

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

DIVISION OF WATER RIGHTS

ORDER WR 2024-0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Violations or Threatened Violations of Scott River and Shasta River Watersheds Drought Emergency Requirements, Order WR 2024-0024-DWR, and Order WR 2024-0025-DWR

RICHARD M. BERRY

S024360, SG003902

SOURCE: Scott River

COUNTY: Siskiyou

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Richard M. Berry (Respondent) to cease and desist from an ongoing, or a threatened, violation of the Scott River and Shasta River Watersheds Drought Emergency Requirements (Emergency Regulation), which were properly adopted in accordance with Water Code section 1058.5 and approved by the Office of Administrative Law.

Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a CDO when it determines that any person is violating or threatening to violate “[a] regulation adopted under [Water Code] section 1058.5.”

BACKGROUND INFORMATION

1. On December 19, 2023, the State Water Board adopted the Scott River and Shasta River Watersheds Drought Emergency Requirements (Emergency Regulation) which went into effect February 1, 2024. The Emergency Regulation provides curtailment authority in the Scott and Shasta watersheds, 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 protect fall-run Chinook salmon, threatened Southern Oregon/Northern California Coast coho salmon, and culturally significant steelhead. Resolution No. 2023-0047 adopted the Emergency Regulation and describes the need for the Emergency Regulation and its intent.
2. Section 875 of the Emergency Regulation grants the Deputy Director for the Division of Water Rights (Division) the authority to issue Curtailment Orders requiring diverters to cease or limit their diversions.
 3. On July 23, 2024, the Deputy Director issued Order Imposing Water Right Curtailments and Requiring Reporting for Surface Water Rights in the Scott River Watershed (Order WR 2024-0024-DWR). This imposed curtailments on all surface water rights in the Scott River Watershed.
 4. On July 24, 2024, the Deputy Director issued "Order Imposing Water Right Curtailment and Requiring Reporting for Adjudicated Groundwater Rights and Known Groundwater Diversions Associated with Parcels Listed in Attachment A in the Scott River Watershed" (Order WR 2024 0025-DWR). This imposed curtailments on adjudicated groundwater rights and groundwater rights associated with parcels in the Scott River watershed outside of municipal service areas.
 5. Both Order WR 2024-0024-DWR and Order WR 2024-0025-DWR required submission of an online Curtailment Certification Form in accordance with section 875.6 subdivision (a) and allowed for curtailment exceptions applicable to non-consumptive instream uses, human health and safety, and livestock watering, as described in sections 875.1, 875.2, and 875.3 of the Emergency Regulation. If such exception was claimed, the Respondent must also self-certify or submit a petition online at <https://public.waterboards.ca.gov/WRInfo>.
 6. On August 9, 2024, the Deputy Director issued "Addendum To Attachment A: Groundwater Rights In The Scott River Watershed Associated With Order WR 2024-0025-DWR: Water Right Curtailment And Requiring Reporting For Groundwater Rights In The Scott River Watershed" (Parcel Addendum). This Addendum updated Attachment A of the Order and clarified the parcels subject to curtailment. No additional diverters were included in the Parcel Addendum.
 7. On August 23, 2024, "Addendum 1 – Temporary and Conditional Suspension to Scott River Curtailments Orders" (Addendum 1) to Order WR 2024-0024-DWR and Order WR 2024-0025-DWR was sent ahead of an expected storm event suspending curtailments upon flows reaching, and maintaining, a rate of 35 cfs. Should flows have met this condition, diverters were directed to notify the State Water Board of their diversions and update the diversion amounts daily. However, the storm event did not result in increased flows above 35 cfs, and therefore diversions remained curtailed.

8. On September 6, 2024, "Addendum 2 – Scott River Groundwater Curtailment Suspension and Required Information for Potential Future Surface Water Diversions" (Addendum 2) was sent to Scott River water right holders. Curtailments were conditionally suspended for groundwater diverters upon the diverter contacting State Water Board staff indicating they are diverting and upon the Drought Emergency Minimum Flows being met at the USGS Fort Jones gage.
9. On September 17, 2024, "Addendum 3: Update to Scott River Surface Water Curtailments for Farmer's Ditch Company" (Addendum 3) was sent to Scott River water right holders. The addendum applies only to Farmer's Ditch Company, as that was the only surface water diverter that submitted a request to the State Water Board under the provisions of Addendum 2. Addendum 3 allows Farmer's Ditch Company to divert under certain conditions set to expire at 11:59 pm on September 30, 2024.
10. On September 27, 2024, "Addendum 4: Update to Scott River Surface Water Curtailments for Farmer's Ditch Company and Scott Valley Irrigation District" (Addendum 4) was sent to Scott River water right holders. Addendum 4 applied only to Farmer's Ditch Company and Scott Valley Irrigation District, as they were the only surface water diverters that submitted a request to the State Water Board under the provisions of the previous addenda. Addendum 4 further states, "If you did not submit a request under the addendum (issued September 6, 2024 and September 17, 2024), your surface water right(s) remains curtailed (unless you have a local cooperative solution or meet an exception to curtailment like human health and safety or minimum livestock watering)." Addendum 4 expired on September 30, 2024 at 11:59pm.

