

State Water Resources Control Board

July 19, 2022

Koua Yang


ORDER IMPOSING WATER RIGHT CURTAILMENT AND REPORTING REQUIREMENTS IN THE SHASTA RIVER WATERSHED (ORDER WR 2022-0161-DWR)

Our records indicate that you did not receive [Order WR 2021-0082-DWR](#) or did not receive it for all applicable water rights. Order WR 2021-0082-DWR was issued for curtailed surface water and appropriative groundwater rights in the Shasta River watershed on September 10, 2021. This letter and the enclosed Order are being sent to specifically identify additional water rights that should have received notice of curtailment under Order WR 2021-0082-DWR.

This letter and the enclosed Order contain important information regarding the curtailment of the water right(s) listed in Attachment A (at the end of the Order), that are owned by Koua Yang or their successor in interest. Depending on the water right(s) you hold, Attachment A may include permits and licenses issued after the date of the Shasta Adjudication,¹ water right(s) specified in the Shasta Adjudication, and/or appropriative groundwater rights associated with a specific groundwater well or assessor's parcel number (APN). You are required to complete an online certification by **July 29, 2022**. The Login(s)/Water Right Identification Number(s) and Password(s)/Reporting Identifier(s) in Attachment A² will be needed to complete the certification and any other required forms for exceptions to the curtailment.

¹ Judgement 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.

² If you already report to the State Water Board yourself, Attachment A contains the identification number(s) you normally use to enter information into the State Water Board's online Report Management System (RMS). If the Scott Valley and Shasta Valley Watermaster District normally reports to the State Water Board on your behalf, or if you are a groundwater diverter, Attachment A has a newly assigned identification number that starts with the letters "SG."

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Due to the drought and extremely dry conditions, water supply in many parts of California, including the Shasta River watershed, is insufficient to meet a significant portion of water demands, and many people throughout the region have taken steps to reduce water use. The enclosed Order curtails certain surface water and groundwater diversions, describes exceptions to curtailments (including for firefighting needs), and imposes reporting requirements. This Order is issued under an emergency regulation adopted by the State Water Resources Control Board (State Water Board or Board) that became effective on August 30, 2021. The enclosed Order describes the steps that you, or your agent of record, must follow to curtail water diversions and to comply with reporting requirements. You or your agent of record are responsible for immediately notifying all parties that divert water under the water right(s) identified in Attachment A of the enclosed Order and its requirements.

You may already be curtailing water use and/or be unable to divert water due to dry conditions. **Even if you are currently not diverting water, you must respond to this Order by completing the certification form.**

It is highly recommended all water users in the watershed sign up to receive notifications on the State Water Board's "Scott-Shasta Drought" email distribution list. You may also visit the State Water Board's [Scott River and Shasta River Watersheds Drought Response webpage](#)³ for updates. All future updates on curtailments will be provided through the email distribution list and webpage.

Emergency Regulation

On August 17, 2021, the State Water Board adopted an emergency regulation establishing drought emergency minimum flows in the Scott River and Shasta River watersheds. (Cal. Code Regs., tit. 23, §§ 875-875.9.) The regulation was reviewed and approved by the Office of Administrative Law and went into effect upon filing with the Secretary of State on August 30, 2021. Emergency regulations remain in effect for one year unless repealed earlier. The State Water Board readopted the regulation with amendments on June 21, 2022 and the amendments will become effective once it is approved by the Office of Administrative Law and filed with the Secretary of State. The current [regulation](#) is available online.⁴

Curtailment of Water Rights in Shasta River Watershed

The State Water Board is requiring certain water right holders in the Shasta River watershed to stop diverting under their water rights until water supply conditions improve in the watershed and there is no longer a risk to minimum flow requirements, to

³ https://www.waterboards.ca.gov/drought/scott_shasta_rivers/

⁴ https://www.waterboards.ca.gov/drought/scott_shasta_rivers/docs/klamath_reg_searchable.pdf

water supplies for minimum human health and safety needs (including firefighting), to minimum livestock needs, or for injury to senior diverters.

The regulation follows the water right priorities in the Shasta River adjudication, and adds in rights that are not addressed under those adjudications (e.g., post-adjudication rights, riparian, and groundwater rights). The regulation does not change the adjudications, or affect the authority of the Scott Valley and Shasta Valley Watermaster District to implement the adjudication, or of the Siskiyou County Superior Court to administer or otherwise retain and exercise jurisdiction over the adjudication. Section 875.5 of the regulation describes the order of priority for curtailments.

