

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

ORDER WR-2022-0177-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Violation of
Klamath River Watershed Drought Emergency Regulations

Shasta River Water Association
Water Right SG005955

SOURCE: Shasta River

COUNTY: Siskiyou

The Assistant Deputy Director of the Division of Water Rights (Division), through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability Order (ACL Order or Order) to the Shasta River Water Association (the Diverter). On November 4, 2022, the Division issued the Diverter an Administrative Civil Liability Complaint (ACLC), which is hereby incorporated by reference as part of this ACL Order.

THE STATE WATER BOARD, OR ITS DELEEGEE, FINDS AS FOLLOWS:

1. On August 30, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 875 through 875.9 (Emergency Regulations). On July 21, 2022, the State Water Board re-adopted the Emergency Regulations.
2. Section 875 of the Emergency Regulations authorizes the Deputy Director of the Division of Water Rights to issue curtailment orders to water right holders, requiring the curtailment of water diversion and use.
3. On September 10, 2021, the State Water Board issued a curtailment order (Order WR 2021-0082-DWR) to the most junior water right holders in the Shasta River, including post-Shasta River Adjudication appropriative surface water and

groundwater rights, as well as surface water rights in the Shasta Adjudication¹ with priority dates later than November 1912. The Diverter's water right, defined in paragraph 341 of the Shasta Adjudication to divert 42.00 cfs from Point of Diversion (POD) 419 from April 1 to October 1 has a priority date of November 25, 1912. This water right is the most senior water right to be curtailed under Order WR 2021-0082-DWR.

4. Based on forecasted precipitation and other factors, the State Water Board issued various addenda partially suspending curtailment of water rights in order of priority contingent on the required minimum flow being met and sustained at the Yreka USGS gage. On March 15, 2022, the State Water Board reinstated water right curtailments for the most junior water rights in the Shasta River watershed (Addendum 9). Based on ongoing dry conditions, flows being consistently below the minimum flow requirement, and uncertainties associated with demands from overlying groundwater and riparian claims, the State Water Board issued Order WR 2022-0162-DWR, subjecting more senior water rights to curtailment (to a priority date of April 1, 1885) because the minimum emergency flow requirement of 50 cfs cannot be met by the more junior water rights curtailed in Order WR 2021-0082-DWR.
5. On August 17, 2022, flows in the Shasta River began precipitously dropping by over 20 cfs and by August 18, 2022, dropped over 30 cfs. Flows at Yreka gage declined from 46.8 cfs on Aug 17, to 16.7 cfs on Aug 18, and were about 32 cfs below the minimum instream flow requirement of 50 cfs. From August 18 to August 24, the flow of the Shasta River at the Yreka gage was as low as 12.2 cfs (37.8 cfs below the instream flow requirement). Water Board staff confirmed with the Diverter that they were diverting approximately 30 cfs, notwithstanding the curtailment under Order WR 2021-0082-DWR. As explained above, the State Water Board issued Order WR 2022-0162-DWR, curtailing more senior water rights to a priority date of April 1, 1885 because the minimum emergency flow requirement cannot be met by the more junior water rights curtailed in Order WR 2021-0082-DWR. Accordingly, water was not available under Diverter's water right. No exemptions or petitions had been approved for Diverter to continue diverting.
6. The Shasta River basin contains spawning and rearing habitat for commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead. The minimum summer flows of 50 cfs are critical to providing over summering juvenile salmonid habitat and lower flows exacerbate negative water quality issues (e.g., temperature and dissolved oxygen) that limit fish mobility and survival.

¹ Judgment and Decree entered on December 29, 1932 in Siskiyou County Superior Court Case No. 7035, In the Matter of the Determination of the Relative Rights, Based Upon Prior Appropriation, of the Various Claimants to the Waters of Shasta River and its Tributaries in Siskiyou County, California.

