

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

FISHER BRANDY L & RACHAEL M TRUSTEE

SG003327

SOURCE: Scott River

COUNTY: Siskiyou

YOU ARE HEREBY GIVEN NOTICE THAT:

1. FISHER BRANDY L & RACHAEL M TRUSTEE (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.
2. On December 19, 2023, the State Water Resources Control Board (State Water Board or 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.
3. 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.

4. 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.
5. 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.
6. 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 needs, and livestock watering, as described in sections 875.1, 875.2, and 875.3 of the Emergency Regulation. If an exception was claimed, the Respondent must also self-certify or submit a petition online at <https://public.waterboards.ca.gov/WRInfo>.
7. 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.
8. 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 subject to 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.
9. 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.
10. 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.

11. 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.
12. On October 15, 2024, "Addendum 5: Update to Scott River Surface Water Curtailments for Farmer's Ditch Company and Scott Valley Irrigation District" (Addendum 5) was sent to Scott River water right holders. Addendum 5 applies 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 5 further states, "Surface water diverters that have not submitted the requested information identified in Addendums 2 and 3 (issued September 6, 2024, and September 17, 2024, respectively) and received approval from the Board to divert under this addendum remain curtailed." Addendum 5 expires on October 31, 2024, at 11:59pm.
13. 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."
14. 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.
15. 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

16. The Respondent is the primary owner of Water Right ID SG003327. Water Right ID SG003327 was assigned to the Respondent's parcel identified in, and subject to, Order WR 2024-0025-DWR and the Parcel Addendum.
17. United States Postal Service (USPS) certified mail tracking indicates that attempted delivery for Order WR 2024-0025-DWR occurred on July 26, 2024. Order WR 2024-0025-DWR was returned to the Division because the Respondent did not accept delivery.
18. USPS certified mail tracking indicates that attempted delivery for the Parcel Addendum to Order WR 2024-0025-DWR occurred on August 12, 2024 and August 17, 2024, but was returned to the Division because the Respondent did not accept delivery.
19. Division staff observed multiple days of active irrigation occurring on the Respondent's properties identified as Siskiyou County Assessor Parcel Numbers (APN) [REDACTED] and [REDACTED]. These observations occurred on July 31, August 13, August 21.
20. The Respondent did not submit Scott Shasta Curtailment Certification forms for Water Right ID SG003327 as required in Order WR 2024-0025-DWR. The Respondent did not submit qualified exception forms claiming continued limited diversions stated in sections 875.1, 875.2, and 875.3 of the Emergency Regulation.
21. Local Cooperative Solutions (LCS) grant water right holders the opportunity to propose alternative means of reducing water use to meet minimum flows, or to provide other fishery benefits, in lieu of curtailment, as described in the Emergency Regulation. The Respondent is not currently enrolled in a LCS nor were they enrolled as of the date of the alleged violations.
22. Division staff issued a Notice of Violation (NOV) package to the Respondent on August 23, 2024. The NOV package included the NOV, copies of Order WR 2024-0025-DWR, and the Parcel Addendum that had previously failed delivery.
23. GLS certified mail tracking indicate that the Respondent received the NOV package on August 26, 2024.
24. Division staff observed additional days of active irrigation occurring on the Respondent's properties identified as Siskiyou County Assessor Parcel Numbers (APN) [REDACTED] and [REDACTED]. These observations occurred on September 5, September 13, September 20, and October 2, 2024.
25. To date, the Respondent has not contacted the State Water Board indicating they are diverting under Addendum 2 nor provided evidence of qualifying under

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.

