

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2025-0002**

TO AMEND AND READOPT AN EMERGENCY REGULATION THAT ESTABLISHES  
MINIMUM INSTREAM FLOW REQUIREMENTS AND PROVIDES CURTAILMENT  
AUTHORITY AND INFORMATION ORDER AUTHORITY IN THE SCOTT RIVER AND  
SHASTA RIVER WATERSHEDS

WHEREAS:

1. Western North America has been experiencing an ongoing and persistent drought over the past 20 years. Across California and within the Klamath Basin, the water years from 2013-2015 and 2020-2022 were some of the driest on record. Drought effects include lowered groundwater levels, earlier and prolonged tributary disconnections, declining fish populations, impeded salmonid migration, and impacts to water quality. Even after near to and slightly above average precipitation in the Scott River and Shasta River watersheds in water years 2022-2023 and 2023-2024, the Scott and Shasta Rivers continue to experience drought effects, and the salmon cohorts currently in and returning to these watersheds continue to be significantly suppressed by the successive drought cycles. Increases in weather extremes on a global and more local scale, as well as the extended drought conditions, exacerbate water challenges and heighten the risk of continued drought effects in 2025.
2. On May 10, 2021, Governor Newsom proclaimed a State of Emergency for 41 counties, including those in the Klamath River watershed ([May 2021 Proclamation](#)), in response to drought conditions. The May 2021 Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Klamath River watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions. On July 8, 2021, the Governor [expanded the emergency declaration](#) and called upon Californians to voluntarily reduce their water use by 15 percent. On October 19, 2021 the Governor expanded the [drought state of emergency](#) to the entire state of California.
3. On March 24, 2023, the Governor issued [Executive Order N-5-23](#), repealing many provisions of the various drought proclamations in light of significant precipitation, particularly in the Sierra Nevada range. However, the executive order specifically found that continued action is needed to abate drought harm to native fish in the Klamath River watershed. Executive Order N-5-23 directs the State Water Resources Control Board (State Water Board or Board) and California Department of Fish and Wildlife (CDFW) to evaluate minimum

instream flows and other actions to protect salmon, steelhead, and other native fishes in critical systems in the Klamath River watershed and work with water users, tribes, and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the State Water Board, in coordination with CDFW, is to consider emergency regulations to establish minimum instream flows to mitigate the effects of drought conditions.

4. On September 4, 2024, the Governor issued [Executive Order N-3-24](#), rolling back the drought state of emergency for 19 counties while noting continued action by the State is needed to address ongoing consequences of the drought emergency, including on drought-related harm to native fisheries, in the Klamath River watershed.
5. Under Article X, section 2 of the California Constitution, the right to use water extends only to an amount and manner of diversion that is reasonable in light of competing needs, including instream needs.
6. The public trust doctrine limits the development of a right to divert water without taking into account the impact of such diversion on instream uses of the waters, including fishery protection. The state has an affirmative duty to protect such uses whenever feasible, recognizing that all uses, including instream uses, are subject to the constitutional rule of reasonableness. (*National Audubon Society v. Superior Court* (1983) (en banc) 33 Cal.3d 419.)
7. The state retains continuing supervisory control over its waters under the public trust and reasonable use doctrines, and may revisit past water allocation decisions.
8. These rivers and watersheds also provide economic and social value to the residents of California for agricultural, fishery, forestry, and recreational uses.
9. The Scott River and Shasta River watersheds are tributaries to the Klamath River with significant ecological value, particularly for anadromous fish, including fall-run Chinook, coho salmon, and steelhead.
10. These rivers and fisheries hold cultural importance for California Native American Tribes, including the Quartz Valley Indian Reservation, the Shasta Nation, the Shasta Indian Nation, the Karuk Tribe, the Hoopa Valley Tribe, and the Yurok Tribe.

11. The Southern Oregon/Northern California Coast (SONCC) coho salmon is listed as a threatened species under both the federal and state Endangered Species Acts (ESAs). The Scott River and Shasta River coho salmon are both “core, functionally independent” populations of the SONCC Evolutionarily Significant Unit under the federal ESA, indicating that the Scott River and Shasta River have a critical role in the continuation and recovery of SONCC coho salmon. The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service has rated the species as having a high risk of extinction in the Shasta River and a moderate risk of extinction in the Scott River. CDFW has documented that the SONCC coho population in the Scott River represents the largest wild population in the Klamath Basin.
  
12. The Scott River and Shasta River are key streams in the Klamath Basin for the culturally and commercially significant fall-run Chinook salmon, with the Shasta River supporting roughly 10 to 30 percent of the natural Klamath River watershed fall-run Chinook salmon population over the last decade. The Scott River population has contributed an average of 9 percent of the total wild run of Chinook salmon in the Klamath River since record-keeping began in 1978. The fall-run Chinook salmon has high commercial importance and comprises one of the major stocks sought by commercial ocean fisheries. Coastal ocean fishing-dependent communities have suffered severe economic impacts due to decreases in fish numbers and related harvest limitations. Low returns of Klamath fall-run Chinook salmon have resulted in a complete closure of hundreds of miles of the coast to commercial fishing multiple times in the past 15 years, including in 2024. Low returns in the Sacramento River have also contributed to closures of the salmon fishery over the last 15 years.
  
13. In addition to the closure of commercial ocean fishing, the in-river tribal and commercial fisheries have closed multiple times in the past decade when the numbers of returning fall-run Chinook are low, including at times foregoing even tribal ceremonial fishing.
  
14. On June 16, 2021, the California Fish and Game Commission listed the Upper Klamath-Trinity River Spring Chinook Salmon as threatened under the California Endangered Species Act. The spring-run Chinook no longer returns to the Scott and Shasta Rivers, though the run was present historically.
  
15. Steelhead in the Scott River and Shasta River watersheds are part of the federally-designated Klamath Mountains Province (KMP) Distinct Population Segment (DPS). KMP steelhead are a United States Forest Service Sensitive species, and summer-run steelhead in this DPS are a CDFW recognized species of special concern. Steelhead populations have declined dramatically in the Klamath River watershed compared to historical levels. While recent monitoring in the Scott River and Shasta River watersheds is incomplete, the

trends in those watersheds similarly show significant decline, with both watersheds having record-low adult returns in 2022.

16. The Scott River was listed as impaired for temperature in 1998, pursuant to Section 303(d) of the federal Clean Water Act. The Scott River Sediment and Temperature Total Maximum Daily Load (TMDL) identifies five anthropogenic factors that drive stream temperatures, including stream flow via surface diversion and stream flow via changes to groundwater accretion. The Shasta River was listed as impaired for adverse dissolved oxygen conditions in 1992 and for temperature in 1994. The Shasta River Temperature and Dissolved Oxygen TMDL identifies spring inflow as critical for the temperature impairment, stream temperature and flow as a driver for dissolved oxygen impairment, and the need for an additional 45 cubic feet per second (cfs) of cold water in the Shasta River. Low flows thus contribute to temperature and dissolved oxygen failing to meet the objectives set to protect the beneficial use of cold-water fishery protection.
17. Anadromous fishery declines have multi-pronged causation, including factors related to ocean conditions, predation, low instream flows, land uses, and water quality. Low flows in key tributary streams, including the Scott River and Shasta River, are a contributor to such declines that interfere with migration, incubation, rearing, and food production (including healthy benthic macroinvertebrate populations), and can inhibit recovery. Adequate flows are necessary for spawning, incubation, outmigration and rearing habitats, but are not in and of themselves sufficient, to ensure species survival and recovery.
18. Forestry and small-scale agriculture, and in particular raising cattle and cultivating alfalfa, grain, and pasture for livestock consumption are the predominant land uses in the Scott River and Shasta River watersheds.
19. In June 2021, CDFW submitted to the State Water Board survival-level flows for the Scott River and Shasta River watersheds in drought years. These flows were routinely not met in many water year types.
20. In August 2021 the State Water Board adopted drought emergency minimum flows for both rivers, based on CDFW's June 2021 recommendation. The emergency regulation was readopted with minor amendments in June 2022 and expired on August 1, 2023. A similar drought emergency minimum flow regulation was adopted in December 2023, and became effective February 1, 2024. It is set to expire on February 1, 2025. The current drought emergency regulation provides the State Water Board with curtailment authority to protect minimum instream flows, establishes minimum human health and safety and livestock watering exceptions, and limits inefficient

diversions for livestock during the September through March timeframe. On July 23-24, 2024 and June 7, 2024, the State Water Board issued curtailment orders in the Scott River and Shasta River watersheds, respectively, to protect minimum instream flows. Since that time, curtailment of water rights has been managed adaptively to maintain minimum instream flows while maximizing water right diversions.