INVESTIGATION

11. The Respondent is the primary owner of Water Right IDs S024360 and SG003902. Respondent's Initial Statement of Diversion and Use for Water Right ID S024360 is claimed as Diversion #18 under Court Decree No. 13775 and is subject to Order WR 2024-0024-DWR. SG003902 was assigned to the Respondent's parcel identified in, and subject to, Order WR 2024-0025-DWR and the Parcel Addendum.
12. United States Postal Service (USPS) certified mail tracking indicate that the Respondent received Orders WR 2024-0024-DWR and WR 2024-0025-DWR on July 25, 2024 and July 29, 2024, respectively.
13. Division staff observed active irrigation occurring on the Respondent's property, identified as Siskiyou County Assessor Parcel Numbers (APN) [REDACTED] and [REDACTED], from a public road on August 1, August 13, and August 29, 2024. The Respondent submitted Scott Shasta Curtailment Certification forms for Water Right IDs S024360 and SG003902 on

August 8, 2024. Division staff issued a Notice of Violation (NOV) to the Respondent on August 14, 2024. The Respondent is not currently enrolled in a Local Cooperative Solution and nor were they enrolled as of the date of the alleged violations.

14. On August 8, 2024, the Respondent submitted a 2024 Scott & Shasta Non-Consumptive Use certification and a 2024 Curtailment Certification form, both for Water Right ID SG003902. In the Non-Consumptive Use certification, he stated that he had an “old well in back-yard...” that he is, “not currently using or diverting”. The Respondent provided no other information, nor did he allege a legitimate purpose for non-consumptive use exception from curtailment. In the Respondent’s Curtailment Certification, he provided the information that “there is no water used on the lands associated with the parcels listed in Attachment A.”
15. USPS certified mail tracking indicate that the Respondent received the NOV on August 16, 2024.
16. To date, the Respondent has not contacted the State Water Board indicating they are diverting under Addendum 2 nor any other exception as stated in sections 875.1, 875.2, and 875.3 of the Emergency Regulation and thus curtailments are still in effect.

APPLICABLE LAW AND FINDINGS

17. Under Water Code section 1831, subdivision (d), the State Water Board may issue a CDO when it determines that any person is violating or threatening to violate “[a] regulation adopted under [Water Code] section 1058.5.” Water Code section 1058.5 authorizes the 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.” Following Executive Order N-5-23, the Board issued the Emergency Regulation.
18. Under the Emergency Regulation, the State Water Board issued the Respondent Curtailment Orders on July 23, 2024 and July 24, 2024. All water sources for the Respondent’s water rights are claims of right are subject to the Curtailment Order. The Respondent received the Curtailment Orders on July 25, 2024 and July 29, 2024. The Respondent received the Addendum to Attachment A of the Curtailment Order on August 13, 2024.

19. The Respondent had notice of the requirement to cease diversions and comply with minimum flow requirements in the Scott River, as established by the Emergency Regulation. As evidenced by USPS tracking and submitting the curtailment certification forms for S024360 and SG003902, the Respondent indicated they were aware of the curtailments.
20. Since July 23, 2024 and July 24, 2024, Curtailment Orders prohibited the Respondent from diverting water from any sources associated with their Water Right IDs. The State Water Board has not authorized the Respondent to divert water under any exception to curtailment and neither has the Respondent claimed an exemption to the Curtailment Orders that would authorize irrigation.
21. Despite having notice of curtailment, the Respondent continued to divert in violation of curtailment order. Evidence of their violations were photographed on August 1, 2024, August 13, 2024 and August 29, 2024.
22. Many diverters in the Scott Watershed have enrolled in Local Cooperative Solutions (LCS) that require pumping reduction or improvements in irrigation efficiency in lieu of curtailment. The LCS plans require applicants to spend time developing the plans, implementing the plans, and provide monthly reporting of diversions. By continuing to divert in violation of the curtailment, the Respondent is avoiding costs that others in the watershed are bearing to comply with the Emergency Regulation. The Respondent will likely violate Curtailment Orders again if the financial incentives remain the same.
23. The Respondent has diverted water in violation of the Curtailment Orders. Financial incentives to violate Curtailment Orders again threaten further violations. The curtailment violation and threatened violations are subject to a Cease and Desist Order under Water Code section 1831.

THE STATE WATER RESOURCES CONTROL BOARD THEREFORE ORDERS, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. The Respondent must immediately cease and desist all diversions subject to any applicable curtailment order(s) adopted by the State Water Board and shall continue to cease diversions until notified by the State Water Board.
2. The Respondent must maintain, and provide to the Division upon request, records of all groundwater and surface water diversions.

Notice and Opportunity for Hearing

This draft CDO serves as notice pursuant to Water Code section 1834 that a violation is occurring or threatening to occur. You may request a hearing not later than 20 days after receipt. Unless a written request for a hearing is delivered to or received by mail by

the State Water Board within 20 days after receipt of the notice, the State Water Board may adopt the CDO.

Consequences of Non-Compliance

In the event the Respondent fails to comply with the requirements of this Order, they shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO may be referred to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a):

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

Failure to comply with this Order may subject the Respondent to civil liability in an amount not to exceed \$10,000 for each water right per day in which the violation occurs pursuant to Water Code section 1845, subdivision (b)(1)(A).

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board or other entities from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, administrative civil liability under Water Code section 1846, the authority to bring enforcement against the Respondent for infractions under Water Code section 1058.5, subdivision (d), and Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse the Respondent from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse the Respondent from meeting any additional regulatory requirement that may be imposed by other local, state, or federal regulatory entities for corrective actions taken by the Respondent to comply with this Order.

Exemption From CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the

provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD



*Robert P. Cervantes, Acting Assistant Deputy Director
Division of Water Rights*

Dated: October 9, 2024

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