

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 876

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0321-03

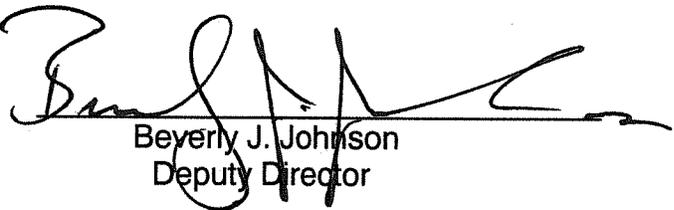
OAL Matter Type: Emergency Readopt (EE)

The State Water Resources Control Board submitted this emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0624-01E. The emergency rulemaking action adopted section 876 in title 23 of the California Code of Regulations, regarding enhanced water conservation and additional reporting requirements for the protection of specific fisheries in tributaries to the Russian River as an emergency regulation. Pursuant to Water Code section 1058.5, the finding of emergency is not subject to review by the Office of Administrative Law.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 3/30/2016 and will expire on 12/28/2016. The Certificate of Compliance for this action is due no later than 12/27/2016.

Date: March 30, 2016



Beverly J. Johnson
Deputy Director

For: Debra M. Cornez
Director

Original: Thomas Howard
Copy: David Rose

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0321-03EE
For use by Office of Administrative Law (OAL) only			ENDORSED - FILED in the office of the Secretary of State of the State of California 2016 MAR 21 P 1:32 OFFICE OF ADMINISTRATIVE LAW MAR 30 2016 1:36 PM
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0624-01E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Section 876
	AMEND per agency request 3/30/2016
TITLE(S) 23	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> Other (Specify) <u>emergency readopt (Wat. Code §1058.5)</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON David Rose	TELEPHONE NUMBER 916-341-5196	FAX NUMBER (Optional) 916-341-5199	E-MAIL ADDRESS (Optional) david.rose@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Thomas Howard</i>	DATE 3/18/16
TYPED NAME AND TITLE OF SIGNATORY Thomas Howard, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 30 2016

Office of Administrative Law

**Emergency Actions due to Insufficient Flow for Specific Fisheries in
Tributaries to the Russian River**

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In Title 23, Division 3, Chapter 2, amend the title of Article 24, and add section 876 to read:

Article 24. Curtailment of Diversions and Other Actions Based on Insufficient Flow to Meet All Needs

§ 875 [reserved]

§ 876 Emergency Enhanced Water Conservation and Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River.

(a) [reserved]

(b) [reserved]

~~The State Water Resources Control Board (State Board) has determined that it is a waste and unreasonable use of water under Article X, section 2 of the California Constitution to divert or use water sourced from within the watersheds listed in subdivision (c) in a manner inconsistent with subdivision (d) during the current drought emergency, regardless of water right seniority, given limited available supply and the need for the water to support other more critical uses.~~

~~(a) For the purposes of this section:~~

~~(1) "Untreated rainwater or gray water" means all untreated rainwater collected in a runoff capture system or any water meeting the definition in Health and Safety Code section 17922.12.~~

~~(2) "Ornamental turf" means all turf other than turf used for community recreation by education facilities, recreation related business, non-profit organizations, or recreational facilities, including but not limited to sports fields and playgrounds, that are generally accessible to the public.~~

~~(3) "Landscapes" includes all plantings besides ornamental turf, including but not limited to trees, annual plants, perennial plants, and edible plants, but does not include agricultural commodities meeting the definition of Government Code section 51201, subdivision (a).~~

~~(b) For the protection of threatened and endangered fish, all water users who receive water from diversions sourced within the watersheds designated in subdivision (c) shall comply with subdivision (d). To better assess impacts on surface stream stage and flow, all landowners in, or suppliers of water from, the watersheds designated in subdivision (c) shall comply with subdivision (e).~~

(c)(4) The State Water Resources Control Board (State Board) has authority to ensure the protection and preservation of streams and to limit diversions to protect critical flows for species, including for state- and federally- threatened and endangered salmon and steelhead species. The following watersheds have been identified as critical rearing habitat for juvenile state- and federally-listed Central California Coast coho salmon (CCC coho salmon) and

Central California Coast steelhead (CCC steelhead). All landowners and water users within the following watersheds and the use of said water shall be subject to this section.

