

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

DIVISION OF WATER RIGHTS

ORDER WR 2024-0051-EXEC

ORDER APPROVING SETTLEMENT AGREEMENT

In the Matter of Violations of Curtailment Order WR 2024-0024-DWR and Order WR
2024-0025-DWR

Fisher Brandy L. & Rachael M Trustee

SG003327

SOURCE: Scott River

COUNTY: Siskiyou

BY THE DEPUTY DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Deputy Director of the State Water Resources Control Board (“State Water Board” or “Board”) following the issuance of an Administrative Civil Liability (“ACL”) complaint to Fisher Brandy L. & Rachael M Trustee (“Respondent”). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights (“Division”) Prosecution Team (“Prosecution Team”) and the Respondent have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

On May 10, 2021, the Governor issued Executive Order N-10-21 declaring a state of emergency based on drought conditions in the Scott River and Shasta River

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

watersheds.

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.

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.

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.

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.

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>.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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] 0. These observations occurred on July 31, August 13, August 21.

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.

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.

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.

GLS certified mail tracking indicate that the Respondent received the NOV package on August 26, 2024.

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.

The Respondent did not contact the State Water Board to indicate they were diverting under Addendum 2, nor did they provide evidence of qualifying under any other exception as stated in sections 875.1, 875.2, and 875.3 of the Emergency Regulation.

Water Code² 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. 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 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.

Water Code section 1831 authorizes the State Water Board to issue a cease-and-desist order (“CDO”) in response to a violation or threatened violation of any decision or order of the Board issued under Part 2, Division 2 of the Water Code, any regulation adopted under Water Code section 1058.5, or of other requirements and prohibitions not presently relevant. Water Code section 1845 further authorizes the Board to impose administrative civil liability, pursuant to Water Code section 1055. If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the administrative civil liability may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. If the violation occurs any other time, the administrative civil liability may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

On October 23, 2024, the Assistant Deputy Director for the Division of Water Rights, under delegated authority, issued an ACL Complaint and draft CDO to the Respondent for diverting in violation of the curtailment orders. The ACL complaint recommended a civil liability of \$2,000.

In lieu of a hearing on the matter, the Parties agree to settle the violation(s) alleged in the ACL complaint and draft CDO.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Division Prosecution Team executed the settlement agreement (“Settlement Agreement”), attached to this order as Exhibit 1. The general terms of the settlement are that Respondent:

1. Waives the right to a hearing on the ACL complaint and CDO, waives the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement and incorporated into this Order;

² All references to the “Water Code” are to the California Water Code.

2. 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;
3. Must maintain, and provide to the Division upon request, records of all diversions; and
4. Is subject to administrative civil liability in the amount of Two-Thousand Dollars (\$2,000). Alternatively, the Respondent may enroll in a payment plan whereby they agree to pay the penalty in installments, with the full amount paid within one year.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Respondent is approved. The Respondent must perform all the following actions:

1. 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. Maintain, and provide to the Division upon request, records of all diversions.
3. Pay an ACL of Two-Thousand Dollars (\$2,000).
 - A. Two-Thousand Dollars (\$2,000) of the ACL is due no later than 30 days after issuance of this Order.
 - B. The Respondent may enroll in a payment plan whereby they agree to pay the penalty in installments. The Respondent must pay the first installment of Five-Hundred Dollars (\$500) before the end of the third full month following issuance of the order approving this settlement, and an additional installment of Five-Hundred Dollars (\$500) before the end of every third month after that. The full Two-Thousand Dollar (\$2,000) amount must be paid no later than the end of twelve full months after issuance of the order approving this settlement.
 - C. If the Respondent fails to make any payment before the applicable deadline, the Deputy Director will issue a written finding directing the Respondent to make immediate payment of the ACL's remaining balance.
 - D. If the Respondent fails to meet any of this Order's requirements, the Deputy Director will issue a written finding directing the Respondent to immediately pay the ACL remaining balance. If the ACL's balance is unpaid after 30 days of the date of the Deputy Director's finding, the Deputy Director will seek a judgment against the Respondent in accordance with Water Code section 1055.4.

