

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

DIVISION OF WATER RIGHTS

ORDER WR 2024-0XXX-DWR

CEASE AND DESIST ORDER

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

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 Edmund Gareth Plank (Respondent) to cease and desist from an ongoing, or a threatened, violation of the Scott River and Shasta River Watersheds Drought Emergency Requirements (Emergency Regulation), 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.”

BACKGROUND INFORMATION

1. On December 19, 2023, the State Water 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.

2. 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.
3. 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.
4. 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.
5. 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, and livestock watering, as described in sections 875.1, 875.2, and 875.3 of the Emergency Regulation. If such exception was claimed, the Respondent must also self-certify or submit a petition online at <https://public.waterboards.ca.gov/WRInfo>.
6. 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.
7. 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 upon 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 continued to be curtailed.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

INVESTIGATION

13. The Respondent is the primary owner of Water Right ID SG003790. Water Right ID SG003790 was assigned to the Respondent's parcel identified in, and subject to, Order WR 2024-0025-DWR and the Parcel Addendum.
14. United States Postal Service (USPS) certified mail tracking indicate that delivery 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. The Parcel Addendum was unclaimed on August 27, 2024, and was returned to the Division.
15. Division staff observed multiple days of 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.
16. 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.
17. 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.
18. 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.
19. GLS shipment tracking indicated that the Respondent received the NOV package on August 26, 2024.
20. 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, which is owned by Jason Walker.

21. 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.
22. 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. Pursuant to section 875 (d)(1) of the Emergency Regulation, the water right holder is responsible for providing notice of curtailment to anyone diverting water under the holder's right. Absent notice by the Respondent to Mr. Walker, the Respondent remains responsible for compliance with the Emergency Regulation.
23. To date, the Respondent has not contacted the State Water Board indicating they are diverting under Addendum 2 nor 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.

APPLICABLE LAW AND FINDINGS

24. Under Water Code section 1831, subdivision (d)(4), the State Water Board may issue a CDO when it determines that any person is violating or threatening to violate "[any decision or order of the board issued under [Part 2 of Division 2 of the Water Code]..."
25. 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)."
26. Pursuant to the Emergency Regulation, the State Water Board issued the Respondent Curtailment Order on July 24, 2024. All water sources for the Respondent's water rights or claims of right are subject to the Curtailment Order.

The Respondent received the Curtailment Order and Parcel Addendum enclosed with the NOV on August 26, 2024.

27. Enforcement staff observed and documented active irrigation occurring on three days—August 1, August 29, and September 13, 2024. The Curtailment Order prohibited these diversions.
28. The Respondent had notice of the Curtailment Order's requirement to cease diversions. Yet, the Respondent continued to irrigate in violation of the Curtailment Order on at least two days after receiving the order.
 - 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 received prior curtailment orders and submitted certification forms in 2022. While the Emergency Regulation has changed slightly from year to year, its substance has largely remained the same.
 - b. The 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. 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.
 - d. 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 three days, and never contacted the Division about the curtailment orders or NOVs.
29. The State Water Board has not authorized the Respondent to divert water under any exception to curtailment and neither has the Respondent claimed an exemption to the Curtailment Order that would authorize irrigation.
30. Many diverters in the Scott Watershed have enrolled in Local Cooperative Solutions (LCS) that require pumping reduction or improvements in irrigation

efficiency in lieu of curtailment. The LCS plans require applicants to spend time developing the plans, implementing the plans, and provide monthly reporting of diversions. By continuing to divert in violation of the curtailment, the Respondent is avoiding costs that others in the watershed are bearing to comply with the Emergency Regulation. The Respondent will likely violate Curtailment Orders again if the financial incentives remain the same.

31. The Respondent has diverted water in violation of the Curtailment Order; even after receiving the order. Financial incentives to violate Curtailment Orders threaten further violations. The curtailment violation and threatened violations are therefore 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 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. The Respondent must maintain, and provide to the Division upon request, records of all diversions.

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 Respondent, or any successor of interest, fails to comply with the requirements of this Order, the Respondent, or the Respondent's successor in interest, shall be in violation of this Order 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, or the Respondent's success in interest, to administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the

violation occurs during a non-drought year. In a period for which the Governor has issued a proclamation of state of emergency based on drought conditions, the Respondent, or the Respondent's successor in interest, may be subject to the imposition of administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occur.

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 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 or Respondent's successor in interest 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.

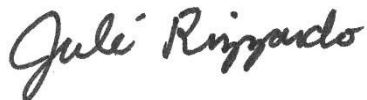
Compliance with Other Regulatory Requirements

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



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

Dated: December 6, 2024