

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

DIVISION OF WATER RIGHTS

ORDER WR 2023–0029-DWR

CEASE AND DESIST ORDER

In the Matter of Violations or Threatened Violations of Emergency Regulations and
Orders WR 2021-0083-DWR and WR 2021-0084-DWR

4T RANCH LLC (SG003335 AND SG003055)

SOURCE: Scott 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 4T Ranch LLC (“Respondent”) to cease and desist from an ongoing, or a threatened, violation of the Klamath River Watershed Drought Emergency Regulations (“Emergency Regulations”), which were properly adopted in accordance with Water Code section 1058.5 and approved by the Office of Administrative Law.

Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a CDO when it determines that any person is violating or threatening to violate “[a] regulation adopted under [Water Code] section 1058.5.”

On September 30, 2022, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (“Division”), provided

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

notice of the CDO against the Respondent for the violation and/or threatened violation of the Emergency Regulations.^[1]

BACKGROUND INFORMATION

1. 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 watersheds.
2. On August 17, 2021, the State Water Resources Control Board (“State Water Board” or “Board”) adopted the Regulations, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Authority in the Klamath River Watershed. The Emergency Regulations provide curtailment authority throughout the Klamath River watershed and establish minimum instream flow requirements and information order authority in the Scott River and Shasta River watersheds. The minimum instream flow requirements were established to prevent 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 by prohibiting surface water and groundwater diversion subject to a curtailment order. (Cal. Code Regs., tit. 23, § 875, subd. (a).). The Emergency Regulations went into effect on August 30, 2021, when they were approved by the Office of Administrative Law and filed with the Secretary of State. **Resolution No. 2021-0029** adopted the Emergency Regulations and describes the need for the Emergency Regulations and their intent.
3. On September 9, 2021, the Deputy Director issued Order Imposing Water Right Curtailment and Reporting Requirements for Reported Water Rights in the Scott River Watershed. Then, on September 10, 2021, the Deputy Director issued two more orders. The first order was an Order Imposing Water Right Curtailment, Increased Coordination, and Reporting Requirements for Adjudicated Groundwater Rights in the Scott River Watershed (Order WR 2021-0083-DWR). The second order was an Order Imposing Water Right Curtailment and Reporting Requirements in the Scott River Watershed for Water Right(s) Associated with the Parcel(s) Listed in Attachment A and not Otherwise Curtailed (Order WR 2021-0084-DWR). These orders imposed curtailments on adjudicated groundwater rights, non-reported surface water rights, and water right(s) associated with parcel(s) in the Scott River watershed outside of municipal service areas.
4. On June 21, 2022, the State Water Board readopted the Emergency Regulations, which went into effect on July 29, 2022. 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).)
5. On October 25, 2021, curtailments in the Scott River Watershed were conditionally suspended (Addendum 1 to Order WR 2021-0083-DWR and Order

WR 2021-0084-DWR). On July 1, 2022, the State Water Board issued Addendum 32 to the curtailment orders, stating that the suspension of curtailments for surface water rights expired at 12:00 PM on July 2, 2022, and would subsequently resume. On July 14, 2022, the State Water Board issued Addendum 35 to the curtailment orders stating that all surface water and groundwater diversions in the Scott River Watershed must immediately cease unless they are approved under a certified Local Cooperative Solution ("LCS") agreement (Cal. Code Regs., tit. 23, § 875, subd. (f.)) or meet an exception.

6. Addendum 35 to the Curtailment Orders was in effect from July 14, 2022, through January 3, 2023. The Respondent violated, or threatened to violate, the Curtailment Orders by diverting from the Scott River Watershed without approved enrollment in an LCS agreement.
7. The Respondent is the primary owner Water Right IDs SG003335 and SG003055. SG003055 is under Court Decree No. 30662. SG003335 was assigned to specific APNs associated with the diverter in Order WR 2021-0084-DWR. The Respondent has also stated that he has a small pond on his property that is used for storage. The Respondent submitted a Scott Shasta Curtailment Certification form for SG003055 on March 8, 2022.
8. On September 10, 2021, pursuant to the Emergency Regulations, the State Water Board issued two orders, Order WR 2021-0083-DWR and Order WR 2021-0084-DWR. These orders imposed curtailments on adjudicated groundwater rights, non-reported surface water rights, and water right(s) associated with parcel(s) in the Scott River watershed outside of municipal service areas. The first order was an Order Imposing Water Right Curtailment, Increased Coordination, and Reporting Requirements for Adjudicated Groundwater Rights in the Scott River Watershed (Order WR 2021-0083-DWR). The second order was an Order Imposing Water Right Curtailment and Reporting Requirements in the Scott River Watershed for Water Right(s) Associated with the Parcel(s) Listed in Attachment A and not Otherwise Curtailed (Order WR 2021-0084-DWR). The Respondent received Order WR 2021-0084-DWR for SG003335 on September 16, 2021.
9. Based on forecasted precipitation and other factors, the State Water Board issued various addenda partially suspending curtailment of water rights in the Scott River Watershed. In 2022, curtailments went into effect on July 2, 2022, for all surface water rights. On July 6, 2022, curtailments were partially suspended, allowing each first priority water right to divert up to 15% of their right. On July 8, 2022, each first priority right was allowed to divert up to 30% of their right. Finally, on July 14, 2022, all rights (surface and groundwater) were fully curtailed. These curtailments included the Respondent's diversions.