PROPOSED CIVIL LIABILITY

26. 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. The Deputy Director for the Division subsequently issued the Respondent curtailment orders on July 23, 2024 and July 24, 2024. The Respondent's diversions are subject to these orders and the Respondent diverted water when they were in effect.
27. Each day of diversion when the Curtailment Order prohibited diversion is a day of violation. Enforcement staff observed and documented active irrigation occurring on seven days— July 31, August 13, August 21, September 5, September 13, September 20, and October 2, 2024. The Respondent has no known reservoirs. Thus, active irrigation required direct diversion. The Respondent's diversions on July 31, August 13, and August 21 were all in violation of the curtailment orders, and but for the Respondent's refusal to accept delivery of the curtailment orders, Respondent would have had documented notice of the requirement to halt diversions. The Division is electing to exercise enforcement discretion for this case in assessing days of violation for the purposes of calculating an ACL. Any future attempts by the Respondent to avoid or refuse service of orders or notices from the State Water Board in order to claim ignorance of required actions may not result in similar enforcement discretion determinations. Four days of diversion occurred after the Respondent received the NOV and Curtailment Order on August 26, 2024. The Respondent violated the Curtailment Order for at least four days. The statutory maximum liability for the alleged violations is \$2,000 (4 days x 1 curtailed water right x \$500 per day of violation).
28. 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."
29. In considering the extent of harm caused by the violation:
 - a. The Curtailment Order was issued pursuant to the Emergency Regulation. 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 Regulation "prevent[s] 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. 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. By diverting in violation of the Curtailment Order, it endangers the health of the fish the Emergency Regulation was adopted to protect.
 - ii. Diversions during the summer are most likely to impact steelhead and coho salmon which rear in the Scott Watershed during the summer.
 - iii. 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.
 - iv. The Respondent’s prohibited diversions occurred from July and into October; likely impacting steelhead, coho salmon, and fall-run Chinook.
 - b. The Respondent was found to have been actively diverting for at least seven days. Each day of diversion during curtailment deprived other legal users of water, potentially harmed fish protected by the Emergency Regulation, or both. The Respondent’s diversions during curtailment further worsened, and therefore further harmed, 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.
30. In considering the nature and persistence of the violation, available facts more than support a reasonable inference that the Respondent intentionally violated Curtailment Orders or willfully neglected them.
- a. 2024 is the third year Emergency Regulations have been adopted and the third year the Division has issued curtailments in the Scott Watershed, with emergency regulations and curtailments previously in effect in 2021 and 2022. The Respondent has received prior curtailment orders and submitted certification forms. While the Emergency Regulation has

changed slightly from year to year, its substance has largely remained the same.

- b. The Respondent twice refused delivery of the curtailment orders resulting in the orders arriving back at the State Water Board. The State Water Board pursued due diligence in ensuring the Respondent was notified of his requirements to cease diversions. Repeated refusals to accept delivery of mail from the State Water Board is not a strategy that should be accepted or rewarded.
31. Pursuant to the Emergency Regulation, the Respondent has previously received multiple curtailment orders. As required, they submitted curtailment certification forms; indicating they were aware of the ongoing Emergency Regulation and were aware of the State Water Board's curtailment efforts. Division staff issued an NOV to the Respondent on August 23, 2024. The Respondent received the NOV on August 26, 2024. The NOV described the Emergency Regulation and need to comply with curtailment orders. Curtailment Orders issued to the Respondent were attached to the NOV. Still, the Respondent actively irrigated in violation of the Curtailment Order on at least four days. To date, the Respondent has not contacted the Division to dispute the violation.
32. In considering the length of time over which the violation occurred, Division staff observed seven separate days of irrigation after the Curtailment Order was issued. They occurred over the course of 64 days, from July 31 through September 13. Four of these days occurred after the Respondent eventually received the NOV with Curtailment Order attachment on August 26, 2024, over the course of 38 days. While there may be additional days in which the Respondent diverted after the Curtailment Orders were issued and received by the Respondent, these are the seven days the Division documented irrigation occurring after the Curtailment Order was issued.
33. In considering the corrective action, if any, taken by the Respondent, the Respondent has taken no corrective action. They have not indicated they will comply with future curtailment orders. Neither have they indicated they will maintain and provide to the Division, upon request, records of all diversions.
34. In considering other relevant circumstances, 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 Division has not precisely calculated the staff time or cost at this time. However, given a general understanding of the staff time and costs involved in this enforcement action, the statutory maximum penalty of \$2,000 is the most appropriate penalty the Board may issue for this violation.

35. 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 \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

36. The Respondent 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).
37. If the Respondent requests a hearing, the Respondent 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.
38. At the hearing, the Board will consider whether to impose a monetary fine, and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any Board order imposing an ACL shall be final and effective upon issuance.
39. If the Respondent 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.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: October 23, 2024