- (1A) The portion of the Mark West Creek watershed as defined by the United States Geological Survey- Watershed Boundary Dataset- Hydrologic Unit Code 180101100706. Mark West Creek enters the Russian River from the south at river mile 31, along the northern border of Forestville. This portion of the Mark West Creek watershed spans approximately 57 square miles.
- (2B) Mill Creek. Mill Creek is a tributary to Dry Creek, which enters the Russian River from the west at river mile 42, approximately one mile south of Healdsburg. The Mill Creek watershed spans approximately 23 square miles.
- (3C) Green Valley Creek. Green Valley Creek enters the Russian River from the south at river mile 29, along the northwestern border of Forestville. The Green Valley Creek watershed spans approximately 38 square miles.
- (4D) Dutch Bill Creek. Dutch Bill Creek enters the Russian River from the south at river mile 13, within the town of Monte Rio. The Dutch Bill Creek watershed spans approximately 12 square miles.

~~(2) The State Board recognizes that the upper portion of each of the watersheds listed in (e)(1) is the most critical for mid- to late-summer rearing of state and federally threatened and endangered salmon and steelhead species. These upper portions are defined as:~~

- ~~—(A) On Mark West Creek, the portion of the watershed upstream of the confluence with an unnamed tributary (the tributary flowing parallel to western Riebli Road) as defined by the Latitude/Longitude of 38.5066°N and 122.72607°W.~~
- ~~—(B) On Mill Creek, the portion of the watershed upstream of the confluence with Felta Creek, and including Felta Creek, as defined by the Latitude/Longitude of 38.58098°N and 122.88306°W.~~
- ~~—(C) On Green Valley Creek, the portion of the watershed upstream of the confluence with Atascadero Creek as defined by the Latitude/Longitude of 38.44841°N and 122.88697°W.~~
- ~~—(D) On Dutch Bill Creek, the portion of the watershed upstream of the confluence with Tyrone Gulch as defined by the Latitude/Longitude of 38.44776°N and 122.99979°W.~~

(d) [reserved] ~~(1) The use of potable and non-potable water sourced from areas identified in accordance with subdivision (d)(3) is prohibited for any of the following actions, except where necessary to address an immediate health and safety need or where used exclusively for irrigation for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b):~~

- ~~—(A) The application of water, except untreated rainwater or gray water, to ornamental turf;~~
- ~~(B) The application of water to landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;~~
- ~~(C) The application of water, except untreated rainwater or gray water, to landscapes~~