Hard copy notices will not be sent out when curtailments are suspended, reinstated, or rescinded. As flows improve or worsen over the year, changes to curtailment orders will be posted on the State Water Board website (see footnote 3 of this letter) and sent out to individuals that have signed up for the **“Scott-Shasta Drought” Email Subscription List under “Water Rights”**.⁵ **Signing up for this email list is the best way to stay informed about implementation of the regulation, including changes to curtailments.**

Groundwater Wells

Because the surface water and groundwater are interconnected in the Shasta River watershed, the regulation includes water rights for diversions of surface water as well as appropriative and overlying groundwater diversions, in order of priority. Section 875.5 of the regulation specifies the order in which curtailments shall be issued, taking into account water right priority in groupings from lowest to highest water right priority.

For groundwater diversions, case law recognizes overlying and appropriative rights to groundwater, analogous to riparian and appropriative rights to surface water. An overlying groundwater right is generally senior and attaches to land overlying a groundwater basin. An appropriative groundwater right is the type of water right you have if you divert water but: (1) do not own (or rent or lease) land overlying the basin that you use the water on; (2) own overlying land but use the water on non-overlying land; or (3) sell or distribute⁶ the water to someone else. Groundwater appropriators have a priority date from when the groundwater well was constructed, and water first used for non-overlying use.

In the Shasta River watershed, appropriative groundwater pumpers are likely more junior to many surface water diversions, including those described in the adjudication. This curtailment order does not extend to overlying groundwater use in the Shasta River watershed. Groundwater diversion curtailment extends only to appropriative

⁵ https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

⁶ Sharing a well with your neighbors does not necessarily count as “distributing.” If you have questions about whether your use is “distributing” please call the State Water Board’s Scott River and Shasta River Drought phone message line at: (916) 327-3113 or e-mail us at ScottShastaDrought@waterboards.ca.gov.

groundwater diversions established after November 1912⁷. **Selling groundwater to be hauled and used at a different location is an appropriative use and must cease immediately (subject to exceptions described below), if the use started after November 1912.**

Exceptions to Curtailment (allowances to continue limited diversions)

The regulation has exceptions for certain types of diversions that may continue even after you receive a curtailment order, if the appropriate form(s) is submitted to and approved by the State Water Board (see more on this below). These are:

- **Non-consumptive Diversions.** This exception applies if your diversion is not consumptive, meaning that it does not use up water or change the time the water is available to others (i.e., diversions do not decrease stream flows).
- **Minimum Human Health and Safety Diversions.** This exception applies if your diversion is your only water source for human health and safety purposes, like drinking, cooking, washing, or meeting the state's critical infrastructure needs. **Please note that diversions for firefighting may continue under this exception.**
- **Minimum Livestock Watering Diversions.** This exception applies if your diversion is your only source for minimum livestock watering needs.

If you want to use one of these exceptions to continue diverting, you must submit additional information to the State Water Board using the applicable forms available at: <https://public.waterboards.ca.gov/WRInfo>.

Required Response – Curtailment Certification Form

Within 10 calendar days of issuance of this curtailment order, all water right holders or their agents receiving this Order are required to submit, under penalty of perjury, a Scott-Shasta Curtailment Certification Form.

The online Scott-Shasta Curtailment Certification Form confirms cessation of diversion under your water right and whether you are pursuing an exception to continue limited diversions under the curtailment order. Timely and accurate completion of the form can help you avoid unnecessary enforcement proceedings. Your Login(s)/Water Rights ID and Password(s)/Water Right Identifier(s) are provided in Attachment A of the Order. You can access and complete the form at: <https://public.waterboards.ca.gov/WRInfo>.

Staff are available to answer questions or otherwise assist with completing the form by email to: ScottShastaDrought@waterboards.ca.gov and via our phone message line at: (916) 327-3113.

⁷ The priority date for groundwater appropriations is the date of well construction and when appropriative use was initiated. Therefore, appropriative groundwater use established prior to November 1912 is not subject to this curtailment at this time.

Local Cooperative Solutions

Water users may also petition to implement local cooperative solutions that would achieve the purposes of the curtailment order. Local cooperative solutions are described in section 875, subdivisions (f)(1) through (f)(4) of the emergency regulation. Proposed local cooperative solutions may be submitted to the Deputy Director for the Division of Water Rights (Deputy Director) at any time, but they may not be implemented instead of complying with a curtailment order unless it has been approved by the Deputy Director. Additional information regarding local cooperative solutions is provided on the State Water Board website (see footnote 3 of this letter).

Local cooperative solutions should be submitted to the Deputy Director by email to: ScottShastaDrought@waterboards.ca.gov. The Deputy Director will review timely submitted proposals as soon as practicable and inform the affected water right holder or claimant of the determination or decision.