21. During the drought, as refinements and new information were developed, the State Water Board implemented amendments to the flows recommended in CDFW's June 2021 letter, based on CDFW recommendations. The Board and CDFW also considered and rejected other recommendations for changes to the minimum flows, as insufficiently supported or contraindicated by available evidence. CDFW continues to support these flows based on available information and remains open to consideration of new information.
22. The best available information indicates that the flows set forth in the attached emergency regulation are the appropriate baseline minimum flows required for fisheries, even in a severe drought.
23. Since August 2021, the Shasta River largely met the drought emergency minimum flow requirements during the effective period of the regulations, with curtailment of all but the most senior diversions in 2022 and more limited curtailments in fall of 2021, in 2023, and in 2024. The spring-fed Shasta River provides sufficient, year-round flows such that diversion management alone can reliably sustain the drought emergency minimum flow requirements. When the drought emergency regulation expired in August of 2023, flows on the Shasta River sharply declined – local coordination and diversion management efforts improved flows, but not to the flows required by the drought emergency regulation.
24. Diversion management under the emergency regulations is an important, but less determinative tool on the snowmelt- and groundwater-level-driven Scott River. The Scott River may not maintain the baseline thresholds to support fish in the most extreme drought situations. When flows are at such minimum levels, every increment of water is important to the species. Conditions improved in the Scott River when the emergency regulation was in place, but flows continued to fall below minimum requirements for at least some period in the critical late summer and early fall adult salmonid migration season. The improved conditions include higher flows than under recent similar water years; increased wetted area and improved water quality conditions in isolated pools; improved and earlier tributary connection to the mainstem; improved groundwater levels; and improved surface flows after less precipitation. The cause of these improvements is not only management under the regulations (i.e., curtailment, reductions in livestock watering

diversions, and reductions in overlying groundwater use through widespread adoption of local cooperative solutions) but is also influenced by other management efforts (including winter groundwater enhancement and restoration efforts that enhance natural groundwater infiltration) and by natural conditions (including temperature, precipitation timing, and precipitation amounts). The relative contribution of such varying factors is under evaluation but all of the factors – including but not limited to diversion reductions – are likely important in sustaining the river to provide minimum conditions for fish.

25. Prior to the drought proclamation in 2021, the State Water Board, CDFW, diverters, tribes, federal agencies, nonprofit organizations, and other interested parties have undertaken efforts to protect the fish in the Scott River and Shasta River watersheds, short of curtailments for minimum instream flows. These efforts include: sending notices of water unavailability in the Scott River watershed; distributing educational materials to promote voluntary conservation efforts; providing information on funding availability at public meetings; making planting decisions for a dry year; contracting to cease diversions earlier in the year; coordination of diversions to protect redds and juvenile salmon; dedications of water to instream use; and funding and technical assistance for restoration and forbearance actions and groundwater substitutions to improve water temperatures. Such efforts improved the availability of water, including for instream uses, but did not result in meeting flows necessary to adequately protect fish in the ongoing drought situation.
26. Decades of flow and hydrologic data for the Scott River and Shasta River show that these streams are unlikely to maintain minimum flows for Chinook, coho, and steelhead over the next year without reduced or curtailed water use. Flows in the Scott and Shasta Rivers do not regularly achieve the drought minimum flows except in very wet water years in large part due to anthropogenic modifications of the watersheds and diversion. Without a regulation to protect instream flows or to provide greater incentives for voluntary action and cooperation, voluntary efforts have not yet been sufficient to adequately support important fisheries in the Scott River and Shasta River watersheds.
27. In recent years the Board has received requests for the continuation of emergency regulations that provide for minimum flows as well as the establishment of permanent flows for the Scott River and Shasta River watersheds. On October 16, 2024, the Board adopted [Resolution No. 2024-0036](#) directing staff to, among other things, in the immediate term, solicit input on the potential readoption of the emergency regulation and any proposed changes thereto, as well as potential alternatives to the regulation that are supported by diverse interests in the

watersheds, are enforceable, are implementable at the local level, and extend longer than the year-term of an emergency regulation.

28. No proposals for alternatives to readoption of the emergency regulation were received that met the criteria in the resolution, though stakeholders have indicated that continued work towards a non-regulatory path to flow management continues. At this point, there is no viable alternative for protecting minimum flows to protect drought-impacted fisheries outside of an emergency regulation.
29. The attached emergency regulation provides for integration of broad local alternatives, including watershed-wide and tributary-level local cooperative solutions to substitute for regulation implementation, should these emerge.
30. The Board continues to receive comments and proposals for modifications to the summer flows in the Shasta River watershed, and suggestions that alternative flows could improve summer temperatures and habitat in the Shasta Canyon area. CDFW has indicated its interest in ongoing discussions and in developing new information related to this topic. The attached emergency regulation provides specific flexibility to explore such flow alternatives for a limited time upon CDFW's recommendation.
31. Members of the agricultural community and nongovernmental organizations provided comments in support of flow requirements at additional locations in the watershed such as the confluences of key tributaries with the mainstem Scott River. However, there is insufficient information and infrastructure to support establishment and implementation of such flow requirements as part of this emergency regulation. For example, the watersheds lack gages with sufficient history and quality controls to support implementation of flows at additional locations at this time.
32. The Karuk Tribe, Environmental Law Foundation, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources filed a petition with the State Water Board on May 23, 2023, requesting that the Board initiate a rulemaking to establish permanent minimum flows on the Scott River. In a November 20, 2024 letter these parties strongly encouraged the State Water Board to readopt the emergency regulation noting the Scott and Shasta Rivers cannot return to a situation where they have no legal flow protections and that the emergency regulations serve as a bridge to a permanent regulation to protect flows in perpetuity.

33. On July 20, 2023, CDFW submitted a letter that emphasized the potential benefits of extending the drought emergency minimum flows as an interim backstop during establishment of long-term minimum flows. In a November 20, 2024 letter, CDFW noted it believes readoption of the emergency regulation is needed to protect fish species including state and federally threatened coho salmon, steelhead, Chinook salmon, and native endemic fish in the Shasta River and Scott River watersheds and that it supports the use of emergency drought flows to meet this immediate instream flow protective need.
  
34. On January 17, 2024, California Coastkeeper Alliance, Friends of the Shasta River, Mt. Shasta Bioregional Ecology Center, Water Climate Trust, Shasta Waterkeeper, Save California Salmon, and Environmental Protection Information Center filed a petition with the State Water Board requesting that the Board initiate a rulemaking to establish permanent minimum flows in the Shasta River based on a number of studies. In a November 20, 2024 letter these parties noted strong support for the Board's readoption of an emergency regulation as a stopgap while the Board works towards more robust and durable long-term management solutions.
  
35. There is a need to ensure that continued minimum human health and safety needs are met, notwithstanding the water shortage conditions. The California Water Code declares water supplies for consumption, sanitation, and cooking, as a human right (Wat. Code, § 106.3); identifies domestic use as the highest water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection (Wat. Code, § 350). In light of the need to curtail other uses of water in order of priority to ensure drought emergency minimum flows to support fish in the Shasta River and Scott River watersheds, regulatory action is needed in the Klamath River watershed this year to ensure that water right holders and claimants without other means to access water for basic human health and safety, fire prevention, and fire recovery efforts, are able to continue to access water for these uses under the regulation.
  
36. Division of Financial Assistance staff has been working closely with the Rural Community Assistance Corporation to provide funding for ongoing outreach in support of implementing the minimum human health and safety provisions for exceptions to curtailment in the regulation and to explore long-term solutions to address the drinking water needs of water insecure communities in Siskiyou County, including the Hmong and other disadvantaged communities in the Shasta River watershed whose primary water source is hauled water. Division of Water Rights staff have held meetings in the Shasta River watershed to discuss the regulations and participate in meetings with the



Division of Financial Assistance, Rural Community Assistance Corporation, and representatives of the Hmong community regarding the regulation and addressing the broader water supply needs of the Hmong and other disadvantaged communities. These efforts remain ongoing.

37. There is a need for regulatory action to ensure that water remains available for minimum livestock watering purposes, notwithstanding the drought conditions and the associated curtailment of water rights in order of priority. Cattle ranching is a primary economic activity in the Scott River and Shasta River watersheds, with pasture and growing of alfalfa comprising the predominant manner of land cultivation. California law recognizes the obligation to provide sufficient water for livestock (see Penal Code, section 597, subdivision (b)), and the emergency regulation will continue to provide reasonable amounts of water for livestock watering. (See Cal. Code Regs., tit. 23, section 697, subdivision (c).)
  
38. A number of diversions in the Scott River and Shasta River watersheds involve surface diversions of water through long, unlined ditches in order to provide for relatively small amounts of water for livestock. Diverting into these inefficient ditches can result in removing orders of magnitude greater amounts of water from the stream than will actually be used for livestock. These livestock diversions typically occur during the winter-early spring months, at the time when the water is often required throughout the watershed to enable adult salmon migration, as well as rearing, incubation, and juvenile migration. Water is needed in the adult salmon migration periods to provide cues to the salmon that it is time to migrate upstream, as well as ensure there are adequate flows for fish to move upstream and access tributaries where the salmon will incubate and rear. Water is needed during and after the adult salmon migration period to ensure redds are not dewatered and tributaries remain connected so juvenile salmon can move within the system.
  