7. Water rights more senior than the Diverter's are subject to curtailment. Requiring more senior rights to curtail, while permitting more junior rights to continue diverting, to meet the minimum flows violates the rule of priority and is contrary to law. Diverter's action adversely impacted the State Water Board's ability to enforce the Emergency Regulations and ensure that minimum flow requirements would be met.
8. On August 18, 2022, the Division received a letter from the Diverter explaining that due to weather conditions, they were about to begin diverting water for the purposes of irrigation, livestock watering, watering trees, and fire suppression. Despite acknowledging in the letter that certain exceptions to curtailment orders are permitted after submission, *and approval*, of the appropriate forms, the Diverter still chose to divert water from the Shasta River in violation of the curtailment order and Emergency Regulations.
9. On August 18, 2022, Division staff inspected Diverter's headgate and observed water flowing in ditches that serve SRWA's member properties. Staff witnessed and photographed the diversion facility and witnessed the pump station and fish screen operating, water flowing in the irrigation canal, and water arriving at multiple member properties.
10. During the inspection, staff spoke to three members of the Diverter's board of directors. The directors stated that they turned on their diversion the night of August 17, 2022 and, in the absence of a working flowmeter, estimated that SRWA was currently diverting 30 cfs. They stated they would try to maintain river flows of between 20-25 cfs. However, that amount is half or less than half of the minimum flow requirements for the Shasta River. The Diverter also stated that they are using the water for irrigation.
11. On August 18, 2022, the Division issued a Notice of Violation to the Diverter for failure to comply with the curtailment order. The Notice stated that the diversions were not permitted under the Diverter's water right and urged the Diverter to cease diversions to avoid further enforcement actions against them by the State Water Board.
12. On August 19, 2022, a draft Cease and Desist order was issued to the Diverter requiring the Diverter to cease and desist from an ongoing violation of the Emergency Regulations.
13. On August 24, 2022, the Diverter ceased their unauthorized diversions.
14. On September 12, 2022 the final Cease and Desist Order WR 2022-01688-DWR was issued.
15. The Diverter was diverting water from the Shasta River in violation of the Emergency Regulations and Order WR 2021-0082-DWR. Specifically, the Diverter was diverting

when water was not available under its water right priority. This constitutes a violation of the Emergency Regulations which prohibit the diversion of water for specified water rights holders during a period of curtailment unless granted permission by the State Water Board under a valid exception. While the Diverter did submit the Livestock Diversion Certification and petition form certifying that the diversion is necessary to provide adequate water to livestock, the Certification and petition form were submitted on August 5, 2022. The certification and petition were not approved at the time the diversions occurred and the petition was partially approved on September 21, 2022 for a maximum diversion of 0.24 cfs. The Diverter certified that the diversion does not exceed the reasonable livestock watering quantities set forth in Article 5 Section 697 of the emergency regulations. Additionally, there was no exemption granted for irrigation use.

16. On November 4, 2022, the Division issued the Diverter an Administrative Civil Liability Complaint (ACLC). The ACLC alleged the Diverter diverted water from the Shasta River in violation of the Emergency Regulations and Order WR 2021-0082-DWR. The ACLC recommended a penalty of \$4,000.
17. The ACLC was mailed to the Diverter via certified mail. The Division confirmed with the United States Postal Service that the ACLC was delivered to the Diverter's address of record on November 7, 2022.
18. The Diverter did not request a hearing within 20 days of receipt of the ACLC, in accordance with Water Code section 1055, subdivision (b).
19. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing administrative civil liability when a Complaint has been issued and no hearing has been requested in the period provided by Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to an Assistant Deputy Director. This authority was redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.
20. Water Code section 1055, subdivision (b), Resolution No. 2012-0029, and subsequent redelegation memorandums authorize the Assistant Deputy Director of the Permitting and Enforcement Branch to issue an ACL Order to the Diverter assessing administrative civil liability in the amount proposed in the November 4, 2022 ACLC.
21. Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.

22. In this case, the recommended administrative civil liability of \$4,000 is based on the relevant circumstances alleged in the ACLC. In consideration of these circumstances, the State Water Board has determined that the statutory maximum administrative civil liability of \$4,000 is appropriate.


IT IS HEREBY ORDERED THAT:

1. The attached ACLC is incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including those specifically identified in the ACLC pursuant to Water Code 1055.3.
3. Diverter shall remit within 30 days of the date of this Order, a check or money order payment of the full penalty of \$4,000 to:

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

4. Fulfillment of the Diverter's obligations under this Order constitutes full and final satisfaction of liability for the alleged violation specifically identified in this Order. The State Water Board reserves the right to take further enforcement action for any future violations.
5. The State Water Board is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if the Diverter fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: December 2, 2022