

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0005-DWR

**TEMPORARY CONDITIONAL SUSPENSION OF
CALIFORNIA CODE OF REGULATIONS, TITLE 23, SECTION 875.5
DURING HIGH FLOWS IN THE SHASTA RIVER WATERSHED**

ISSUED JANUARY 12, 2023

SOURCE: Shasta River Watershed

COUNTY: Siskiyou

BY THE DEPUTY DIRECTOR

FINDINGS:

1. On June 21, 2022, the State Water Resources Control Board (State Water Board or Board) readopted an emergency regulation, titled Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Klamath River Watershed (hereinafter "**Regulation**"). The Regulation provides curtailment authority throughout the Klamath River watershed and establishes minimum instream flow requirements, minimum livestock-watering efficiency, and information order authority in the Scott River and Shasta River watersheds. **State Water Board Resolution No. 2022-0025** adopted the Regulation and describes the need for the Regulation and its intent. State Water Board Resolution No. 2022-0025 is incorporated by reference into this Order. The readoption of the Regulation went into effect on July 29, 2022, when it was approved by the Office of Administrative Law and filed with the Secretary of State.
2. The Regulation includes California Code of Regulations, title 23¹, section 875.7, which generally provides that, in the months of September through March, diversions in the Scott River and Shasta River watersheds for livestock watering must meet a threshold of efficiency in order to be reasonable uses under Article X, Section 2 of the California Constitution. The Regulation allows the prohibition to be lifted if certain findings are made. Specifically, subdivision (c) provides for the Deputy Director for the Division of Water Rights to suspend the efficiency limitations

¹ All subsequent section references in this Order are to California Code of Regulations, title 23 unless otherwise noted.

“upon a finding that suspending the provision will not result in a decrease in flows that would: (1) require curtailment; (2) unreasonably inhibit adult or juvenile salmonid migration, incubation, or rearing; or (3) unreasonably impact competing uses.” While it is not possible to make these findings for a permanent suspension of the prohibition for the rest of the 2022-2023 water year, this Order makes these findings to allow a conditional and temporary suspension of the prohibition in the Shasta River watershed to allow diversions during the upcoming wet hydrology occurring in the region when certain conditions are met.

3. In addition to this broad lifting of the prohibition during high flows under this Order, the Regulation also provides flexibility for local cooperative solutions for exceptions to the inefficient livestock watering prohibition based on other, more locally-specific criteria. While there have been some initial discussions regarding livestock watering in tributaries in the Shasta River watershed, so far none of these have developed quickly enough to be useful in the current high flow conditions. The type of conditions for diversion here can provide a model for such continued discussion.
4. Storms this winter season have been more frequent and of greater magnitude than we have seen in many years, and as a result flows in the Shasta River watershed are significantly higher than anticipated. All curtailments were suspended on December 27, 2022.² While it is not possible to determine at this point how long flows will remain greater than the drought emergency minimum flow of 125 cubic feet per second (cfs) at the [Yreka United States Geological Survey \(USGS\) gage](#), no active curtailments are expected through mid-March, 2023.
5. Winter livestock watering and diversion to storage are the dominant sources of surface water demand in the Shasta River watershed in winter. While information regarding livestock watering demands in the Shasta River watershed is imperfect, the best estimate for maximum winter livestock watering demand based on prior reporting is 50 cfs throughout the watershed. This demand may be higher where ditches have dried during the drought and curtailment period; however, recent rains have also provided for wetting of soils. In light of the current flows at the Yreka USGS gage of 379 cfs (as of 10:00 am on January 11, 2023), a temporary suspension of the inefficient livestock watering prohibition under the conditions provided in the Order would not require reimposition of curtailments. Allowing

² [Addendum 1 to Order WR 2022-0162-DWR](#) and [Addendum 1 to Order WR 2022-0167-DWR](#) suspended curtailments, through March 2023, in the Shasta River watershed for water rights senior to and including April 1, 1912. [Addendum 10 to Order WR 2021-0082-DWR](#) (including [Order WR 2021-0085-DWR](#), [Order WR 2022-0142-DWR](#), and [Order WR 2022-0161-DWR](#)) conditionally suspended curtailments for all other water rights in the Shasta River watershed so long as the 125 cfs flow requirement is met at the USGS Yreka gage. At this time, there are no active curtailments under Order WR 2021-0082-DWR.

diversions to occur only if flows are at or greater than 220 cfs will ensure that the temporary suspension of the prohibition will not result in a need to reimpose curtailment.

