Creek for irrigation and stockwatering for 250 head of cattle. S028076 diverts water from Kidder Creek for irrigation and stockwatering for 250 head of cattle. S025829 is an adjudicated groundwater diversion from Oro Fino Creek for irrigation and stockwatering, also for 250 head of cattle. None of the Respondent’s claims of right include a right to divert and use stored water.
8. On September 9, 2021, "Order Imposing Water Right Curtailment and Reporting Requirements for Reported Water Rights" was sent to every diverter in the Scott watershed that has a water right in the electronic Water Right Information System and watermastered surface water rights. This order was sent to the Respondent, by certified mail, and received September 14, 2021. The order requires the Respondent to cease diversions and comply with minimum flow requirements in the Scott River for diversions under statement S028076.
9. On September 10, 2021, the State Water Board issued an Order Imposing Water Right Curtailment, Increased Coordination, and Reporting Requirements for Adjudicated Groundwater Rights in the Scott River Watershed (Order WR 2021-0083-DWR). The Respondent received Order WR 2021-0083-DWR on September 14, 2021. The order requires the Respondent to cease diversions and comply with minimum flow requirements in the Scott River for diversions under statements S025830, S025829, S025820, and S025819. According to the order, these rights are adjudicated groundwater diversions identified in Schedule C of the Scott Adjudication [Decree entered on January 30, 1980, in Siskiyou County Superior Court Case No. 30662, In the Matter of Determination of the Rights of the Various Claimants to the Waters of Scott River Stream System, Except Rights to Water of Shackelford Creek, French Creek, and all Streams Tributary to Scott River Downstream from the U.S. Geological Survey Gaging Station, in Siskiyou County, California].
10. The State Water Board issued various addenda partially suspending curtailment of water rights in the Scott River watershed. In 2022, curtailments went into effect on July 2, 2022, for all surface water rights. On July 6, 2022, curtailments were partially suspended, allowing each first priority water right to divert up to 15% of their right. On July 8, 2022, each first priority right was allowed to divert up to 30% of their right. Finally, on July 14, 2022, all rights (surface and groundwater)

were fully curtailed.

11. The Respondent submitted a Curtailment Certification Form on October 4, 2021. The Respondent claimed exemptions to curtailment for minimum livestock diversion, but these exemptions do not apply to irrigation.
12. Water Code<sup>3</sup> section 1831 authorizes the State Water Board to issue a cease and desist order (“CDO”) in response to a violation or threatened violation of any decision or order of the Board issued under Part 2, Division 2 of the Water Code, any regulation adopted under Water Code section 1058.5, or of other requirements and prohibitions not presently relevant. Water Code section 1845 further authorizes the Board to impose administrative civil liability, pursuant to Water Code section 1055. If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the administrative civil liability may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. If the violation occurs any other time, the administrative civil liability may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
13. Water Code section 1846 authorizes the State Water Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a regulation or order adopted by the Board. Under these statutes, the Board may impose administrative civil liability in an amount not to exceed five hundred dollars (\$500) per day for each day in which the violation occurs.
14. Enforcement staff from the Division of Water Rights (“Division”) issued a Notice of Violation to the Respondent on August 10, 2022, based on information received indicating the Respondent was in violation of the Curtailment Order. On August 23, 2022, Division enforcement staff inspected the Respondent’s point of diversion and some of the place of use.
15. On September 30, 2022, the Assistant Deputy Director for the Division, under delegated authority, issued a draft CDO to the Respondent and an information order, Order WR 2022-0171-DWR (“Information Order”). The draft CDO alleged that the Respondent had violated or threatened to violate the Curtailment Order by irrigating 47 acres.
16. The Information Order required a response by October 14, 2022. There was no response by that date.
17. On December 9, 2022, the Assistant Deputy Director for the Division, under

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<sup>3</sup> All references to the “Water Code” are to the California Water Code.

delegated authority, issued an Administrative Civil Liability (“ACL”) complaint to the Respondent for failing to respond to the Information Order. The ACL complaint recommended a civil liability of \$5,000.

