

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

Shasta River Water Association
Water Right SG005955

SOURCE: Shasta River

COUNTY: Siskiyou

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Shasta River Water Association (the Diverter) is alleged to have violated Order WR 2021-0082-DWR, issued in accordance with the Klamath River Watershed Drought Emergency Regulations (Emergency Regulations). (Cal. Code of Regs., tit. 23 § 875.) Violation of a regulation adopted by the State Water Board may subject a person to administrative civil liability in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs (Wat. Code § 1846, subd. (a)(2).)
2. Water Code section 1055 grants the Executive Director for the State Water Resources Control Board (State Water Board or Board) authority to issue an administrative civil liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed.¹
3. Under Water Code sections 1055 and 1846, the Board is authorized to issue an ACL Complaint to the Diverter for violation of the Emergency Regulations which were duly adopted in accordance with Water Code section 1058.5 and approved by the Office of Administrative Law. In direct violation of the curtailment order issued pursuant to the Emergency Regulations, Diverter began diverting up to 30 cubic feet per second (cfs) on August 17, 2022, depleting Shasta River flows to approximately 18 cfs, 32 cfs below the minimum flow requirement of 50 cfs at the Yreka USGS gage. This action has direct impacts on more senior water right holders and sensitive fisheries that the Emergency Regulation intends to protect.

BACKGROUND INFORMATION

¹ The Executive Director delegated this authority to the Deputy Director for Water Rights. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. This authority has been redelegated to the Assistant Deputy Director.

4. To protect the Klamath River watershed from significant harm to all beneficial uses and extreme drought, on August 17, 2021, the State Water Board adopted the Emergency Regulations, which provides curtailment authority throughout the Klamath River watershed, and establishes minimum instream flow requirements and information order authority in the Scott River and Shasta River watersheds. The regulation went into effect on August 30, 2021. On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. The updated regulation contains a provision that extends previously issued curtailment orders under the amended regulation. (Cal. Code Regs., tit. 23 § 875, subd. (b).)
5. 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 Adjudication² 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.
6. 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.
7. 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

² 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.

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.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. On August 24, 2022, the Diverter ceased their unauthorized diversions.
16. On September 12, 2022 the final Cease and Desist Order WR 2022-01688-DWR was issued.
17. 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.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

18. Water Code section 1846 states that a person or entity may be liable for a violation of a regulation or order adopted by the State Water Board in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.
19. As stated above, the Diverter began diverting in violation of Order WR 2021-0082-DWR on August 17, 2022 and ceased diverting on August 24, 2022. The statutory maximum administrative civil liability that may be imposed in this matter is four thousand (\$4,000) dollars for eight (8) days of violation.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

20. Diverter is a general stock corporation registered in California. The Diverter operates a headgate used to divert water from the Shasta River for the benefit of several dozen properties which use the water for irrigation, livestock watering, and other uses.

21. In determining the appropriate amount of a civil liability, Water Code section 1848(d) and Water Code section 1055.3 provide that the State Water Board “shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.”

22. Violation of the Emergency Regulations

- a. Extent of harm:
 - i. To other water rights users - The Diverter’s violation of Order WR 2021-0082-DWR is unfair to other curtailed water right holders who remained in compliance with the Emergency Regulations and curtailment order. The violation harms the water rights priority system and other more senior diverters and their ability to access water which they may legally divert and use. Given the large volume of the Diverter’s illegal diversion, it is unlikely that Diverter could have made an agreement with other senior water right holders to coordinate diversions while maintaining the minimum instream flow during the period of violation.
 - ii. To the environment - The significant reduction in flows caused by the Diverter’s violation threatened harm to fish species that the Emergency Regulations and minimum flow requirements were intended to protect. Lower flows result in higher water temperatures and harm instream beneficial uses.
 - iii. To the orderly and efficient administration of State Water Board regulations and policies - The harm caused by the Diverter’s violation can further be categorized generally as harm to the orderly and efficient administration of the state’s water resources. The harm done to the regulatory program impacts other water right diverters, the environment, and the public at large. The Diverter’s actions threatened the State Water Board’s ability to enforce the Emergency Regulations and ensure that minimum flow requirements will be met.
- b. Nature and persistence of the violation - Water users throughout the state are aware of the precarious nature of California’s water resources and the need to implement best management practices to reduce water waste and operate efficiently with limited resources. Further, over the course of 2021, the Governor issued four executive orders declaring a drought emergency in an increasing number of counties in the State. These drought declarations directed the State Water Board to develop and implement emergency drought regulations in high priority watersheds. The Diverter received Order WR 2021-0082-DWR and was aware of the requirement to cease diversions to comply with minimum flow requirements in the Shasta River as established by the Emergency Regulations. Notwithstanding Diverter’s knowledge of its curtailment, Diverter indicated at the time of the

violation that they will continue to divert so long as their individual members request water. Diversions continued even after Diverter received both an NOV and Draft CDO for the illegal diversions. The Diverter's actions coincided with a precipitous drop in the flow rate of the Shasta River to under 20 cfs, far below the minimum flow requirements established for the Shasta River.

- c. Length of time over which the violation occurred – Diverter intentionally began diverting on August 17, 2022 and ended on August 24, 2022. Flows at the Yreka gage dropped to as low as 12.2 cfs during this time period. The Diverter violated the Order for a total of 8 days.
 - d. Corrective action taken, if any, by the Diverter – After 8 days, Diverter ceased its unauthorized diversion on August 24, 2022.
 - e. Other relevant circumstances – The violation resulted in significant economic benefit to the Diverter and its members. The members were able to obtain water via the Diverter's ditch and thus avoid costs associated with obtaining another source of water such as hauled water.
23. Having taken into consideration all relevant circumstances, including but not limited to: the significant volume diverted in a short period of time, the knowing violation of the Emergency Regulations and curtailment order, impacts to the watershed, the sensitive timing of this violation near the end of the irrigation season and approaching fall salmonid migration, and the Diverter's continued diversion even after the Division issued a Notice of Violation and a draft Cease and Desist Order, the Division of Water Rights Prosecution Team recommends the maximum imposition of \$4,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

24. The Diverter may request a hearing on this matter before the State Water Board. Any such request for hearing must be delivered to or received by mail by the Board within 20 days after the date that this notice is received in accordance with Water Code section 1055, subdivision (b).
25. If the Diverter requests a hearing, the Diverter will have an opportunity to contest the allegations in this complaint and the imposition of a fine by the Board. The Board will issue a notice setting the specific time and place for the hearing. The hearing notice will be mailed not less than 10 days before the hearing date.

26. If the Diverter requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with Water Code sections 100, 275, and 1050 *et seq.* and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
27. If the Diverter does not request a hearing within 20 days of receipt of this Complaint, then the right to a hearing on the matter is waived. The Assistant Deputy Director for the Division of Water Rights may then issue a final Administrative Civil Liability Order assessing the Proposed Liability as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



Julé Rizzardo, Assistant Deputy Director
Division of Water Rights

Dated: November 4, 2022