

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

DIVISION OF WATER RIGHTS

ORDER WR 2022-0XXX-DWR

DRAFT CEASE AND DESIST ORDER

In the Matter of Violations or Threatened Violations of Emergency Regulations and
Order WR 2021-0082-DWR

SHASTA RIVER WATER ASSOCIATION

SOURCE: Shasta 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 Shasta River Water Association (referred to herein as the Diverter) to cease and desist from an ongoing, or a threatened, violation of the Klamath River Watershed Drought Emergency Regulations (hereinafter Emergency Regulations) which were properly adopted in accordance with Water Code section 1058.5 and approved by the Office of Administrative Law. In direct violation of the curtailment order issued pursuant to the Emergency Regulations, Diverter began diverting up to 30 cubic feet per second (cfs) on August 17, 2022, dropping Shasta River flows to approximately 18 cfs, 32 cfs below the minimum flow requirement of 50 cfs at the Yreka USGS gage. This action has direct impacts on more senior water right holders and the fisheries that the Emergency Regulation intends to protect.

On August 19, 2022, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division), provided notice of the CDO against the Diverter for the violation and/or threatened violation of the Emergency Regulations.¹

¹ Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831, et seq. State Water Board Resolution 2012-0029 authorizes re-delegation of this authority from

BACKGROUND INFORMATION

1. To protect the Klamath River watershed from significant harm to all beneficial uses and extreme drought, on August 17, 2021, the State Water Board adopted the Emergency Regulations, which 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. The Emergency Regulations went into effect on August 30, 2021. The minimum instream flow requirements were established to protect fall-run Chinook salmon and threatened Southern Oregon/Northern California Coast coho salmon. On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. The updated regulation contains a provision that extends previously issued curtailment orders under the amended regulation. (Section 875, subd. (d)(3).)
2. On September 10, 2021, the State Water Board issued a curtailment order (Order WR 2021-0082-DWR) to the most junior water right holders in the Shasta River, including post-Adjudication appropriative surface water and groundwater rights, as well as surface water rights in the Shasta Adjudication with priority dates later than November 1912. The Diverter's water right, defined in paragraph 341 of the Shasta Adjudication² to divert 42.00 cfs from Point of Diversion (POD) 419 from April 1 to October 1 has a priority date of November 25, 1912. This water right is the most senior water right to be curtailed under Order WR 2021-0082-DWR.
3. Based on forecasted precipitation and other factors, the State Water Board issued various addenda 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. On March 15, 2022, the State Water Board reinstated water right curtailments for the most junior water rights in the Shasta River watershed (Addendum 9). Based on ongoing dry conditions, flows being consistently below the minimum flow requirement, and uncertainties associated with demands from overlying groundwater and riparian claims, the State Water Board issued Order WR 2022-0162-DWR, subjecting more senior water rights to curtailment (to a priority date of April 1, 1885) because the minimum emergency flow requirement of 50 cfs cannot be met by the more junior water rights curtailed in Order WR 2021-0082-DWR.
4. On August 17, 2022, flows in the Shasta River began precipitously dropping by over 20 cfs and by August 18, 2022, dropped over 28 cfs. Flows at Yreka gage have declined from 46.8 cfs on Aug 17, to 18.1 cfs on Aug 18, and are now about

the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights (Assistant Deputy Director). This authority has been re-delegated.

² 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.

32 cfs below the minimum instream flow requirement of 50 cfs. Water Board staff confirmed with the Diverter that they are diverting approximately 30 cfs, notwithstanding the curtailment under Order WR 2021-0082-DWR. As explained above, the State Water Board recently issued Order WR 2022-0162-DWR, curtailing more senior water rights to a priority date of April 1, 1885 because the minimum emergency flow requirement cannot be met by the more junior water rights curtailed in Order WR 2021-0082-DWR. Accordingly, water is currently not available under Diverter's water right. No exemptions or petitions have been approved for Diverter to continue diverting.³

5. The Shasta River basin is key to supporting spawning and rearing habitat for Klamath basin coho salmon. Coho salmon fry emerge from February to May and rear in the Shasta River through the summer for approximately one year. The minimum summer flows of 50 cfs are critical to providing over summering juvenile habitat and lower flows exacerbate negative water quality issues (e.g., temperature and dissolved oxygen) that limit fish mobility and survival. The fall-run Chinook and coho salmon migration season begins September 1. The minimum flow requirements to support this migration are 50 cfs for September before increasing to 125 cfs in October. Considering flows are now hovering around 20 cfs and the lack of a significant amount of predicted rainfall between now and September 1, the Diverter's actions have and will continue to have serious impacts to the health of these critical fish species.
6. In addition, more senior water rights are subject to curtailment. Requiring more senior rights to curtail to meet the minimum flows violates the rule of priority and is contrary to law. Diverter's action threatens the State Water Board's ability to enforce the Emergency Regulations and ensure that minimum flow requirements will be met.