Potential Enforcement

The enclosed Order includes enforceable requirements regarding a water right or claim of right that require your immediate attention. Diverting water in violation of the enclosed Order or the regulation may result in administrative fines, a cease and desist order, or prosecution in court. The State Water Board has enforcement discretion and decisions related to enforcement and associated penalties are based on the specific circumstances of the violation. Fines may be up to \$1,000 per day of violation. (Wat. Code, §§ 1052, 1055, 1846.)

The Division of Water Rights exercises discretion when considering enforcement, and generally will not pursue enforcement where violations are the result of emergency circumstances such as evacuation orders and loss of property due to wildfires. If you are severely impacted by an emergency and receive an enforcement-related notice or order, please contact us when conditions are safe and you are able to do so. Please also note that intentional misstatements, or intentionally claiming emergency circumstances when none are present, is subject to legal actions and fines.

Request for Reconsideration

You may submit a petition within 30 days to request that the State Water Board reconsider the enclosed Order. The process and grounds for reconsideration are provided by California Code of Regulations, title 23, sections 768 through 771. Any petition requesting reconsideration must be filed with the State Water Board no later than **August 18, 2022**. To ensure timely consideration, any petition for reconsideration should be emailed to: ScottShastaDrought@waterboards.ca.gov.

Questions, Resources, and How to Stay Informed

Please review resources on the [Scott River and Shasta River Watersheds Drought Response webpage](https://www.waterboards.ca.gov/drought/scott_shasta_rivers/) (https://www.waterboards.ca.gov/drought/scott_shasta_rivers/) if you have questions. You may also contact staff by email at: ScottShastaDrought@waterboards.ca.gov or by leaving a message at our dedicated Scott River and Shasta River Drought phone line at: (916) 327-3113. Please be aware that calls and emails will be responded to as soon as possible in the order received.

Staff will try to return calls within 24 hours, but responses may take longer depending on call volume.

We highly encourage you to sign up for the “Scott-Shasta Drought” Email Subscription List under “Water Rights”.⁸ This is the best way to stay informed about changes to the curtailments and other important information related to the regulation.

Sincerely,



Erik Ekdahl, Deputy Director
Division of Water Rights

Enclosure: Order Imposing Water Right Curtailment and Reporting Requirements in the Shasta River Watershed, including Attachment A thereto.

⁸ https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

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

DIVISION OF WATER RIGHTS

ORDER WR 2022-0161-DWR¹

**IN THE MATTER OF WATER RIGHT(S) LISTED IN ATTACHMENT A OF
KOUA YANG**

**ORDER IMPOSING WATER RIGHT CURTAILMENT AND REPORTING
REQUIREMENTS IN THE SHASTA RIVER WATERSHED**

ISSUED JULY 19, 2022

FINDINGS:

1. 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 “Regulation”). The Regulation 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. State Water Board [Resolution No. 2021-0029](#) adopted the Regulation, and describes the need for the Regulation and its intent. State Water Board Resolution No. 2021-0029 is incorporated by reference into this Order. The 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. The Regulation establishes minimum instream flows, as measured in cubic feet per second (cfs) at United States Geological Survey (USGS) gage no. 11517500 located near Yreka, as:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
135	135	135	70	50	50	50	50	50	125	150	150

2. The Regulation includes California Code of Regulations, title 23,² sections 875, 875.1, 875.2, 875.3, 875.5, 875.6, and 875.9, which establish the circumstances under which the State Water Board may issue curtailments in the Shasta River

¹ All future addenda to Order WR 2021-0082-DWR include Order WR 2021-0085-DWR, Order WR 2022-0142-DWR, and this Order (Order WR 2022-0161-DWR).

² All subsequent section references in this Order are to California Code of Regulations, title 23 unless otherwise noted.

watershed to maintain minimum flows for fish, as well as exceptions to curtailments and curtailment reporting requirements.

