

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

ORDER 2023-028-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of Violations or Threatened Violations of Emergency Regulations, Order for Adjudicated Groundwater Rights (Order WR 2021-0083-DWR) and Water Rights Associated with Parcels (Order WR 2021-0084-DWR) in the Scott River Watershed issued September 10, 2021

4T RANCH LLC

Water Right IDs: SG003335 and SG003055

SOURCE: Kidder Creek thence Scott River

COUNTY: Siskiyou

YOU ARE HEREBY GIVEN NOTICE THAT:

1. 4T Ranch LLC (“Respondent”) is alleged to have violated Title 23, Division 3, Chapter 2, Article 24, section 875 of the California Code of Regulations which prohibit diversions of surface water and groundwater when curtailments are in place. Curtailments were in place July 14, 2022, through January 3, 2023, based on Addendum 35: Order for Reported Water Rights in the Scott River Watershed issued September 9, 2021, Order WR 2021-0083-DWR, and Order WR 2021-0084-DWR (“Curtailment Orders”).
2. On August 17, 2021, the State Water Resources Control Board (“State Water Board” or “Board”) adopted an emergency regulation, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Klamath River Watershed (hereinafter “Emergency Regulation”). The Emergency Regulation went into effect on August 30, 2021, when it was approved by the Office of Administrative Law and filed with the Secretary of State. On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022.
3. The Emergency Regulation provides curtailment authority throughout the Klamath River watershed, establishes minimum instream flow requirements, and

provides information order authority in the Scott River and Shasta River watersheds. The minimum instream flow requirements were established to prevent the diversion of water that would unreasonably interfere with an emergency minimum level of protection for commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead by prohibiting surface water and groundwater diversion subject to a curtailment order. (Cal. Code Regs., tit. 23, § 875, subd. (a).).

4. Section 875 of the Emergency Regulation grants the Deputy Director for the Division of Water Rights ("Division") the authority to issue Curtailment Orders ordering diverters to cease or limit their diversions. On September 9, 2021, the Deputy Director issued Order Imposing Water Right Curtailment and Reporting Requirements for Reported Water Rights in the Scott River Watershed. Then, on September 10, 2021, the Deputy Director issued two more orders. The first order was 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 second order was an Order Imposing Water Right Curtailment and Reporting Requirements in the Scott River Watershed for Water Right(s) Associated with the Parcel(s) Listed in Attachment A and not Otherwise Curtailed (Order WR 2021-0084-DWR). These orders imposed curtailments on adjudicated groundwater rights, non-reported surface water rights, and water right(s) associated with parcel(s) in the Scott River watershed outside of municipal service areas. The Respondent received these orders on September 16, 2021.
5. On October 25, 2021, curtailments in the Scott River Watershed were conditionally suspended (Addendum 1 to Order WR 2021-0083-DWR and Order WR 2021-0084-DWR). On July 1, 2022, the State Water Board issued Addendum 32 to the curtailment orders, stating that the suspension of curtailments for surface water rights expired at 12:00 PM on July 2, 2022, and would subsequently resume. On July 14, 2022, the State Water Board issued Addendum 35 to the curtailment orders stating that all surface water and groundwater diversions in the Scott River Watershed must immediately cease unless they are approved under a certified Local Cooperative Solution ("LCS") agreement (Cal. Code Regs., tit. 23, § 875, subd. (f).) or meet an exception.
6. Addendum 35 to the Curtailment Orders was in effect from July 14, 2022, through January 3, 2023. The Respondent violated, or threatened to violate, the Curtailment Orders by diverting from the Scott River Watershed without approved enrollment in an LCS agreement.
7. Under Water Code section 1846, subdivision (a)(2), "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."

8. Water Code section 1055 grants the Executive Director for the State Water Board authority to issue an Administrative Civil Liability (“ACL”) Complaint to any person or entity to whom administrative civil liability may be imposed.
9. The Executive Director delegated this authority to the Deputy Director for the Division of 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.