39. Alternatives exist to provide water for livestock more efficiently and many people in both watersheds have developed other methods for livestock water delivery in recent decades. While it can be costly over the long term, it is possible for those who do not currently have such an alternative to divert water to trucks for delivery to livestock on a short-term basis. Ranchers may also implement long-term water conservation solutions for post-irrigation-season livestock watering, such as developing groundwater wells, purchasing heated troughs, lining ditches, or switching to piped diversions. There are financial resources available to assist ranchers in finding alternative livestock watering systems during the drought emergency. Such funding has been provided in the past and funding opportunities focused on installation and use of such livestock systems remains available to diverters in these watersheds.

40. While large diversions of water through inefficient ditches may in some circumstances provide for some amount of recharge of groundwater for later beneficial use, such recharge is uncertain, location-specific, and has not been quantified. Some water users in the Scott River watershed are engaging in groundwater recharge efforts under a temporary permit from the Board and are working with researchers to better understand the potential for managed groundwater recharge in the basin. Potential for additional recharge projects also exists and are being explored in the Shasta River watershed as well. The Siskiyou County Flood Control and Water Conservation District, which is the local groundwater sustainability agency for implementation of the Sustainable Groundwater Management Act, supports investigation of groundwater recharge, and has obtained significant funding for additional projects. Such projects and the associated data will provide information that can be used to understand the long-term potential for such projects in the watershed and to tailor groundwater recharge efforts in the most effective manner possible.
41. Diversion for livestock water is the largest water use following the conclusion of the irrigation season and can cause or contribute to tributary or mainstem disconnection or other conditions that prevent salmon from accessing appropriate spawning habitat. Additionally, diverting substantial portions of streamflow can inhibit juvenile migration or dewater of redds.
42. In light of the ongoing emergency, the flow fisheries need and the availability of alternative livestock water supply options, it is generally not reasonable to divert more than 10 times the amount of water that livestock require for drinking, as described in the reasonable water quantities for water rights applications (See Cal. Code Regs., tit. 23, section 697, subdivision (c).), during the September through March period unless certain flow conditions are met to protect the various fish life stages. Changes in the attached emergency regulation from the prior drought emergency regulations build on the experience of implementation of the prohibition on inefficient livestock watering diversions, and the determination that such diversions are not unreasonable during certain conditions. Such conditions include ensuring sufficient flows for the migration of fall-run Chinook salmon and coho salmon prior to diversions for inefficient livestock watering, there is sufficient flow to establish and maintain tributary connectivity with the mainstem river and ensure adult fish are able to migrate into tributaries to spawn, at least 90 percent of flow is bypassed at the point of diversion unless higher flows are present that provide for up to 80 percent bypass of flows at the point of diversion, diversions are managed to avoid disturbing redds, and appropriate reporting requirements.
43. Providing for livestock diversions through inefficient means under conditions described in the emergency regulation allows for potential groundwater

recharge outside of permitted projects, recognizing that the benefits of recharge are uncertain.

44. Building on the existing local cooperative solutions program, amendments to the existing regulation include several minor updates to clarify requirements and provide efficiencies for groundwater local cooperative solutions, including (a) providing for multi-year groundwater local cooperative solutions; (b) clarifying and updating inspection, application, and deadline requirements; and (c) updating the groundwater metering provisions, including requiring readings weekly rather than daily and explicitly providing for metering at the point of use rather than at the groundwater well. The “equal or better” provisions for local cooperative solutions were modified to allow for considerations related to future benefits and access to new information.
45. The amendments to the regulation also include provisions that provide for the implementation of temporary alternative flows in the Shasta River with concurrence from CDFW; provide for CDFW to notify the Board if flows are insufficient to support migration of adult fish into a tributary to limit inefficient livestock watering; delete outdated penalties; provide additional emphasis that water may be used for firefighting during curtailment; and provide for continuation of existing curtailment orders, petitions, certifications, or approvals of exceptions to curtailment without reissuance.
46. The California Salmon Strategy finds that adequate flows of cold water, including during drought and water shortage conditions, will help protect endangered and imperiled species when they are most at risk.
47. Through implementation of the emergency regulations and by working with representatives of state, local and federal agencies, tribes, environmental and agricultural interests, the State Water Board is continuing to gather and analyze data relevant to instream flows and balancing of water uses, including on groundwater dynamics, agricultural practices, stream connectivity, flows, and watershed responses to changing conditions and practices.
48. The State Water Board is under contract to develop a set of models to simulate the complicated hydrology of the Shasta River watershed including flows, groundwater levels, surface and groundwater interaction, water temperature, and water demands. Initial iterations of the groundwater model are being refined to include more recent climatic and groundwater level data, and geohydrologic parameters, and to improve integration of the surface water, groundwater, and water temperature models.

49. Similarly, the State Water Board is under contract to improve existing groundwater and surface water models in the Scott River watershed, including incorporation of more recent data and improved ability to model different management scenarios, including conservation measures and unimpaired flow.
50. In both watersheds, the Board is coordinating with Siskiyou County Flood Control and Water Conservation District's modeling efforts under the Sustainable Groundwater Management Act. These modeling efforts are documented in the Shasta Valley and Scott Valley Groundwater Sustainability Plans. The California Department of Water Resources has reviewed and approved both plans with corrective actions, including actions related to providing a current water budget and filling data gaps related to understanding groundwater conditions, including the location, volume, and timing of surface water depletions due to groundwater extraction.
51. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use to the fullest extent possible and the unreasonable use of water be prevented. Relevant to the current drought conditions, the California Supreme Court has clarified that "[w]hat may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 567.) The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367.) Further, the reasonable use doctrine extends to the adoption of drought emergency minimum instream flows under Water Code, section 1058.5 to protect specific species in critical watersheds, and to implementation of these through curtailment of diversions based on water rights priority. (*Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.) This regulation is in furtherance of article X, section 2 during this drought emergency.
52. Both the Scott River and Shasta River watersheds have groundwater that is closely interconnected with surface flows. Because of this, it is necessary to address both groundwater and surface-water in a curtailment regulation. Where groundwater and surface waters are interconnected, the "common source" doctrine applies, integrating the water rights and applying priorities without regard to whether the diversion is from surface water or groundwater. (*Hudson v. Dailey* (1909) 156 Cal. 617, 627–628.).

53. Adoption of an emergency regulation is necessary to address ongoing water shortages in the Klamath River watershed. This amended emergency regulation will enable the State Water Board to continue to act in a timely manner to protect vital flows for fisheries, and to enforce the water right priority system with respect to all water right holders and claimants, including groundwater diversions, while assuring water remains available for minimum health and safety and livestock watering needs.
54. Emergency regulations adopted under Water Code, section 1058.5 may remain in effect for up to one year.
55. Pursuant to Water Code, section 7, the State Water Board is authorized to delegate authority to staff.
56. The attached drought emergency regulation would continue to provide for a minimum level of fishery-protective flows, as recommended by CDFW. A drought emergency declaration for the Klamath watershed, including the Scott River and Shasta River watersheds, remains in effect, which allows the Board to readopt the emergency regulation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board readopts California Code of Regulations, title 23, Division 3, Chapter 2, Article 23.5, Sections 875.1, 875.3, 875.5, and 875.6, and re-adopts with amendments Sections 875, 875.2, 875.7, 875.8, and 875.9, as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designee, may make such changes;
4. This regulation shall remain in effect for one year after filing with the Secretary of State;

5. The State Water Board directs staff to process as expeditiously as possible any proposals for local cooperative solutions which may be offered as alternatives to curtailments;
6. The State Water Board directs staff to continue to work with CDFW to evaluate and refine the drought minimum instream flows adopted in this regulation if new scientifically-defensible information becomes available, including the potential evaluation of alternative flows in the Shasta River, and to continue to engage with affected stakeholders and other experts;
7. The State Water Board directs staff to continue work with stakeholders this year and in future years on voluntary efforts to meet instream flow needs and avoid curtailments;
8. The State Water Board directs staff to continue to develop and use hydrologic modeling tools in the Scott River and Shasta River watersheds to better understand and support the planning and implementation of groundwater recharge projects, curtailments, local cooperative solutions, and other water management strategies;
9. The State Water Board supports and encourages efforts to improve gaging resources in the Scott River and Shasta River watersheds and recognizes the need for external partners to carry forward and build on the Board's current gaging efforts with the United States Geological Service. Such gaging efforts are anticipated to provide support for the potential establishment of interim or permanent flows at additional locations in the watersheds, and as such the Board encourages entities and parties with interests in the watersheds to develop resources and knowledge to support reliable long-term gaging in these watersheds;
10. The State Water Board directs staff in the Division of Financial Assistance and Division of Water Rights to continue to work regarding domestic water needs with communities in the areas covered by the regulation. If staff identify that the regulation has resulted in unintended limitations on water delivery for minimum human health and safety needs, staff are directed to update the State Water Board at an upcoming meeting and to provide potential solutions, if possible; and

11. Except for purposes of enforcement of a curtailment order issued pursuant to this regulation, this regulation and any curtailment order issued hereunder shall not be cited as authority for, or evidence of, the validity or priority of any water right or claim affected or protected by this regulation. Given this, it would be inappropriate to consider compliance with the regulation to be an admission or waiver of any rights or claims of affected parties.

### CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 7, 2025.

AYE: Chair E. Joaquin Esquivel  
Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None

  
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Courtney Tyler  
Clerk to the Board

**Establishment of Minimum Instream Flow Requirements, Curtailment Authority, and Information Order Authority in the Scott River and Shasta River Watersheds**

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In Title 23, Division 3, Chapter 2, readopt Article 23.5, Sections 875.1, 875.3, 875.5, and 875.6, and amend Sections 875, 875.2, 875.7, 875.8, and 875.9

Article 23.5. Scott River and Shasta River Watersheds Drought Emergency Requirements

§ 875 Emergency Curtailment Where Insufficient Flows are Available to Protect Fish in Certain Watersheds

- (a) It is necessary 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. For this reason, surface water and groundwater shall not be diverted from the watersheds listed below at a diversion point or for the benefit of a place of use that is subject to a curtailment order, during the effective period of the curtailment order under this article, except as provided under sections 875.1, 875.2, or 875.3.
- (b) The Deputy Director for the Division of Water Rights (Deputy Director) may issue a curtailment order upon a determination that without curtailment of diversions, flows are likely to be reduced below the drought emergency minimum flows specified in subdivision (c), within the constraints detailed in this article. Curtailment orders shall be effective the day after issuance.
  - (1) Where flows are sufficient to support some but not all diversions, curtailment orders shall be issued, suspended, reinstated, and rescinded in order of water right priority provided in section 875.5. In determining which diversions should be subject to curtailment, the Deputy Director shall consider the need to provide reasonable assurance that the drought emergency minimum flows will be met with consideration of hydrologic, weather, and other conditions that influence flows.
  - (2) If maintaining the flows described in subdivision (c) would require curtailment of uses described in section 875.2 or 875.3, then the Executive Director may determine whether or not those diversions should be allowed to continue based on the most current information available regarding fish populations, human health and safety needs, livestock needs, and the alternatives available to protect human health and safety, livestock, and fish populations.



(3) The Deputy Director may determine not to issue curtailment orders, to issue curtailment orders to a smaller priority grouping described in section 875.5, or to suspend curtailment orders already issued in order of priority as described in section 875.5, as applicable, using information provided by the California Department of Fish and Wildlife described in section 875.1(c)(1)(B)-(D) or 875.1(c)(2)(B)-(D), as well as other information that could affect the need for curtailments to meet minimum flow needs for fisheries purposes, including weather forecasting, the need for flows to ramp up or down, the contributions of voluntary flow measures, and future flow needs.

(4) Curtailment orders and subsequent addenda issued under any prior version of this article shall not require reissuance or further action to remain effective under this amended regulation. Likewise, any petitions, certifications, or approvals of exceptions to curtailment under sections 875.1, 875.2, 875.3 shall not require further action under this amended regulation to remain effective.

(c) Drought Emergency Minimum Flows are as specified below.

(1) Scott River. The Scott River enters the Klamath River at United States Geological Survey River Mile 145.1.

(A) As measured in cubic feet per second at United States Geological Survey gage 11519500 located downstream of the city of Fort Jones at the northern end of Scott Valley (Scott River Mile 21), the natural flow of the system up to the following amounts:

Jan	Feb	Mar	Apr	May	June 1-23	June 24-30	July	Aug	Sept	Oct	Nov	Dec
200	200	200	150	150	125	90	50	30	33	40	60	150

(B) The California Department of Fish and Wildlife or the National Marine Fisheries Service may notify the Deputy Director that the pertinent life stage(s) of the pertinent species the flows are crafted to protect is not yet present, or is no longer present at the time anticipated. Additionally, the California Department of Fish and Wildlife, after coordination with the National Marine Fisheries Service, may notify the Deputy Director that lower, alternative flows at the Fort Jones gage, or alternative flows at a different point or points in the watershed, provide equal or better protection for the pertinent species' relevant life stages.

(2) Shasta River. The Shasta River enters the Klamath River at United States Geological Survey River Mile 179.5, at the junction of State Routes 263 and 96.

(A) As measured in cubic feet per second at United States Geological Survey gage 11517500 located near Yreka:

Jan	Feb	Mar 1-24	Mar 25-31	Apr	May	June	July	Aug	Sept 1-15	Sept 16-30	Oct	Nov	Dec
125	125	125	105	70	50	50	50	50	50	75	105	125	125

(B) The California Department of Fish and Wildlife or the National Marine Fisheries Service may notify the Deputy Director that the pertinent life stage(s) of the pertinent species the flows are crafted to protect is not yet, or is no longer present at the time anticipated.

(C) The California Department of Fish and Wildlife, after coordination with the National Marine Fisheries Service, may notify the Deputy Director that lower alternative flows at the Yreka gage, or alternative flows at a different point or points in the watershed, provide equal or better protection for the pertinent species' relevant life stages.

(D) The California Department of Fish and Wildlife, after coordination with the National Marine Fisheries Service, may propose that the Deputy Director implement, for a limited amount of time, alternative flows at the Yreka gage to gather temperature and other information to evaluate whether such alternative flows can provide equal or better protection for the pertinent species' relevant life stages. If such alternative flows are higher than the flows described in subsection (c)(2)(A), the proposal requires agreement from affected water right holders.

(3) Compliance with the drought emergency minimum flows will be determined by the Deputy Director.

(d) Notice

(1) 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).

- (2) The State Water Board has established the “Scott-Shasta Drought” email subscription and distribution list that water right holders, landowners, and other parties may join to receive drought-related notices and updates regarding curtailments in the Scott River and Shasta River watersheds. The State Water Board has also established a “Scott-Shasta Drought” webpage at: [https://www.waterboards.ca.gov/drought/scott\\_shasta\\_rivers/](https://www.waterboards.ca.gov/drought/scott_shasta_rivers/). Notice provided by email or by posting on the State Water Board’s drought webpage shall be sufficient for all purposes related to drought notices and updates regarding curtailment orders.

- (e) Suspension, reinstatement, or rescission of curtailment orders shall be noticed using the email subscription and distribution list or webpage described in subdivision (d)(2).

(f) Local Cooperative Solutions

- (1) Local cooperative solutions by individuals or groups may be proposed by petition to the Deputy Director as an alternative means of reducing water use to meet or preserve drought emergency minimum flows, or to provide other fishery benefits (such as cold-water refugia, localized fish passage, or redd protection), in lieu of curtailment as described in this section.

(A) Petitions to implement local cooperative solutions that coordinate diversions, share water, strategically manage groundwater and/or surface water for fisheries benefits, reduce annual water use, or engage in similar activities may be submitted to the Deputy Director at any time, except as noted in subsection (f)(4)(D)(ii).

(B) The Division of Water Rights and the Executive Director may coordinate with the California Department of Fish and Wildlife, National Marine Fisheries Service, the Scott River and Shasta River Watermaster District, the developers of any model or other information used as part of the petition, and others in evaluating local cooperative solutions.

(C) After or as part of approval of a petition, the Deputy Director shall not issue curtailment orders or shall suspend, rescind, or modify, as applicable, such orders already issued, affecting those rights relevant to the proposed local cooperative solution so long as the Deputy Director finds that any continued diversions under the local cooperative solution are reasonable and do not result in unreasonable harm to other legal users of water.

- (D) Deputy Director approval of a petition for a local cooperative solution may be subject to appropriate conditions, including metering, monitoring, and reporting requirements, to assure that no unreasonable injury to users of water will occur, that the terms and purpose of the petition or the associated underlying binding agreement will be met, and to provide information useful in responding to the ongoing drought.
- (E) The Deputy Director may delegate approval of any local cooperative solution to an Assistant Deputy Director for the Division of Water Rights.
- (F) The Deputy Director may rescind approval of a local cooperative solution and issue or reinstate curtailment orders for the relevant water rights in the order described in section 875.5, notwithstanding approval of the local cooperative solution, if monitoring or other reliable information indicates that parties are not meeting their obligations under the local cooperative solution or the agreement is not providing the benefits outlined in the local cooperative solution, or based on an objection filed under (f)(2).
- (G) A coordinating entity for the purposes of this section shall refer to an entity which possesses the expertise and ability to evaluate and require performance of the commitments made in a local cooperative solution, and which commits that:
  - (i) Evaluation of local cooperative solution proposals and inspections shall be conducted by representatives who lack a financial or close personal interest in the outcome, and
  - (ii) Information collected on compliance with local cooperative solutions is provided to the State Water Board monthly and upon request. The entity shall undertake data collection (including metering data) and inspections, either by itself or in coordination with State Water Board staff, sufficient to ensure implementation of local cooperative solutions, including inspection or data collection targeted within two weeks of completion of commitments to cease pumping as of a date certain.

With such commitment, the coordinating entity may be the California Department of Fish and Wildlife, the National Marine Fisheries Service, the Scott Valley and Shasta Valley Watermaster District, the Siskiyou or Shasta Valley Resources Conservation District, a nonprofit organization with expertise and

experience in water-saving transactions, or a similarly qualified public entity.

(H) Petitions may be submitted for time periods less than or greater than a single irrigation season, unless otherwise indicated.