18. The Respondent submitted a request for a hearing on the draft CDO on October 13, 2022, and a request for hearing on the ACL complaint on December 12, 2022. On August 23, 2022, the State Water Board, Administrative Hearings Office (“AHO”) issued a Notice of Public Hearing, scheduling a hearing on the allegations in the draft CDO and ACL to be held on February 14, 2023.
19. In lieu of a hearing on the matter, the Parties agree to settle the violation(s) alleged in the draft CDO, issued September 30, 2022, and the ACL complaint, issued December 9, 2022, through this Agreement.
20. This Agreement will be submitted to the AHO 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

In consideration of these Recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties agree to settle the ACL complaint as follows:

21. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
22. **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.
23. **Actions to be Taken by Respondent.** To settle the alleged violation, the Respondent agrees to the following:
  - a. Immediately cease and desist all diversions from the Oro Fino Creek and from hydraulically connected groundwater and continue to cease all such diversions until curtailments have lifted or otherwise receiving notification by the State Water Board that curtailments have lifted.
  - b. Maintain, and provide to the Division upon request, records of all diversions of surface water hydraulically connected groundwater.
  - c. Maintain a working flow meter that meets the requirements of Title 23, Chapter 2.8, Sections 931–938 of the California Code of Regulations, for any future diversions once curtailment is lifted.
  - d. No less than 14 days after the State Water Board’s Executive Director

issues an order approving this Agreement, submit the information described in Directive 2 of the Information Order, and respond to any additional information requests from the Division to clarify or complete the initial information request.

- e. Work with the Prosecution Team to jointly submit this Agreement to the AHO prior to the scheduled hearing date and request a notice of cancellation of the hearing be issued.
24. **Stipulation for Water Right Compliance.** The Parties jointly stipulate and agree to the compliance actions described above in Stipulation 23.a through Stipulation 23.e and that those terms shall be enforceable as a Cease and Desist Order issued in accordance with Water Code section 1831.
25. **Suspended Administrative Civil Liability.** The Respondent accepts an ACL of Five-Thousand Dollars (\$5,000). The ACL will be suspended if the Respondent meets the requirements of Stipulation 23.d. If the Respondent fails to meet any requirement of Stipulation 23.d, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL. 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 — Curtailment  
P.O. Box 2000  
Sacramento, CA 95812-2000
26. **Satisfaction of Administrative Civil Liability Complaint.** Respondent's completion of the terms and conditions under Stipulation 23.d and Stipulation 24 will constitute a complete and final satisfaction of the administrative civil liability described in the ACL complaint, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding the alleged violation(s) described in that ACL complaint.
27. **Enforcement of this Settlement Agreement.** If the ACL that Stipulation 25 requires is unpaid after 30 days of the date of the Deputy Director's finding, the Deputy Director will seek a judgment against the Respondent in accordance with Water Code section 1055.4.
28. **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 Respondent from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
29. **Waiver of Reconsideration.** Respondent waives its rights 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.

30. **Successors.** This Agreement is binding on any successors or assigns of the Parties.
31. **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.
32. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
33. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
34. **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.
35. **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.
36. **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.
37. **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.
38. **Effective Date.** This Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving the Settlement Agreement.
39. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.

40. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
41. **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 the Respondent 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

Respondent

By: \_\_\_\_\_  
Lance Batistich

\_\_\_\_\_ Date

Exhibit 1: Proposed Order Approving Settlement Agreement

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*  
Julé Rizzardo  
Division of Water Rights

02/02/2023  
Date

Respondent

By: \_\_\_\_\_  
Lance Batistich

\_\_\_\_\_  
Date

Exhibit 1: Proposed Order Approving Settlement Agreement



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

Respondent  
By:  Date 2-2-23  
Lance Batistich

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