INVESTIGATION

10. The Respondent submitted a Curtailment Certification Form on March 8, 2022, but only after formal enforcement from the Division and pursuant to settlement. (Order WR 2022-0137-DWR) The Respondent claimed that all diversion had ceased from water right SG003055. A certification for SG003335 was never submitted.
11. The Division found that the Respondent was potentially violating the Curtailment Order through photographic evidence captured from public roads on August 19, 2022. After Division staff was informed that the Respondent was not enrolled within a Local Cooperative Solution (LCS) Program, Division staff issued a Notice of Violation (NOV) to the Respondent on September 1, 2022. The Respondent received the NOV on September 9, 2022, but did not respond.
12. On August 19, 2022, Division staff observed active irrigation of crops via a pivot and well irrigated fields. They documented their observations with photographs.
13. On November 22, 2022, Division staff issued an Information Order which was received by the Respondent on November 28, 2022. The Respondent did not respond.
14. On January 20, 2023, Division staff issued an Administrative Civil Liability Complaint – Failure to Submit Information Order Response – Siskiyou County (ACLC). The ACLC was delivered to the Respondent on January 25, 2023, but was never received. Division staff then emailed the Respondent the ACLC on February 14, 2023. The Respondent did not respond. Lastly, the ACLC was delivered via process server to the Respondent on March 3, 2023.
15. On March 13, 2023, Division staff discussed the Information Order and alleged curtailment violations, by telephone, with John Burrone, one of the partners who owns and operates 4T Ranch LLC. Mr. Burrone stated that three days of irrigation had occurred. He indicated that he knew irrigating would violate curtailment but irrigated anyway. He further indicated that, had he not irrigated, he would have lost crops — losses that would have cost him more than \$500 a day, the maximum daily fine for violating a Curtailment Order under Water Code section 1846.
16. The Respondent responded to the Information Order as part of the response to the ACLC on March 17, 2023. In the Information Order Response Forms, the Respondent reported 3 days of diversion for irrigation on August 18, 19, and 20, 2022. According to the information submitted, the diverter was in violation for 3 days. Nonetheless, subsequent review of this information indicates more days of irrigation likely occurred.

APPLICABLE LAW AND FINDINGS

17. Under Water Code section 1831, subdivision (d), the State Water Board may issue a CDO when it determines that any person is violating or threatening to violate “[a] regulation adopted under [Water Code] section 1058.5.” Water Code section 1058.5 authorizes the Board may adopt emergency regulations “during a period for which the Governor has issued a proclamation of a state of emergency... based on drought conditions.” The Board may adopt such emergency regulations “to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.” Following Executive Order N-10-21, the Board issued the Emergency Regulations.
18. Under the Emergency Regulations, the State Water Board issued the Respondent a Curtailment Order on September 9, 2021. All water sources for the Respondent’s water rights are claims of right are subject to the Curtailment Order. The Respondent received the initial Curtailment Order on September 16, 2021.
19. The Respondent had notice of the requirement to cease diversions and comply with minimum flow requirements in the Scott River, as established by the Emergency Regulations. By submitting the curtailment form for SG003055, the Respondent showed that they were aware of the curtailments.
20. Since July 14, 2022, Curtailment Orders prohibited the Respondent from diverting water from any sources within his water rights and claims of right. The State Water Board has not authorized the Respondent to divert water under any exception to curtailment; neither has the Respondent claimed an exemption to the Curtailment Orders that would authorize irrigation.
21. Despite having notice of curtailment, the Respondent diverted in violation of curtailment for at least three days. Division staff observed irrigation occurring on the Respondent’s property on August 19, 2022, and documented their observations in photographs. Mr. Burrone later admitted that three days of irrigation occurred — August 18, 19, and 20, 2022. The Information Order response on March 17, 2023, is consistent with Mr. Burrone’s admission.
22. Mr. Burrone has a financial incentive to violate curtailment. He indicated he was aware he was curtailed, but diverted anyway, because it would cost him less than the \$500 a day maximum fine for violating curtailment. The Respondent will likely violate Curtailment Orders again if the financial incentives remain the same.
23. The Respondent has diverted water in violation of the Curtailment Orders. Financial incentives to violate Curtailment Orders again threaten further violations. The

curtailment violation and threatened violations are subject to a Cease and Desist Order under Water Code section 1831.

THE STATE WATER RESOURCES CONTROL BOARD THEREFORE ORDERS, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. The Respondent must immediately cease and desist all diversions from Kidder Creek and hydraulically connected groundwater and shall continue to cease diversions until curtailments have lifted or otherwise notified by the State Water Board.
2. The Respondent must maintain, and provide to the Division upon request, records of all interconnected groundwater diversions.
3. The Respondent must maintain a working flow meter for any future diversions once curtailment is lifted.

Consequences of Non-Compliance

In the event the Respondent fails to comply with the requirements of this Order, they 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 Respondent 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 Respondent for infractions under Water Code section 1058.5, subdivision (d), and Water Code section 1052.

Regulatory Changes

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

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

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

Dated: June 2, 2023