(I) For local cooperative solutions that propose providing flow or other benefits on a watershed-wide or tributary basis, the petitioners must provide substantiation that they control sufficient flow in the system to allow the agreed-upon terms to be met and provide the anticipated benefits proposed.

(J) While the State Water Board can assist in evaluation and development of local cooperative solutions, the ultimate responsibility to provide information regarding the benefits, implementation, potential injury to other legal users, expected flow impact, and other information necessary to evaluate the proposal lies with the petitioner(s).

(2) Diversions covered by a local cooperative solution approved by the Deputy Director pursuant to this section are subject to this article and violations of such an approved local cooperative solution shall be subject to enforcement as a violation of this article. Notice of petitions and decisions under this section will be posted as soon as practicable on the State Water Board's drought webpage described in subdivision (d)(2). Normally, notice of the local cooperative solution petition shall post on the website at least one week prior to a decision on the merits; however, the Deputy Director may issue a decision under this article prior to providing such notice. Any interested person may file an objection to the petition or decision. The objection shall indicate the manner of service upon the petitioner. The State Water Board will consider any objection, and may hold a hearing thereon, after notice to all interested persons.

(3) The Division of Water Rights, California Department of Fish and Wildlife, National Marine Fisheries Service, Scott Valley and Shasta Valley Watermaster District, or North Coast Regional Water Quality Control Board may install and maintain additional gages in the Scott River and Shasta River watersheds. The gages may be used to evaluate compliance with the flow requirements defined in subdivisions (c)(1) and (c)(2) on a watershed or tributary scale, as needed. Diverters or other entities may also request to install and maintain a gage or use an existing gage to support new flow requirement compliance points by submitting a written request with supporting data and information to the Deputy Director for approval.

(4) The Deputy Director, relying on reasonable assumptions regarding probability, risk, and impact in light of the data limitations in the watersheds, the limited duration of the local cooperative solution, and the lack of certainty regarding future flow conditions, may approve a petition to implement local cooperative solutions under this article as follows:

(A) For watershed-wide cooperative solutions: The Executive Director determines that a watershed-wide local cooperative solution will provide sufficient assurance that the flows in subdivision (c)(1) or (c)(2) are achieved for a specific time period, considering the amount of flow anticipated and the level of assurance that flows made available by agreements will be protected.

(B) For tributary-wide local cooperative solutions: The Deputy Director may approve the petition submitted under this article by a diverter or group of diverters that provides for tributary-wide benefits if:

(i) Sufficient information allows the Deputy Director to identify the appropriate contribution of the tributary to the flows identified in subdivision (c)(1) or (c)(2), and the Executive Director makes a finding that a local cooperative solution is sufficient to provide the pro-rata flow for that tributary. The Deputy Director may approve this solution regardless of whether the flows identified in subdivisions (c)(1) and (c)(2) are being met; or

(ii) The California Department of Fish and Wildlife finds that the in-tributary or downstream benefits are equal to or greater than curtailment of petitioners' water diversions, as described in this article. ~~the anticipated contribution to protections provided by the flows in subdivision (c)(1) or (c)(2).~~ Such assessment may include consideration of multi-year benefits of restoration projects and access to information that would not otherwise be available. The Deputy Director may approve this solution regardless of whether the flows identified in subdivisions (c)(1) and (c)(2) are being met.

(C) For individual or small group local cooperative solutions: In the absence of applicable watershed-wide or tributary-specific local cooperative solutions, the Deputy Director may approve a petition submitted under this article:

- (i) Where the watershed-wide flows in subdivision (c)(1) or (c)(2) and tributary-specific pro-rata flows established by the Deputy Director cannot be guaranteed, and there is a binding agreement under which water users have agreed to cease diversions in a specific timeframe. Such binding agreement may be made with a coordinating entity. Where the diverter or coordinating entity submits a petition under this subdivision that includes a certification that diversion under a specified right has ceased for a certain time period, the Deputy Director shall approve the petition unless there is evidence that the diversion is nonetheless occurring.
  - (ii) Where an individual diverter or sub-tributary group of diverters has entered into a binding agreement with the California Department of Fish and Wildlife or the National Marine Fisheries Service to perform actions for the benefit of anadromous salmonids, and the California Department of Fish and Wildlife makes a recommendation for an exemption to curtailment based on an assessment that the benefits of the actions to anadromous fish in a specific time period are equal to or greater than the protections provided by ~~their contribution to flow described in section 875, subdivision (c)(1) or (c)(2) for that time period~~ curtailment of the petitioners' water diversions as described in this article. Such assessment may include consideration of multi-year benefits of restoration projects and access to information that would not otherwise be available.
- (D) For overlying or adjudicated groundwater diversions for irrigated agriculture described under in section 875.5, subdivision (a)(1)(A)(ix) [Scott River] or section 875.5, subdivision (b)(1)(C) [Shasta River] the Deputy Director may approve a groundwater-basin-wide, groundwater-sub-basin-wide, or any number of individual local cooperative solutions where:
- (i) The proposal may be based on a binding agreement made with a coordinating entity with primary responsibility to verify implementation of the local cooperative solution.
  - (ii) For individual proposals, the proposal must be submitted no later than April 15 and must be implemented during the entirety of the irrigation season (including during pendency of approval), unless the proponent withdraws. The Deputy Director may waive the deadline on demonstration of good cause and evidence of implementation during the entirety of the irrigation season.

(iii) The proposal ~~describes any existing groundwater~~ includes a description of metering in place for groundwater well extractions, and a proposal to meter and record such extractions or applications on weekly basis ~~daily~~ and to report monthly to the Deputy Director (or the coordinating entity, if so agreed as applicable), except as described below. The State Water Board has funding and technical support available to support some amount of metering, and those interested in such assistance are encouraged to promptly contact the State Water Board.

- a. The Deputy Director may waive this requirement for groundwater wells irrigating less than 30 acres. In determining whether to waive the requirement, the Deputy Director may consider, inter alia, distance of the groundwater well from surface water and whether the groundwater well would provide uniquely useful information in light of other metered information being provided. The Deputy Director may require other information in lieu of metering in such an instance.
- b. When a meter is not currently installed and may not be installed prior to the start of the irrigation season, the petitioner may submit a time schedule as part of a proposal that describes and substantiates the efforts, actions, and timelines for installation of a meter. The Deputy Director may approve a proposal with a reasonable time-schedule, and upon a finding that the proponent has taken reasonable steps to procure and install a meter, including coordination with the State Water Board or another entity with funding and/or expertise in meter installation.
- c. The Deputy Director may waive the requirement upon a determination that metering in a particular instance is not feasible.

(iv) The proponent(s) agrees to allow compliance inspections with 24-hour notice-, including notice by e-mail or telephone. Compliance inspections may include observations, interviews, note-taking, and obtaining other information to determine and document compliance that may include taking relevant Global Positioning System (GPS) coordinates, taking photographs of relevant matters, review of records, and similar actions.



- (v) For percent-based reduction in pumping local cooperative solutions:
- a. For the Scott River: The proposal provides at least:
    - 1. A net reduction of water use of 30 percent throughout the irrigation season (April 1 – October 31); and
    - 2. A monthly reduction of 30 percent in the July through October time period.
  - b. For the Shasta River: The proposal provides at least:
    - 1. A net reduction of water use of 15 percent throughout the irrigation season (March 1 – November 1); and
    - 2. A monthly reduction of 15 percent in the June through September time period.
  - c. The relevant water use reduction shall generally be based on a comparison to the 2020, 2021, 2022, or 2023 irrigation season, and may be demonstrated by evidence that provides a reasonable assurance that the change in farming practice or other action results in at least the relevant proportionate reduction in water use. Such evidence may include but is not limited to: pumping reports; actions that will be taken to reduce water use; estimation of water saved from conservation measures or changes in irrigation or planting decisions; and electric bills. However, if evidence for the amount of water applied for the 2020, 2021, 2022, or 2023 irrigation seasons indicates a base rate of applied water that is higher than 33 inches per year for alfalfa, 14 inches per year for grain, or 30 inches per year for pasture, then the base rate of applied water shall be the aforementioned values unless the proponent makes an additional showing that a higher base rate number is an appropriate comparison in light of relevant information that can include but is not limited to multi-year practices, soil type, and irrigation methods.
  - d. In implementing a local cooperative solution approved under this subdivision (f)(4)(D)(v), a diverter or water user may adjust the timing of the actions planned to

meet the requirements of subdivision (f)(4)(D)(v)a or (f)(4)(D)(v)b, by up to one week as an adaptive response to precipitation or cool weather, if the shift in timing does not reduce the total irrigation season water savings. For example, a diverter may postpone a planned irrigation rotation for one week if rain or cool weather allows for greater time between rotations than initially planned, even if the shift would trigger a failure to meet the monthly reductions described in subdivision (f)(4)(D)(v)a.2. or (f)(4)(D)(v)b.2.