6. After an extremely dry fall, recent storms have resulted in several high flow events in the Shasta River watershed, providing water quality and fisheries benefits, including movement of sediment and gravels, tributary connectivity in all Shasta tributaries managed by the Scott Valley and Shasta Valley Watermaster District, as well as confirmed connectivity in Yreka and Willow Creeks, and increased habitat quality. Current flows exceed earlier high flow events.
7. Division of Water Rights and Montague Water Conservation District (MWCD) staff coordinated on the proposal to ensure that a temporary suspension would not impact the competing use of diversion to storage. MWCD storage in Dwinnell Reservoir (Lake Shastina) has increased from a low of 3,100 acre-feet on December 24, 2022, to 11,685 acre-feet as of January 10, 2023. This is already above the maximum storage in Dwinnell Reservoir last year, which was 7,923 acre-feet on March 19, 2022. The increases in storage will help MWCD meet its prior rights and environmental flow commitments in 2023. MWCD has indicated that the temporary suspension of the prohibition when flows are at or above 220 cfs at the Yreka USGS gage would not negatively impact its diversions to storage, particularly with the condition that any livestock water diversions take no more than 20 percent of the total streamflow.
8. Division of Water Rights and California Department of Fish and Wildlife (CDFW) staff have coordinated regarding what level of flows and what associated conditions could allow for diverters to take advantage of high flows for livestock watering without causing a drop in flows that would unreasonably inhibit salmonid migration, incubation, or rearing. Lifting the prohibition on inefficient livestock watering depends on conditions that reasonably: protect redds that could be impacted by reductions in flow downstream of diversions; ensure that migration is not impaired through a loss of mainstem-tributary connectivity; and limit the impact that diversions have on overall flows in any one area. Similarly, it depends on access and accounting provisions that will allow the State Water Board and CDFW to monitor the conditions allowing for diversion. The conditions that enable a finding that a suspension of the inefficient livestock watering prohibition are:
 - (a) Diversions shall not result in the dewatering of redds, and diverters shall provide access to CDFW and State Water Board staff to inspect the diversion and surrounding area;
 - (b) Diversions shall be no more than 20 percent of the instream flow at the point of diversion (i.e., the diverter shall bypass at least 80 percent of instream flow), recognizing that such percentage will be estimated, rather than measured, in

most instances, due to the limited availability of requisite infrastructure for measurement of instream flows;

- (c) Diversions on tributaries shall only occur if existing connectivity with the mainstem is maintained; and
- (d) Diverters shall notify the State Water Board of their intent to divert under these conditions and are required to maintain records of such diversions and provide them to the State Water Board and CDFW upon request.

9. The conditions imposed under this Order relate solely to flow efficiency and do not constitute compliance with Fish & Game Code section 1600, *et seq.* Dependent on an individual diverter's circumstances, a lake and streambed alteration agreement (LSA) may be required for diverting or obstructing the natural flow of, or changing or using any material from the bed, channel, or bank of any river, stream, or lake. Diverters without an LSA from CDFW are encouraged to reach out to CDFW Region 1 to discuss whether notification under Fish & Game Code section 1602 is necessary.

10. For the reasons discussed above, I therefore find that, so long as the conditions below are met, temporarily suspending section 875.5 will not result in a decrease in flows that would: (1) require curtailment; (2) unreasonably inhibit adult or juvenile salmonid migration, incubation, or rearing; or (3) unreasonably impact competing uses.

THEREFORE, IT IS HEREBY ORDERED that:

1. **When flows as measured at the Yreka USGS gage are 220 cfs or more**, water users in the Shasta River watershed may divert surface water for livestock watering without complying with the efficiency requirements in Section 875.7, subdivision (b) **so long as the following conditions are met:**

- (a) Diversions shall not result in the dewatering of redds, and diverters shall provide access to CDFW and State Water Board staff to inspect the diversion and surrounding area;
- (b) Diversions shall be no more than 20 percent of the instream flow at the point of diversion (i.e., the diverter shall bypass at least 80 percent of instream flow), recognizing that such percentage will be estimated, rather than measured, in most instances;
- (c) Diversions on tributaries shall only occur if existing connectivity with the mainstem (at the time this Order is issued) is maintained;
- (d) Diverters shall notify the State Water Board of their intent to divert under these conditions by e-mailing ScottShastaDrought@waterboards.ca.gov. The notification shall include:
 - (i) The diverter's name and contact information;
 - (ii) Point of diversion and water right under which the diversion will occur; and
 - (iii) Anticipated diversion amount; and

(e) Diverters shall maintain records of such diversions and provide them to the State Water Board and CDFW upon request.

2. Violation of this Order shall be subject to enforcement and any applicable penalties pursuant to Water Code sections 1052, 1058.5, 1831, 1845, and 1846. To the extent of any conflict between the requirements of this Order and any other applicable orders or conditions of approval, the diverter must comply with the requirements that are most stringent.
3. Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.
4. Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, water right adjudication, regulation, or a water right or LSA permit requirement. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A sections 1531 to 1544).

STATE WATER RESOURCES CONTROL BOARD

 for
Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: January 12, 2023