

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

EDMUND GARETH PLANK

SG003790

SOURCE: Scott River

COUNTY: Siskiyou

THIS COMPLAINT NOTIFIES YOU THAT:

1. Edmund Gareth Plank (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 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 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 applied 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 allowed Farmer’s Ditch Company to divert under certain conditions and expired 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 stated, “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. On November 13, 2024 “Addendum 6 – Full Suspension of Curtailments in Scott River Watershed” was sent to Scott River water right holders. Addendum 6 provides for the suspension of surface water and groundwater curtailments in the Scott River watershed, but noted that prohibition on inefficient surface water diversions for livestock is still in effect and diverted surface water must not be used for inefficient livestock watering until the requirements of Section 875.7 of the Emergency Regulation are met.
14. 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.”

15. Water Code section 1055 grants the Executive Director to 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.
16. 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

17. The Respondent is the primary owner of Water Right ID SG003790. Water Right ID SG003790 was assigned to the Respondent's parcels identified in, and subject to, Order WR 2024-0025-DWR and the Parcel Addendum.
18. United States Postal Service (USPS) certified mail tracking indicated that the delivery of Order WR 2024-0025-DWR was attempted on July 27, 2024. However, there was no authorized recipient available to receive the delivery. Subsequently, the delivery was refused on July 29, 2024. Order WR 2024-0025-DWR was returned to the Division because the Respondent did not accept delivery.
19. USPS certified mail tracking indicated that attempted delivery for the Parcel Addendum to Order WR 2024-0025-DWR occurred on August 12, 2024, but was returned to the Division because no authorized recipient accepted the delivery.
20. Division staff observed active irrigation occurring on the Respondent's property, identified as Siskiyou County Assessor Parcel Numbers (APN) [REDACTED]. These observations occurred on August 1, August 29, and September 13, 2024.
21. The Respondent did not submit a Scott Shasta Curtailment Certification form for Water Right ID SG003790 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.
22. 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.

23. Division staff issued a Notice of Violation (NOV) package to the Respondent on August 21, 2024. The NOV package included the NOV, copies of Order WR 2024-0025-DWR, and the Parcel Addendum to Order WR 2024-0025-DWR that had previously failed delivery.
24. GLS shipment tracking indicated that the Respondent received the NOV package on August 26, 2024.
25. On August 19, 2024, the Respondent contacted Division staff regarding an NOV that was addressed to him and Scott Valley Irrigation District in a separate matter dated August 5, 2024. He stated he had executed an agricultural license over three years ago and transferred the corresponding responsibility to a third party. On August 20, 2024, the Respondent informed Division staff that the third party is Starwalker Organic Farms, owned by Mr. Jason Walker.
26. On September 23, 2024, the Respondent contacted Division staff again questioning why he is still listed as being in violation. On September 24, 2024, Division staff responded to him to clarify that the NOV we issued him on August 21, 2024, pertains to the property he owns under APN [REDACTED]. He again reiterated that he transferred legal control of his property to a third party by executing an Agricultural License dated May 1, 2022, and requested to know if any third parties reported the water use. On October 14, 2024, and November 4, 2024, Mr. Plank submitted the Agricultural License and associated exhibits to the Division, respectively.
27. Emergency Regulation section 875 (d)(1) states "Initial curtailment orders will be sent to each water right holder, agent of record on file with the Division of Water Rights, or landowner, as applicable. The water right holder, agent of record on file with the Division of Water Rights, or landowner is responsible for immediately providing notice of the curtailment order(s) to all diverters exercising the water right(s) covered by the curtailment order(s)."
28. On November 13, 2024, in a telephone conversation with Division staff, the Respondent stated that he never provided Mr. Walker with the Curtailment Order or NOV for the water use upon the Respondent's property. Mr. Walker, therefore, did not have notice that diversion of water upon the Respondent's property was curtailed. Absent notice by the Respondent to Mr. Walker, the Respondent remains responsible for compliance with the Emergency Regulation.
29. 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 were still in effect.

PROPOSED CIVIL LIABILITY

30. 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 issued the Respondent curtailment orders on July 24, 2024. The Respondent's diversions are subject to these orders and the Respondent diverted water when they were in effect.
31. Each day of diversion when the Curtailment Order prohibited diversion is a day of violation. Enforcement staff observed and documented active irrigation occurring on three days— August 1, August 29, and September 13, 2024.
 - a. The Respondent has no known reservoirs. Thus, active irrigation required direct diversion. The Respondent's diversions on August 1, August 29, and September 13 were all in violation of the initial 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.
 - b. While the Division has evidence of diversions occurring on three separate days, two days of diversion occurred after the Respondent received the NOV, Curtailment Order, and Addendum on August 26, 2024. Pursuant to section 875 (b) of the Emergency Regulation, curtailment orders are effective the day after issuance. Notice is not required to find a diverter in violation of a curtailment order. Therefore, the curtailment order was in effect for all three days of documented diversions.
 - c. The Division is electing to exercise enforcement discretion for this case in assessing days of violation for the purposes of calculating an ACL. Thus, the Division is only alleging two days of violation that occurred after the Respondent received the Addendum; solely for the purpose of calculating maximum statutory liability. Any future attempts by the Respondent to avoid or refuse service of orders or notices from the State Water Board for the purpose of claiming ignorance of required actions may not result in similar enforcement discretion determinations.
 - d. For the purposes of this ACL, the Respondent violated the Curtailment Order for at least two days. The statutory maximum liability for the alleged violations is \$1,000 (2 days x 1 curtailed water rights x \$500 per day of violation).
32. 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."

33. 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 August and into September; likely impacting steelhead, coho salmon, and fall-run Chinook. Thus, the Respondent's violations harmed, or was reasonably likely to harm, sensitive environmental resources the State Water Board has prioritized and exercised specific regulatory actions to protect.
 - b. The Respondent was found to have been actively diverting for at least three 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 an 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.

34. 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 submitted curtailment certification forms in 2022. While the Emergency Regulation has changed slightly from year to year, its substance has largely remained the same.
 - b. The State Water Board pursued due diligence in ensuring the Respondent was notified of his requirements to cease diversions. The Respondent, however, initially refused delivery of the curtailment orders. As a result, the orders arrived back at the Board and had to be reissued. While the Respondent eventually received the curtailment orders, they received them later than they would have had they initially accepted delivery. Refusal to accept delivery of mail from the State Water Board is not a strategy that should be accepted or rewarded.
 - c. Division staff issued an NOV to the Respondent on August 21, 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 two days.
 - d. Pursuant to section 875 (d)(1), water right holders are responsible for providing notice of curtailment to their tenants. The Respondent failed to provide the Curtailment Order and the NOV to his tenant, Mr. Walker. It is the Respondent's responsibility to ensure anyone leasing or using his land complies with the Emergency Regulation.
35. In considering the length of time over which the violation occurred, Division staff observed three separate days of irrigation after the Curtailment Order was issued. The active irrigation was on August 1, August 29, and September 13, 2024. Two of these days occurred after the Respondent eventually received the NOV with Curtailment Order attachment on August 26, 2024. While these are the three days the Division could document irrigation occurring after the Curtailment Order was issued, the Respondent may have diverted on additional days after the Curtailment Orders were issued and received that Division staff were unable to document.

36. 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.
37. 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 \$1,000 is the most appropriate penalty the Board may issue for this violation.
38. 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 \$1,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

39. 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).
40. 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.
41. 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.

42. 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

A handwritten signature in black ink that reads "Julie Rizzardo". The signature is written in a cursive, flowing style.

*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: December 6, 2024