

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

DIVISION OF WATER RIGHTS

ORDER WR 2022-0088-DWR

**ORDER SUSPENDING EMERGENCY DROUGHT PROHIBITION ON INEFFICIENT
LIVESTOCK WATERING IN THE SHASTA RIVER WATERSHED**

ISSUED JANUARY 21, 2022

SOURCES: Shasta River Watershed

COUNTY: Siskiyou

BY THE DEPUTY DIRECTOR

FINDINGS:

1. On August 17, 2021, the State Water Resources Control Board (State Water Board or Board) adopted 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 went into effect on August 30, 2021, when it was approved by the Office of Administrative Law and filed with the Secretary of State.
2. The Regulation provides curtailment authority throughout the Klamath River Watershed, and establishes minimum instream flow requirements, curtailment authority, and information order authority in the Scott River and Shasta River watersheds. (Cal. Code Regs., tit. 23, § 875.) The Regulation also finds that during the fall migration season for fall-run Chinook and coho salmon (September through January), excessive surface water diversions for a small amount of water delivered for the livestock watering beneficial use are not reasonable in light of the alternatives available and needs of the fishery. Inefficient surface water diversions for livestock watering are those that divert, as measured at the point of diversion, more than 10 times the amount of water needed to support the number of livestock based on reasonable water quantities set forth in Article 5, section 697. (Cal. Code Regs., tit. 23, § 875.7.)
3. The inefficient livestock prohibition is a critical provision of the Regulation that supports the minimum flow requirement and curtailment provisions of the Regulation, and also acts as an independent limit on inefficient diversions during the key period in which salmon enter the Shasta River and its tributaries for spawning. The

inefficient livestock prohibition was adopted in light of the availability of more efficient livestock watering methods (including drought funding for such projects) and the need for increased water efficiency in these extreme drought conditions.

4. When there are no active curtailment orders in the relevant watershed, the Regulation provides an option to lift the inefficient livestock water prohibition early (i.e., before it sunsets on February 1) if certain findings can be made pursuant to section 875.7, subdivision (b) of the Regulation. The Deputy Director for the Division of Water Rights (Deputy Director) shall suspend the prohibition on inefficient livestock watering upon finding that suspending the provision will not result in a decrease in flows that would either require curtailment or inhibit salmonid migration. (Cal. Code Regs., tit. 23, § 875.5, subd. (b).)
5. As noted in the [Findings of Emergency and Informative Digest](#) issued on August 12, 2021, this flexibility “allows the regulation to be lifted if and when it becomes clear that the immediate competing needs for the water that provide the reason for the declaration that the inefficiency is unreasonable no longer present a conflict with the use.” (Digest, pp. 65-66.) The Regulation’s livestock watering prohibition is not a determination regarding the reasonableness of inefficient diversions for livestock watering outside of this drought emergency, or outside of the migratory period for salmonids. Likewise, the lifting of the prohibition under the terms provided in the Regulation is not a determination of reasonableness.
6. On September 10, 2021, the Deputy Director issued a curtailment order ([Order WR 2021-0082-DWR](#)) curtailing all water rights in the Shasta River watershed with priority dates junior to November 1912. From September 20, 2021 until December 22, 2021, the Deputy Director issued Addenda 1 through 5 to the curtailment order that suspended curtailments in order of priority based on gage readings, precipitation forecasts, information on water rights and usage, consultation with the Scott Valley and Shasta Valley Watermaster District (Watermaster), and other factors.
7. On December 29, 2021, the Deputy Director issued [Addendum 6](#) to the curtailment order, temporarily suspending all curtailments in the Shasta River watershed through the end of January 2022, contingent on meeting the drought minimum flow of 135 cubic feet per second (cfs) at the United States Geological Survey (USGS) [Yreka gage](#).
8. Issuance of Addendum 6 relied on analysis indicating a high likelihood that flows would not decrease below 135 cfs through January 2022. This analysis was based on a range of factors including: the flows at the time comfortably exceeding 135 cfs; precipitation and river flow forecasts; the river’s history of meeting these flows in the January through March time period absent any curtailments even in the driest years; the assessment, in coordination with the Watermaster, that exercise of curtailed water rights would not cause a decrease in flows below 135 cfs; and the commitment of the Watermaster to ensure that flows did not fall below 135 cfs if curtailments were lifted.
9. Since issuance of Addendum 6, flows have continued to exceed minimum flows, with the lowest measured flow being 147 cfs, and flows remaining above 155 cfs since January 3, 2022. This means flows have been more than 10 cfs higher than the

minimum instream flow since curtailments were lifted, and have been consistently more than 20 cfs above the drought emergency minimum flow of 135 cfs for two weeks.

10. Coordination with the Watermaster indicates that lifting the prohibition on inefficient livestock-watering will not cause flows at the USGS Yreka gage to decrease below 135 cfs through the end of January.
11. Flow in the Shasta River has met or exceeded 135 cfs from January through March at the USGS Yreka gage in all years with recorded gage data – including in drought years. These flows were achieved in the absence of the inefficient livestock watering prohibition, and without curtailment by the Watermaster. In light of the uncertainties regarding diversion amounts in the watershed, this historic information is a key indicator of whether lifting the prohibition on inefficient livestock watering will reduce flows below 135 cfs.
12. On January 20, 2022, the California Department of Fish and Wildlife sent a memorandum notifying the State Water Board that adult salmon migration for the 2021 spawning cycle in the Shasta River watershed has ended.
13. Preliminary data suggest that some livestock diverters may not have consistently adhered to the prohibition. The State Water Board is in the process of collecting additional information to assess regulatory compliance. On January 7, 2022, the State Water Board issued [Order WR 2022-0052-DWR](#), Information Order for Winter Surface Water Rights in the Shasta and Scott River Watersheds, to provide information needed to determine compliance with the inefficient livestock water prohibition, including amounts diverted in the relevant time period (September-January), number of livestock, and any alternative livestock water sources available. While this information could also help support a determination of whether to lift the prohibition, the strength of the historic hydrologic record supports lifting the prohibition now, as described above. A suspension of the inefficient livestock watering prohibition in the Shasta River watershed does not waive the obligation of parties to timely respond to the information order, or in any way affect potential enforcement action for any previous violations of the prohibition.
14. Therefore, the Deputy Director hereby finds that lifting the prohibition on inefficient livestock watering in the Shasta River watershed: (1) will not result in the need to reimpose curtailments; and (2) will not inhibit salmonid migration.
15. Because the analysis supporting the findings is necessarily based on projections and data on livestock watering in the Shasta River watershed is incomplete, the Deputy Director maintains the authority to rescind or amend this order prior to the end of January 2022 should flows drop below the drought emergency minimum flow of 135 cfs.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The prohibition on inefficient livestock watering in California Code of Regulations, title 23, section 875.7 is suspended in the Shasta River watershed for the remainder of January 2022.
2. The Deputy Director reserves the authority to reinstate the prohibition on inefficient livestock watering during the remainder of January 2022 to ensure flows are not reduced below 135 cfs at the USGS Yreka gage.

STATE WATER RESOURCES CONTROL BOARD



Erik Ekdahl
Deputy Director
Division of Water Rights

Dated: January 21, 2022