INVESTIGATION

7. On August 17, 2022, the Division received a letter from the Diverter explaining that due to weather conditions, they are diverting water for the purposes of irrigation, livestock watering, watering trees, and fire suppression. Despite acknowledging in the letter that exceptions to curtailment orders are permitted only after submission, *and approval*, of the appropriate forms, the Diverter still chose to begin diverting water from the Shasta River in violation of the curtailment order and Emergency Regulations.
8. On August 18, 2022, Division staff inspected the Diverter's headgates and several of the member properties that were receiving water from SRWA's

³ Diverter has recently submitted a petition to divert water in excess of minimum livestock watering exemption for 1 cfs per day to serve approximately 5000 adult cattle plus other animals. Under Section 875.3, subd. (d) of the Emergency Regulation, diversion for minimum livestock water needs over the reasonable livestock watering quantities set forth in Article 5, section 697, requires submission of a petition demonstrating compliance with the requirements of subdivisions (d)(1)-(5), and approval by the Deputy Director. Diverter's petition is currently under review and has not been approved.

diversion. Staff witnessed and photographed the diversion facility and witnessed the pump station and fish screen operating, water flowing in the irrigation canal, and water flowing to multiple member properties.

9. During the inspection, staff spoke to three of the Diverter's directors. The directors stated that they turned on their diversion the night of August 17, 2022 and, in the absence of a working flowmeter, estimated that SRWA was currently diverting 30 cfs. They stated they would try to maintain river flows of between 20-25 cfs. However, that amount is half or less than half of the minimum flow requirements for the Shasta River. The Diverter also stated to staff that they are using the water for irrigation.

APPLICABLE LAW AND ALLEGATIONS

12. The Diverter is diverting water from the Shasta River in violation of the Emergency Regulations and Order WR 2021-0082-DWR. Specifically, the Diverter is diverting when water is not available under its water right priority. This constitutes a violation of the Emergency Regulations which prohibit the diversion of water for specified water rights holders during a period of curtailment unless granted permission by the State Water Board under a valid exception. The Diverter has received no such permission, nor have they submitted the necessary forms to request such an exception.
13. The following facts support the basis for the alleged violation of the Emergency Regulations:
 - a. The Diverter operates a headgate used to divert water from the Shasta River for the benefit of several properties which use the water for irrigation, livestock watering, and other uses.
 - b. The Diverter received the curtailment orders and was aware of the requirement to cease diversions to comply with minimum flow requirements in the Shasta River as established by the Emergency Regulations.
 - c. On August 17, 2022, the Diverter began diverting water at a rate of 30 cfs while subject to a curtailment order.
 - d. The Diverter's actions coincided with a precipitous drop in the flow rate of the Shasta River to under 20 cfs, far below the minimum flow requirements established for the Shasta River, and likely severely harming the public trust resources that the minimum flow requirements were established to protect.
 - e. During the August 18, 2022 inspection, when Division staff notified the Diverter that the diversion is not permissible, the Diverter indicated that they will continue to divert so long as their individual members request water.
 - f. The State Water Board has not authorized the Diverter to divert water from

the Shasta River under any claimed exception to curtailment. *The Emergency Regulations do not provide a curtailment exception for irrigation.*

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. The Diverter shall immediately cease and desist all diversions from the Shasta River and shall continue to cease diversions until curtailments have lifted or otherwise notified by the State Water Board.
2. The Diverter shall maintain, and provide to the Division upon request, records of all surface water diversions from the Shasta River.
3. The Diverter shall maintain a working flow meter for any future diversions once curtailment is lifted.

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 Diverter fails to comply with the requirements of this Order, it 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 Diverter to civil liability in an amount not to exceed \$10,000 for each 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 Diverter for infractions under Water Code section 1058.5, subdivision (d), and Water Code section 1052.

Regulatory Changes

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

*ORIGINAL SIGNED BY
JULE RIZZARDO, FOR*

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

Dated: August 19, 2022