1. The diverter or user must provide the coordinating entity and the Deputy Director at least three (3) business days notice of the intent to shift actions, including the reason for the shift and a demonstration that it will continue to meet the approved irrigation season water savings.
2. The diverter or user may implement the change unless the Deputy Director disapproves the shift based on a failure to meet the requirements of this subdivision. Signed binding agreements do not need revision to incorporate this subdivision (f)(4)(D)(v)d. or actions thereunder.

(vi) Graduated Overlying Groundwater Diversion Cessation Schedules: The Deputy Director may approve a petition that provides for cessation of overlying groundwater diversions on one of the following two schedules, after evidence of compliance with the terms is evaluated. Such evidence shall include a demonstration that the proposal reduces irrigation as compared to standard practice on the property (e.g., practice in a similar unregulated year), taking crop rotation and number of alfalfa cuttings into account, unless not applicable (e.g., not for pasture).

- a. Option 1: Diversion to irrigate the following percentages of irrigated acres shall cease by the dates below:
  1. 15 percent by July 15;
  2. 50 percent by August 15; and

3. 90 percent by August 31, with a maximum of 8 inches of water to be applied to the remaining 10 percent of irrigated acres during the remainder of the irrigation season. This 10 percent can be on land previously fallowed.

b. Option 2: Diversion to irrigate the following percentages of irrigated acres shall cease by the dates below:

1. 20 percent by July 20;
2. 50 percent by August 20; and
3. 95 percent by September 5, with a maximum of 6 inches of water to be applied to the remaining 5 percent of irrigated acres during the remainder of the irrigation season. This 5 percent can be on land previously fallowed.

(vii) Best Management Practices Local Cooperative Solution:

The Deputy Director may approve a petition that incorporates all of the following:

- a. Use of a low-energy precision application (LEPA) system on all irrigated acreage, including no irrigation of corners after June 15 and no use of end guns.
- b. Use of soil moisture sensors to inform irrigation timing, with records available for inspection by the coordinating entity, if applicable, and/or State Water Board.
- c. In years with a snow pack of 80 percent or less of the Department of Water Resources' California Data Exchange Center's first May snow water equivalent station average (or the average of the first April measurement if May snow pack measurements are not gathered in the irrigation year) in the Scott River watershed, or with a water year determination of dry or very dry in the Shasta River watershed, as determined under Table 2 of the March 2021 Montague Water Conservation District water operation plan (hereby incorporated by reference), cessation of irrigation on 90 percent of irrigated acreage by August 31, with a maximum of two (2) inches of water/acre to be applied to

the remaining 10 percent of irrigated acres for existing alfalfa fields and grain, or four (4) inches of water/acre for pasture or new alfalfa plantings, during the remainder of the irrigation season.

(viii) A diverter may propose a local cooperative solution for all or a portion of their agricultural lands. In considering approval of a proposed local cooperative solution for a portion of irrigated land or affecting only certain diversions exercised by a diverter, the Deputy Director can require assurance that water use is not increased on lands outside the local cooperative solution in a manner that undermines the groundwater reductions achieved through the local cooperative solution. For example, the Deputy Director may consider whether increasing groundwater pumping on lands outside the area proposed will provide increased run-off to lands that otherwise would have reduced water application or consider whether a proposed local cooperative solution presents a water savings beyond that achieved by a standard grain rotation.

(ix) Overlying groundwater local cooperative solutions may be crafted or amended to allow for enhanced use of valid surface water rights as compared to previous years, in light of the potential for groundwater recharge benefits. Such local cooperative solutions shall include support for an anticipated improvement in groundwater elevations and/or instream benefits and may require monitoring for evaluation of benefits to groundwater elevation and/or instream conditions.

(E) Where a diverter receives a curtailment order for fewer water rights than are used on his or her property, the Deputy Director may approve a petition for a comparable reduction in use of a more senior right in favor of continuing diversion under the more junior right otherwise subject to curtailment where the petition provides reliable evidence sufficient to support the following findings:

- (i) The change does not injure other legal users of water, including by reducing the contribution to flows described in subdivision (c) that other users would rely on;
- (ii) The change does not result in an increased consumptive use of water; and

- (iii) The change does not result in elevation of water temperature above that which would occur from curtailing the original source.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art X, Sec. 2; Sections 100, 104, 105, 109, 186, 275, 1011, 1011.5, 1051.1, 1058.5, 5106, Water Code; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224; *Stanford Vina Ranch Irrigation. Co v. State of California* (2020) 50 Cal.App.5th 976.

#### § 875.1 Non-Consumptive Uses

- (a) Diversion and use described in this section under any valid basis of right may continue after issuance of a curtailment order under this article without further approval from the Deputy Director, subject to the conditions set forth in this section. Any diverter wishing to continue diversion under this subdivision must submit to the Deputy Director a certification which describes the non-consumptive use and explains, with supporting evidence, how the diversion and use do not decrease downstream flows in the applicable watershed. The Deputy Director may request additional information or disapprove any certification if the information provided is insufficient to support the statement or if more convincing evidence contradicts the claims. If a certification submitted pursuant to this section is disapproved, the diversions are subject to any curtailment order issued for that right. Exceptions to curtailment under this section apply to:
  - (1) Direct surface diversions solely for hydropower if discharges are returned to the stream from which they are withdrawn, and water is not held in storage.
  - (2) Direct surface water or groundwater diversions dedicated to instream uses for the benefit of fish and wildlife pursuant to Water Code section 1707, including those diversions that divert water to a different location for subsequent release. This subdivision only applies where the location of release is hydraulically connected to the basin or watershed from which it was withdrawn.
  - (3) Direct surface water or groundwater diversions where the Deputy Director, the California Department of Fish and Wildlife, and the Executive Officer of the North Coast Regional Water Quality Control Board have approved a substitution of releases of either stored water or groundwater into the Scott River or Shasta River or a tributary thereof for the benefit of fish and wildlife such that there is not anticipated to be a measurable net decrease

in stream flow as a result of the diversion at the confluence of the tributary with the mainstem of the Scott River or Shasta River, or the next downstream United States Geological Survey gage, as applicable. The release of water does not have to be conducted by the owner of the water right proposed for the continued diversions, provided an agreement between the water right holder and the entity releasing the water is included in the proposal. The party proposing the substitution of releases shall provide documentation supporting no measurable decrease in stream flow is anticipated as a result of the release of water. The Deputy Director may require reporting and monitoring as part of any approval.

- (4) Other direct diversions solely for non-consumptive uses upon a demonstration that the diversion and use do not decrease downstream flow.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 187, 275, 348, Water Code

#### § 875.2 Minimum Human Health and Safety Needs

- (a) Definition: For the purposes of this article, “minimum human health and safety needs” refer to the amount of water necessary to prevent adverse impacts to human health and safety, for which there is no feasible alternate supply. “Minimum human health and safety needs” include:

- (1) Minimum domestic water uses, including water for human consumption, cooking, or sanitation purposes. Further, minimum domestic water uses include incidental uses necessary for sustenance, such as non-commercial vegetable gardens, and domestic animals but do not include commercial irrigation or commercial livestock. As necessary to provide for minimum domestic water use, water diverted for minimum human health and safety needs may include water hauling and bulk water deliveries, so long as the diverter maintains records of such deliveries and complies with the reporting requirements of section 875.6, and so long as such diversion and use is consistent with a valid water right.
- (2) For Urban Water Suppliers, as defined in Water Code section 10617, water uses allowed under and in accordance with the strictest stage of that supplier’s adopted Water Shortage Contingency Plan as part of its Urban Water Management Plan.
- (3) Water supplies necessary for energy sources that are critical to basic grid reliability, as identified by the California Independent System Operator,

California Public Utilities Commission, California Energy Commission, or a similar energy grid reliability authority.

- (4) Water supplies necessary to prevent tree die-off that would contribute to fire risk to residences, and for maintenance of ponds or other water sources for firefighting, in addition to water supplies identified by the California Department of Forestry and Fire Protection or another appropriate authority as regionally necessary for fire preparedness or post-fire recovery and reforestation efforts.
  - (5) Water supplies identified by the California Air Resources Board, a local air quality management district, or other appropriate public agency with air quality expertise, as necessary to address critical air quality impacts to protect public health.
  - (6) Water supplies necessary to address immediate public health or safety threats, as determined by a public agency with health or safety expertise.
  - (7) Other water uses necessary for human health and safety which a state, local, tribal, or federal health, environmental, or safety agency has determined are critical to public health and safety or to the basic infrastructure of the state. Diverters wishing to continue diversions for these uses must identify the human health and safety need, include approval or similar relevant documentation from the appropriate public agency, describe why the amount requested is critical for the need and cannot be met through alternate supplies, state how long the diversion is expected to continue, certify that the supply will be used only for the stated need, and describe steps taken and planned to obtain alternative supplies.
- (b) Diversions described in this section under any valid basis of right may be authorized to continue notwithstanding curtailment of that right, subject to the conditions set forth in this section. A diversion that would otherwise be subject to curtailment may be authorized if:
- (1) The diversion is necessary for minimum human health and safety needs; and therefore
  - (2) The diversion is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the full extent they are capable, and that waste and unreasonable use be prevented, notwithstanding the effect of the diversions on more senior water rights or instream beneficial uses.
- (c)
- (1) Diversions for minimum human health and safety needs under any valid basis of right of not greater than 55 gallons per person per day may continue notwithstanding curtailment of that right without further approval

from the Deputy Director, subject to the conditions set forth in this section. Any diverter wishing to continue diversion under this subdivision must submit to the Deputy Director a certification of compliance with the requirements of subdivisions (c)(1)(A)-(E), below. The Deputy Director may request additional information or set additional requirements on continued diversion.

