

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0015-DWR

In the Matter of the Draft Cease and Desist Order Issued to:

Darrell Sousa (SG005956)
Siskiyou County

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE DEPUTY DIRECTOR FOR THE DIVISION OF WATER RIGHTS

1.0 INTRODUCTION

This matter comes before the Deputy Director for the State Water Resources Control Board (State Water Board or Board) Division of Water Rights following the issuance of a Draft Cease and Desist Order to Darrell Sousa (Respondent). In accordance with the attached Settlement Agreement, the Assistant Deputy Director for the Division of Water Rights and the Respondent 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 11415.60.¹

2.0 BACKGROUND

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, 2021.² (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

¹ 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. The Executive Director has redelegate this authority to the Deputy Director for the Division of Water Rights.

² The Emergency Regulations became effective on August 30, 2021. The Board updated and readopted the Emergency Regulations on June 21, 2022, effective July 29, 2022.

Parcel Number 019-661-120-000.

On September 10, 2021, the Board issued Order WR 2021-0082-DWR, which required most junior water rights holders in the Shasta River watershed to curtail surface and groundwater diversions due to drought conditions. Respondent's well (SG005956) is subject to the curtailment order.

The Emergency Regulations provide that diversions for human health and safety may continue despite the curtailment order, under certain conditions. (Cal. Code Regs., tit. 23 § 875.2, subd. (b).) Such diversions must be limited to no more than 55 gallons per person per day, and diverters must submit a certification with necessary information to certify compliance with the human health and safety exemption. (Cal. Code Regs., tit. 23, § 878.1, subd. (b)(1).)

Respondent submitted a human health and safety needs certification for SG005956 on November 18, 2021, claiming that diverted water would fall within the exemption. However, the Draft Cease and Desist Order alleges that Respondent did not submit information necessary to verify this claim. Following receipt of an outside complaint, the Division of Water Rights investigated Respondent's well diversions and determined that it is not possible to verify the human health and safety certification given Respondent's lack of necessary records.

On November 16, 2022, the Assistant Deputy Director of the Division, acting under delegated authority, issued Respondent a Draft Cease and Desist Order. A copy of the Draft Cease and Desist Order is attached to the Settlement Agreement, which is Exhibit A to this Order.

On December 9, 2022, Respondent requested a hearing before the State Water Board, Administrative Hearings Office to contest the allegations contained in the Draft Cease and Desist Order. The Administrative Hearings Office has scheduled a hearing to commence April 20, 2023.

The Respondent and the Assistant Deputy Director engaged in settlement negotiations and agreed to settle all matters identified in the Draft Cease and Desist Order by settlement agreement in lieu of a hearing. During the settlement negotiations, the Respondent provided evidence of the implementation of several corrective actions to the satisfaction of the Assistant Deputy Director.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Prosecution Team executed a Settlement Agreement on April 7, 2023. A copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated herein by reference. The general terms of the settlement are:

- 1) Respondent stipulates to request cancelation of the hearing on the Draft Cease and Desist Order, waive the right to petition for reconsideration of this Order, and

agrees to the other terms and conditions described in the Settlement Agreement;
and

- 2) Respondent will undertake the corrective actions detailed in Stipulation 3 of the Settlement Agreement.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Assistant Deputy Director and the Respondent is approved. The Respondent must perform all of the following actions:

1. Comply with the terms and requirements described in Stipulation 3 of the Settlement Agreement before resuming appropriative groundwater diversions for human health and safety.

The terms and requirements described in the Settlement Agreement are enforceable as a cease-and-desist order issued in accordance with Water Code section 1831.

Failure to comply with the terms of the Settlement Agreement may result in additional enforcement, which may include imposition of administrative civil liability pursuant to Water Code section 1845.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: April 10, 2023