ALLEGATIONS

10. The Respondent is the owner of record for Water Right IDs SG003335 and SG003055. The Water Right IDs describe groundwater diversions in the Scott River Watershed and are subject to the Emergency Regulation.
11. On March 8, 2022, Susan Murphy, listed as Manager in the relationship to the legal right owner, submitted the curtailment certification form indicating that diversions under water right SG003055 had ceased. Diversion under SG003335 is still not certified.
12. On August 19, 2022, Division staff witnessed and photographed water being used to irrigate crops via a pivot on the Respondent’s property. Division Staff subsequently issued a Notice of Violation (“NOV”) to the Respondent on September 1, 2022. The Respondent received the NOV September 9, 2022.
13. On November 22, 2022, the Division sent an Information Order (Order WR 2022-0171-DWR) to water right holders requiring them to provide information, under penalty of perjury, of all their watering diversions and wells, including the amount of water diverted and beneficially used, and irrigated acreage. The Respondent received the Information Order via certified mail on November 28, 2022. The Respondent did not respond to the Information Order. As a result, the Division issued an ACL complaint to the Respondent on January 20, 2023.
14. The Respondent ultimately responded to the Information Order on March 17, 2023. The Respondent reported that his property included 479 acres of irrigated land and 6 irrigation wells. The Respondent also reported that water was diverted at a rate of approximately 4.45 cfs from wells on three days — August 18, 19, and 20, 2022. Division staff reviewed this information and determined that additional days of diversion likely occurred. Division staff could not determine how many additional days occurred, but it is more than three.

PROPOSED CIVIL LIABILITY

15. Under Water Code section 1846, subdivision (a)(2), 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.
 - a. Under Water Code section 1058.5, the State Water Board may adopt emergency regulations “during a period for which the Governor has issued a proclamation of a state of emergency... based on drought conditions.” The Board may adopt such emergency regulations “to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
 - b. Following Executive Order N-10-21, the State Water Board adopted the Emergency Regulations pursuant to Water Code section 1058.5, which authorized the Deputy Director to issue curtailment orders. The Deputy Director for the Division subsequently issued the Order Imposing Water Right Curtailment and Reporting Requirements for Reported Water Rights in the Scott River Watershed and Orders WR 2021-0083-DWR and WR 2021-0084-DWR. The Respondent’s diversions are subject to these orders and the Respondent diverted water when they were in effect.
16. Each day of diversion when the Curtailment Orders prohibited diversion is a day of violation. Based on Information Order response, and statements the Respondent has made consistent with that response, the Respondent violated the Curtailment Orders for at least 3 days. The statutory maximum liability for the alleged violations is \$1,500 (3 days x \$500 per day of violation).
17. 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.”
18. In considering the extent of harm caused by the violation:
 - a. The Emergency Regulation was adopted by the State Water Board in response to Governor Newsom’s Declaration of a state of emergency due to drought conditions. The Emergency Regulations “prevent the diversion of water that would unreasonably interfere with an emergency minimum

level of protection for commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead.” (Cal. Code Regs., tit. 23, §875, subd. (a).)

- i. Diversions in violation of the Emergency Regulations may injure other persons by depriving them of water they otherwise would have been entitled to divert, fish the Emergency Regulations were adopted to protect — fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead — or both.
 - ii. September to January is a critical period when fall-run Chinook and coho salmon must migrate from the mainstem Klamath River into the Scott and Shasta River watersheds to find safe places to spawn and rear. Most of this period coincides with reduced irrigation requirements, but flow remains a limiting factor in dry years, thus the need for stronger protections during times of drought.
 - iii. Curtailments are imposed by the Deputy Director of Water Rights when it is determined that without curtailments, flows will drop below drought emergency minimum flows. If water rights users subject to curtailment orders fail to comply, it endangers the health of the Chinook and coho salmon which depend upon a minimum quantity and quality of river water to survive.
- b. Over three days, the Respondent diverted at a rate of 4.45 cfs, for a total of 26.43 acre-feet of water. Each day of diversion during curtailment deprived other diverters, fish protected by the Emergency Regulations, or both, of 4.45 cfs of water. On these days, Scott River flows at the Fort Jones gauge averaged approximately 8.9 cfs — 21.1 cfs below the Emergency Regulation’s minimum instream flow requirements. The Respondent’s diversions during curtailment further worsened, and therefore further harmed, commercially and culturally significant fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead — instream fishery resources the Emergency Regulation was adopted to protect.
- c. The Respondent’s diversions during curtailment harmed water users who were not curtailed. The Respondent’s diversions during curtailment reduced or eliminated flows that otherwise would have been available to water users enrolled in a LCS, who must implement alternative means to meet the minimum threshold flows. Diverting water when other users are curtailed or have formally reduced diversion through a LCS creates an unfair advantage over similarly situated diverters in the watershed.

19. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Respondent intentionally violated Curtailment Orders.
 - a. The drought was not a new phenomenon. Water users throughout the state were 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.
 - b. The Respondent was aware a drought was occurring, aware of the Emergency Regulations, and aware of the State Water Board's enhanced regulatory efforts. He submitted a Curtailment Certification in response to the initial Curtailment Order. By submitting the Curtailment Certification, the Respondent agreed to monitor the Lyris email for curtailment updates.
 - c. On September 1, 2022, the Division sent the Respondent a NOV regarding the evidence of diversion seen on a field visit and documented by photographs taken August 19th, 2022. The Respondent received the NOV on September 9, 2022. The Respondent did not respond to the NOV.
 - d. On November 22, 2022, the Division sent the Respondent an Information Order. The Respondent received the Information Order on November 28, 2022. The Respondent did not respond to the Information Order before the order's required deadline, and later, in a meeting by telephone on March 13, 2023, indicated to Division staff that they were too busy to respond. As a result, the Division issued an ACL complaint. After receiving the ACL complaint and discussing the Information Order and Curtailment Orders with the Prosecution Team, the Respondent responded to the Information Order on March 17, 2022, with information that demonstrated diversions in violation of curtailment had occurred. The Prosecution Team only obtained this information through enforcement action.
 - e. In a meeting by telephone with the Prosecution Team on March 13, 2023, Division staff spoke with John Burrone, one of the partners who owns and operates 4T Ranch LLC. Mr. Burrone stated that the Respondent had irrigated for three days while the Curtailment Orders were in effect. He indicated that, had he not irrigated it would have cost him more than the \$500 per day maximum penalty.
20. In considering the length of time over which the violation occurred, the Information Order Form described three days of violation. The Respondent, in discussions with the Prosecution Team, also stated that diversions had occurred for three days.

21. In considering corrective action undertaken by the violator, the Respondent has stated that they attempted to enroll within an LCS. The Division received a letter from the Respondent dated March 25, 2022, listing information regarding the enrollment in an LCS and a 30% reduction in water use. The Division attempted to reach out to the Respondent several times after the letter was received to understand how the Respondent calculated a 30% reduction in water use, the nature of the Respondent's diversion, and to request that they contact an LCS coordinating entity to verify the implementation of their conservation methods. However, the Respondent did not reply to the requests. The Respondent was therefore never enrolled within an LCS.
22. In considering other relevant circumstances:
 - a. The Respondent has a prior history of adjudicated violations, having been issued Order WR 2022-0137-DWR. This order was issued in March 2022, for a violation occurring in February 2022. This recent adjudicated violation, which occurred during drought, is a significant aggravating factor warranting a significantly higher penalty.
 - b. An ACL should, at a minimum, recover the enforcement costs and economic benefit obtained from a violation, plus an additional nontrivial amount for deterrence. It would be unfair to violators who voluntarily incur the costs of regulatory compliance to impose a lower amount absent exceptional circumstances. Otherwise, liabilities would merely be construed as the cost of doing business and provide no meaningful deterrent to future violations. The Respondent stated that not irrigating would have cost him more than \$500 a day. Since the State Water Board may impose an ACL only up to \$500 a day for this violation, the statutory maximum penalty of \$1,500 is the most effective penalty the Board may issue for this violation.
23. Having taken into consideration all relevant circumstances, including but not limited to the failure of the Respondent comply with the curtailment orders, impacts to the watershed, staff costs associated with pursuing compliance, together with the overall need to preserve the integrity of the regulatory program, the Division of Water Rights Prosecution Team recommends the imposition of \$1,500 in administrative civil liability ("Proposed Liability").

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 section 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 \$1,500 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section – Scott River Information Order
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: June 2, 2023