- (A) Not more than 55 gallons per person per day will be diverted and used for human health and safety purposes under all bases of right.
  - (B) The diversion is necessary to serve minimum human health and safety needs after all other alternate sources of water have been used. To the extent other water sources are available, those sources will be used first and the total used will not exceed 55 gallons per person per day.
  - (C) The diverter and all end users of the diverted water are operating under the strictest existing conservation plan for that place of use, if such a plan exists for the area or service provider. If additional approvals are required before implementation of the conservation regime, the diverter must certify that all possible steps will be taken immediately to ensure prompt approval.
  - (D) If the diverter or anyone using water under the diverter's basis of right is an Urban Water Supplier, it has declared a water shortage emergency condition and either already has adopted regulations and restrictions on the delivery of water or will adopt conservation and water delivery restrictions and regulations within a timeframe specified by the Deputy Director as a condition of certification.
  - (E) The diverter, or the end user where the end user is purchasing water for human health and safety use, has either pursued steps to acquire other sources of water, but has not yet been completely successful, as described in an attached report, or the diverter or end user, where appropriate, will pursue the steps in an attached plan to identify and secure additional water.
- (2) To the extent that a diversion for minimum human health and safety needs requires more than 55 gallons per person per day, or cannot be quantified on the basis of gallons per person per day, continued diversion of water notwithstanding curtailment of the applicable water right requires submission of a petition demonstrating compliance with the requirements of subdivisions (c)(1)(B)-(E) above and (c)(2)(A)-(F) below, and approval by the Deputy Director. The Deputy Director may condition approval of the petition on implementation of additional conservation measures and



reporting requirements. Any petition to continue diversion to meet minimum human health and safety needs of more than 55 gallons per person per day must:

- (A) Describe the specific circumstances that make the requested diversion amount necessary to meet minimum human health and safety needs.
  - (B) Estimate the amount of water needed.
  - (C) Certify that the supply will be used only for the stated need.
  - (D) Describe conservation steps already taken and any other additional steps the diverter or end user, as appropriate, will take to reduce diversions and consumption.
  - (E) Provide the timeframe in which the diverter or end user expects to reduce usage to no more than 55 gallons per person per day, or why minimum human health and safety needs will continue to require more water.
  - (F) As necessary, provide documentation that the use meets the definition of minimum human health and safety needs. For water supplies necessary for fire prevention or firefighting purposes, substantiating documentation, such as guidance from the local fire department, local city or county ordinances, or equivalent local requirements, may be requested by the Deputy Director.
- (d) For public water systems with 15 or greater connections and small water systems of 5 to 15 connections, gallons per person per day shall be calculated on a monthly basis and the calculation methodology shall be consistent with the State Water Board's Percentage Residential Use and Residential Gallons Per Capita Daily Calculation (PRV and R-GPCD Calculation), dated September 22, 2020, which is hereby incorporated by reference.
- (e) For water supplies necessary for electrical power generation critical to grid reliability, substantiating documentation, such as a letter of support from California Independent System Operator, California Public Utilities Commission, California Energy Commission, or a similar energy grid reliability authority, must be provided.
- (f) To the extent necessary to resolve immediate public health or safety threats, a diversion subject to curtailment may continue while a petition under subdivision (b)(2) is being prepared and is pending. This subsection includes, but is not limited to, diversions for fire-fighting. The Deputy Director may require additional information to support the initial petition, information on how long the diversion is

expected to continue, and a description of other steps taken or planned to obtain alternative supplies.

- (g) Notice of petitions and decisions under this section and sections 875.3 and 875.1 will be posted as soon as practicable on the State Water Board's drought webpage. The Deputy Director may issue a decision under this article prior to providing notice.
- (h) Notwithstanding California Code of Regulations, Title 23, section 1064, a petition pursuant to Water Code section 1435 or 1725 solely for the provision of water for minimum human health and safety shall be accompanied by a filing fee of \$250.
- (i) For the purposes of this section and section 875.6, subdivision (b) only, a governmental entity or nonprofit organization with the ability to assess human health and human safety water needs for communities without service from a public water system, may "stand in the shoes of" a diverter and file a certification or petition for human health and safety water that otherwise complies with the terms of this section.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 106.3, 275, 1058.5, Water Code; Environmental Defense Fund v. East Bay Muni. Util. Dist. (1980) 26 Cal.3d 183; Light v. State Water Resources Control Board (2014) 226 Cal.App.4th 1463; Stanford Vina Ranch Irrigation Co. v. State of California (2020) 50 Cal.App.5th 976.

### § 875.3 Minimum Diversions for Livestock Watering

- (a) Limited diversions for minimal livestock watering, even through means that result in some seepage losses, may be authorized to continue after receipt of a curtailment order as specified in this section. Such diversions may include, but are not limited to, pipes, wells, or lined ditches.
- (b) Limited livestock watering diversions may be authorized to continue after receipt of a curtailment order upon certification to the Deputy Director that the diversion: (1) is necessary to provide adequate water to livestock, (2) is conveyed without seepage through a means specified in the certification, and (3) either, shall not, on average, exceed the reasonable livestock watering quantities set forth in Article 5, section 697 for livestock addressed in that section, or, for livestock not addressed in Article 5, section 697, shall not, on average, exceed the closest analogous livestock in Article 5, section 697 or a minimum water amount set forth in the certification with reference to supporting evidence regarding the particular livestock needs. The self-certification shall also include the number of livestock being provided with water, diversion location, water source information, the anticipated daily amount diverted to provide water for livestock, and whether the water source is an alternate source used to comply with the emergency

regulation. The Deputy Director may request additional information or disapprove any self-certification if the information provided is insufficient to support the statement or if more convincing evidence contradicts the claim(s). If a self-certification submitted pursuant to this section is disapproved, the diversions are subject to any applicable curtailment order issued for that basis of right.

- (c) Limited diversions may be temporarily increased to up to twice the amount in Article 5, section 697 to support minimum livestock water needs when the daily high temperatures meet or exceed 90 degrees Fahrenheit.
- (d) To the extent that a diversion for minimum livestock water needs requires more than the reasonable livestock watering quantities set forth in Article 5, section 697, or that it relies on conveyances with minimal amounts of seepage, the continued diversion of water after issuance of a curtailment order for the diversion requires submission of a petition demonstrating compliance with the requirements of subdivisions (d)(1)-(5), below, and approval by the Deputy Director. The Deputy Director may condition approval of the petition on implementation of additional conservation measures, monitoring, or reporting requirements. Any petition to continue diversion to meet minimum livestock watering needs greater than the reasonable livestock watering quantities set forth in Article 5, section 697 must:
  - (1) Describe the specific circumstances that make the requested diversion amount necessary to meet minimum livestock watering needs, if a larger amount is sought.
  - (2) Estimate the total amount of water needed.
  - (3) Certify that the supply will be used only for the stated need.
  - (4) Describe any other additional steps taken to reduce diversions and consumption.
  - (5) Provide the timeframe in which the petitioner expects to reduce usage to no more than the reasonable livestock watering quantities specified in Article 5, section 697, or why minimum livestock needs will continue to require more water.

Authority: 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; Environmental Defense Fund v. East Bay Muni. Util. Dist. (1980) 26 Cal.3d 183; Light v. State Water Resources Control Board (2014) 226 Cal.App.4th 1463; Stanford Vina Ranch Irrigation Co. v. State of California (2020) 50 Cal.App.5th 976.