3. The Deputy Director for the Division of Water Rights determined in [Order WR 2021-0082-DWR](#), issued on September 10, 2021, that without curtailment as described in the Regulation of diversions junior to approximately November 1912, flows were likely to remain reduced below the minimum flows specified in section 875, subdivision(c)(2)(A). Based on forecasted precipitation and other factors, the State Water Board issued addenda to Order WR 2021-0082-DWR on September 23, October 21, October 29, December 17, December 22, December 29, 2021, January 26, and February 25, 2022, 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. In addition, pursuant to section 875, subdivision (c)(2)(B) of the Regulation, the State Water Board modified curtailments twice based on a California Department of Fish and Wildlife recommendation that lower alternative flows at the Yreka USGS gage provide equal or better protection for the pertinent species' relevant life stage (Addenda 4 and 9). On March 15, 2022, the State Water Board reinstated water right curtailments for the most junior water rights in the Shasta River watershed based on ongoing dry conditions, the approach of the irrigation season, and multiple unexpected decreases in flows below the minimum flow requirement (Addendum 9).
4. Ongoing assessment of water supply and demand projections will continue to be pertinent to the management of curtailments in the order of priority. As the river responds to curtailment, precipitation, or other actions that increase flows above the required minimum flows of the Regulation, the Deputy Director will manage curtailments in the order of priority.
5. The State Water Board readopted the Regulation with amendments on June 21, 2022 and the amendments thereto will become effective once it is approved by the Office of Administrative Law and filed with the Secretary of State. The updated regulations contain a provision that extends previously issued curtailment orders under the amended regulation. (Cal. Code Regs., tit. 23, §875, subd. (d)(3).) Upon the effective date of this amended regulation, any curtailment orders that reference drought emergency minimum flows are amended to include the drought emergency minimum flows adjustments in section 875, subdivision (c). Likewise, any petitions, certifications, or approvals of exceptions to curtailment under sections 875.1, 875.2, 875.3, or Article 24, section 878.1 will not require further action under the amended regulation to remain effective.
6. Wildfires in Northern California are often highly active during droughts, and communities across the state, including Siskiyou County, have been periodically at risk. This Order provides an automatic extension of the reporting requirements under the Order where the affected diversions, properties, or reporters are affected by evacuation orders.

IT IS HEREBY ORDERED:

1. This curtailment order shall be effective on July 20, 2022.
2. Diversion of water in the Shasta River watershed pursuant to the water right(s) listed in Attachment A shall cease on July 20, 2022, or upon delivery of this Order, whichever is later. Diversions under this right may be permitted to continue only if authorized under an exception to curtailment as described by sections 875.1, 875.2, and 875.3 of the Regulation.
3. In accordance with section 875, subdivision (d)(1) of the Regulation, the water rights holder or agent of record who receives this Order is responsible for immediately providing notice of this Order to all diverters exercising the water right(s) associated with this Order.
4. Koua Yang or their agent or successor is required, by July 29, 2022, to submit under penalty of perjury an online Scott-Shasta Water Right Curtailment Certification form (Curtailment Certification) in accordance with section 875.6 subdivision (a) for each water right listed in Attachment A. Attachment A lists the Water Rights ID/ Login(s) and Password(s)/Water Right Identifier(s) to be used for reporting requirements. The Curtailment Certification shall be accessed and completed via the following website link: <https://public.waterboards.ca.gov/WRInfo>. Where the diversion or place of use for the water right(s) listed in Attachment A is in an area subject to a wildfire evacuation order, or where such an evacuation order inhibits the ability of Koua Yang or their agent or successor to access the necessary information to complete the Curtailment Certification or to log on to complete the form, the deadline is automatically extended until ten (10) days after the lifting of the evacuation order.
5. If an exception(s) to curtailment is needed to continue diverting for non-consumptive uses, minimum human health and safety needs, or minimum diversions for livestock needs, as authorized by Regulation sections 875.1, 875.2, and 875.3, respectively, Koua Yang or their agent or successor shall complete and submit either a self-certification or a petition using the forms available at: <https://public.waterboards.ca.gov/WRInfo> in addition to completing the Curtailment Certification.
6. All subsequent modifications to Order WR 2021-0082-DWR, which apply equally to this Order, including curtailment suspensions, reinstatements, rescissions, or other modifications, shall be noticed through electronic means, including through the State Water Board's "Scott-Shasta Drought" email distribution list or as posted to the [State Water Board's Scott River and Shasta River Watersheds Drought Response webpage](https://www.waterboards.ca.gov/drought/scott_shasta_rivers/) (https://www.waterboards.ca.gov/drought/scott_shasta_rivers/). Koua Yang is responsible for **signing up** for the "Scott-Shasta Drought" e-mail subscription list and/or for checking the State Water Board's Scott River and Shasta River Watersheds Drought Response webpage to receive such notice.

7. Violation of this Order shall be subject to enforcement and any applicable penalties pursuant to Water Code sections 1052, 1058.5, 1831, 1845, and 1846. To the extent of any conflict between the requirements of this Order and any other applicable orders or conditions of approval, the diverter must comply with the requirements that are most stringent.
8. Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.
9. Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations, or a water right permit requirement. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A sections 1531 to 1544).

STATE WATER RESOURCES CONTROL BOARD



Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: July 19, 2022

Attachment A

The Login(s) and Password(s) are provided below. If you have more than one Water Rights ID, you must re-login and complete a separate form with each Login/Water Rights ID and Password/Reporting Identifier. Please use this information to complete the appropriate forms, which are available online at:

<https://public.waterboards.ca.gov/WRInfo>

Groundwater Well(s):

Present Owner	APN
Koua Yang	APN 109-030-140

Login (Water Right ID)	Password (Reporting Identifier)
██████████	██████████