- more than two days per week;
- ~~(D) The application of water, except untreated rainwater or gray water, to landscapes between the hours of 8:00a.m. to 8:00p.m.;~~
 - ~~(E) Washing motor vehicles, except with untreated rainwater or gray water or at car wash facilities where the water is part of a recirculating system;~~
 - ~~(F) The application of water to driveways and sidewalks;~~
 - ~~(G) The use of water, except untreated rainwater or gray water, to fill or refill decorative ponds, fountains and other decorative water features;~~
 - ~~(H) The use of water, except untreated rainwater or gray water, in a fountain or other decorative water feature, except where the water is part of a recirculating system;~~
and
 - ~~(I) The application of water to landscapes during and within 48 hours after measurable rainfall.~~
- ~~(2) To prevent the waste and unreasonable use of water and to promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily, if daily laundering is offered. The hotel or motel shall prominently display and/or communicate notice of this option to each guest using clear and easily understood language.~~
- ~~(3) The conservation measures identified in subdivisions (d)(1) and (d)(2) shall take effect immediately for all water users who receive water from diversions, whether surface or subsurface, sourced from within the watersheds designated in subdivision (c)(2). The Deputy Director for the Division of Water Rights (Deputy Director), after consultation with the California Department of Fish and Wildlife (CDFW) or the National Marine Fisheries Service (NMFS), may extend these requirements to some or all of the remainder of each tributary watershed identified in subdivision (c) to support CCC steelhead and CCC coho salmon passage this migratory season. The Deputy Director may, after consultation with CDFW or NMFS, lift the conservation measures identified in subdivisions (d)(1) and (d)(2) for all or any portion of the watersheds listed in subdivision (c), based on availability of sufficient streamflow in the tributaries to protect CCC coho salmon and CCC steelhead.~~
- ~~(4) Subdivision (d) shall not place additional restrictions on a party who participates in a voluntary drought initiative program (program) determined by CDFW or NMFS to be at least equivalent to the conservation measures in subdivisions (d)(1) and (d)(2), so long as the party fully complies with the terms and conditions of the program. CDFW or NMFS must provide the Division of Water Rights with a copy of the program and a list of all parties included in the program to confirm participation. Participation in such a program shall not affect any other obligations to implement conservation practices, comply with informational orders, curtail diversions, or comply with other requirements or prohibitions not based on subdivision (d).~~
- ~~(5) The conservation measures required by subdivision (d) do not supersede or affect other conservation requirements for water suppliers, or individual end users.~~
- ~~(6) The taking of any action prohibited in subdivisions (d)(1) or failure to take the action required by subdivision (d)(2) is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal, including civil liability pursuant to Water Code section 1846.~~

- (e) Due to the known hydraulic connection between sub-surface water and surface streams in the Russian River watershed, as well as the limited water use information in the area, additional information on diversions, whether surface or subsurface, and use of water is needed to better assess impacts on surface stream flows. The Deputy Director for the Division of Water Rights (Deputy Director) may issue informational orders to some or all landowners in, or suppliers of water from, the watersheds identified in subdivision (c)(4), requiring them to provide additional information related to diversion and use of water, including but not limited to the: date of first use, location of diversion, type of diversion, types of beneficial uses, distance of well from the nearest surface stream, depth of the well, well screen interval(s), place of use, estimated ~~2014~~ diversion amount, estimated ~~2014~~ use amount, source of water, volume of storage, estimated pumping/diversion rate, amount of water anticipated to be needed this year, or any other information relevant to forecasting use and impacts to the surface streams in the current drought year or in contingency planning for continuation of the existing drought emergency. Any party receiving an order under this subdivision shall provide the requested information within 30 days. The Deputy Director may grant additional time for the submission of information regarding diversion and use of water upon substantial compliance with the 30-day deadline and a showing of good cause.
- (1) Each landowner is responsible for immediately providing notice of any informational order(s) to all water users associated with the parcel of land related to the informational order.
 - (2) The failure to provide the information requested within 30 days or any additional time extension granted, is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.
- (f) **New Diversions.** For purposes of this subdivision, a new diversion means a surface or subsurface diversion initiated after issuance of a watershed-wide informational order to landowners in the watershed in which the new diversion is located. The owner of any new diversion must submit to the Deputy Director any information required by a watershed-wide informational order issued under subdivision (e) prior to commencement of the new diversion, unless the Deputy Director approves commencement of the diversion based on substantial compliance.
- (g) The State Board has established an email distribution list that landowners or others may join to receive notices and updates regarding informational orders and conservation measures required per this section. Notice provided by email or by posting on the State Board's webpage shall be sufficient for all purposes related to notices and updates regarding the provisions of this section.

Authority: Sections 1058, 1058.5, Water Code

Reference: Article X, Section 2, California Constitution; Sections 100, 102, 104, 105, 109, 174, 275, 1011, 1051, 1052, 1058.5, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463