#### § 875.5 Priority for Curtailments in the Scott River and Shasta River Watersheds

- (a) Scott River

(1) Regarding curtailment orders in the Scott River watershed:

- (A) Curtailment orders in the Scott River watershed to meet drought emergency minimum fisheries flows in the Scott River shall be issued taking into account water right priority, in groupings from lowest to highest priority, as follows:
- (i) All post-Scott River Adjudication appropriative water rights.
  - (ii) Surplus Class Rights in all schedules of the Scott River Adjudication.
  - (iii) All Post-1914 Appropriative water rights in the Scott River Adjudication, Shackelford Adjudication, and French Creek Adjudication, collectively.
  - (iv) Diversions in Schedule D4 of the Scott River Adjudication.
  - (v) Diversions in Schedule D3 of the Scott River Adjudication.
  - (vi) Diversions in Schedule D2 of the Scott River Adjudication.
  - (vii) Diversions in Schedule D1 of the Scott River Adjudication.
  - (viii) Diversions in French Creek Adjudication, the Shackelford Adjudication, and Schedule B of the Scott River Adjudication, collectively.
  - (ix) Diversions in Schedule C of the Scott River Adjudication, and overlying groundwater diversions not described in the Scott River Adjudication.
- (B) Surface diversions from the Scott River, Big Slough, Etna Creek, or Kidder Creek and described in Scott River Adjudication Schedules D2, D3, D4, B18, B23, and B26 that have moved from surface water to groundwater diversions as permitted under Scott River Adjudication, Paragraph 44, will be curtailed in priority grouping (a)(1)(A)(ix), rather than under (a)(1)(A)(iv), (a)(1)(A)(v), (a)(1)(A)(vi), or (a)(1)(A)(viii).
- (C) Domestic and Livestock Water Uses during the non-irrigation season by diverters in Scott River Adjudication Schedules A, B, C, and D, under paragraph 36 shall follow the priority groups under (a)(1)(A)(iv) through (a)(1)(A)(viii), as applicable.
- (D) To the extent that curtailment of fewer than all diversions in the groupings listed in (a)(1)(A)(i) and (a)(1)(A)(iii) through (a)(1)(A)(viii) would reliably result in sufficient flow to meet drought emergency minimum fisheries flows, the Deputy Director shall maintain the authority to issue, suspend, reinstate, or rescind curtailment orders for partial groupings based on the priorities in the applicable adjudication or through the appropriative right priority date, as applicable. Any partial

curtailment of groups (a)(1)(A)(ii) and (a)(1)(A)(ix) shall be correlative, except that the Deputy Director may issue curtailments to groundwater diverters in (a)(1)(A)(ix) first to diversions closest to surface waterbodies, or use other reliable information to determine which diversions have the highest potential impact on surface flows.

- (E) Diversions under Paragraph 39 of the Scott River Adjudication shall be curtailed with the group defined in (a)(1)(A) that corresponds to the schedule in which the diversion would be placed if the right were defined in the adjudication. If partial curtailment of the group is issued, suspended, reinstated, or rescinded under (a)(1)(D), these rights will be subordinated to the other rights in that schedule.
- (F) Diversions under paragraph 41 of the Scott River Adjudication shall be curtailed with the group defined in (a)(1)(A) that corresponds to the schedule in which the diversion would be placed if the right were defined in the adjudication. If partial curtailment of the group is issued, suspended, reinstated, or rescinded under (a)(1)(D), these rights shall be treated as subordinate to first priority rights in the schedule, and senior to second priority rights in that schedule.
- (G) Diversions under paragraph 42 of the Scott River Adjudication shall be curtailed with the group defined in (a)(1)(A) that corresponds to the schedule in which the diversion would be placed if the right were defined in the adjudication. If partial curtailment of the group is issued, suspended, reinstated, or rescinded under (a)(1)(D), these rights shall be treated as first priority rights compared to downstream rights in that schedule, and subordinate to all upstream rights in that schedule.
- (H) Diversions under paragraph 43 of the Scott River Adjudication shall be curtailed with the group defined in (a)(1)(A) that corresponds to the schedule in which the diversion would be placed if the right were defined in the adjudication. If an order for partial curtailment of the group is issued, suspended, reinstated, or rescinded under (a)(1)(D), these rights shall be treated as first priority rights in that schedule.
- (I) Diversions under paragraphs 49 and 61 of the Scott River Adjudication shall be curtailed with the group defined in (a)(1)(A)(viii). If an order for partial curtailment of the group is issued, suspended, reinstated, or rescinded under (a)(1)(D),

these rights will be treated as first priority rights in the schedule for the appropriate tributary.

(2) Curtailment orders in the Scott River watershed for lack of water availability at a diverter's priority of right shall be issued:

(A) First to appropriative rights that were initiated after the relevant adjudication, in the Shackleford Creek watershed, the French Creek watershed, and the Scott River Stream System as defined in paragraph 2 of the Scott River Adjudication,

(B) Then in accordance with the priorities set forth in the Scott River, Shackleford Creek, and French Creek Adjudications, as applicable, and

(C) Then correlatively to unadjudicated overlying groundwater diversions.

(b) Shasta River

(1) Curtailment orders in the Shasta River Watershed to meet drought emergency minimum fisheries flows shall be issued taking into account water right priority, in groupings from lowest to highest water right priority, as follows:

(A) Appropriative diversions initiated after the Shasta Adjudication. Appropriative surface water diversions obtained after the Shasta Adjudication in priority of the issuance date specified in the permit or license by the State Water Board. Groundwater appropriations in order of the priority date from when the well was constructed and water first used for appropriative purposes. For the purposes of this article, an appropriative groundwater right is distinguished from an overlying groundwater right when the diverter: 1) does not own land overlying the basin, 2) owns overlying land but uses the water on non-overlying land, or 3) sells or distributes the water to another party.

(B) Post-1914 and pre-1914 water rights under the priorities and quantities set forth in the Shasta Adjudication. Groundwater appropriations initiated prior to the Shasta Adjudication in priority of when the well was constructed and water first used.

(C) Riparian diversions and overlying groundwater diversions. The Deputy Director may limit overlying groundwater curtailment orders to larger diversions or diversions with the highest potential impact on surface flows.

- (i) If there is insufficient natural flow to furnish all rights of equal priority, then the available natural flow in excess of the minimum instream flow established in section 875, subdivision (c)(2) shall be distributed proportionally among the rights of the priority in question.
  - (ii) Water released from storage or bypassed pursuant to a Water Code section 1707 Order is not available to downstream users.
- (c) There are numerous small groundwater diversions in the Scott River and Shasta River watersheds, that are primarily used for domestic uses, firefighting ponds, and other uses closely related to human health and safety and minimum livestock watering needs. The Deputy Director may determine not to curtail such diversions of less than two acre-feet per annum in light of their de minimis impact on flows and the considerable effort required on the part of diverters and of the State Water Board's staff to issue and respond to curtailment orders, and to file, review, and act on appropriate minimum use petitions.
- (d) Definitions: For the purposes of this section:
  - (1) "Scott River Adjudication" shall refer to the Decree entered on January 30, 1980 in Siskiyou County Superior Court Case No. 30662, In the Matter of Determination of the Rights of the Various Claimants to the Waters of Scott River Stream System, Except Rights to Water of Shackleford Creek, French Creek, and all Streams Tributary to Scott River Downstream from the U.S. Geological Survey Gaging Station, in Siskiyou County, California, and all supplements thereto.
  - (2) "Shackleford Adjudication" shall refer to the Decree entered on April 3, 1950 in Siskiyou County Superior Court Case No. 13775, In the Matter of the Determination of the Rights of the Various Claimants to the Waters of Shackleford Creek and its Tributaries in Siskiyou County, California, and all supplements thereto.
  - (3) "French Creek Adjudication" shall refer to the Judgement entered on July 1, 1959 in Siskiyou County Superior Court Case No. 14478, Mason v. Bemrod, and all supplements thereto.
  - (4) "Shasta Adjudication" shall refer to the Judgement and Decree entered on December 29, 1932 in Siskiyou County Superior Court Case No. 7035, In the Matter of the Determination of the Relative Rights, Based Upon Prior Appropriation, of the Various Claimants to the Waters of Shasta River and its Tributaries in Siskiyou County, California, and all supplements thereto.

Authority: Sections 101, 103,174, 186, Water Code

Reference: Sections 1058, 1058.5, Water Code; Cal. Const., Art. X, § 5; Hudson v. Dailey (1909) 156 Cal. 617; Shasta River Adjudication; Shackleford Adjudication; French Creek Adjudication; Scott River Adjudication; Stanford Vina Ranch Irrigation. Co v. State of California (2020) 50 Cal.App.5th 976.

#### § 875.6 Curtailment Order Reporting

- (a) All water users or water right holders issued a curtailment order under this article are required, within the timeframe specified by the Deputy Director, but not less than seven (7) days, to certify that one or more of the actions enumerated below was taken in response to the curtailment order. The Deputy Director may grant additional time for the submission of information regarding diversion and use of water upon a showing of good cause. The water user or water right holder shall certify, as applicable, that:
- (1) Diversion under the identified water right(s) has ceased;
  - (2) Any continued use is under other water rights not subject to curtailment, specifically identifying those other rights, including the basis of right and quantity of diversion;
  - (3) Diversions under the identified water right(s) continue only to the extent that they are non-consumptive, for which a certification for continued diversion has been submitted as specified in section 875.1;
  - (4) Diversions under the identified water right(s) continue only to the extent that they are necessary to provide for minimum human health and safety needs, a certification has been filed as authorized under section 875.2, and the subject water right authorizes the diversion in the absence of a curtailment order;
  - (5) Diversions under the identified water right(s) continue only to the extent that they are necessary to provide for minimum livestock watering needs and a certification has been filed as identified in section 875.3, and the subject water right authorizes the diversion in the absence of a curtailment order.
  - (6) Diversions under the water right(s) continue only to the extent that they are consistent with a petition filed under section 875.2, subdivision (c)(2) or under section 875.3, subdivision (d) and diversion and use will comply with the conditions for approval of the petition; or
  - (7) The only continued water use is for instream purposes.



- (b) All persons who are issued a curtailment order and continue to divert during a period of suspension or conditional suspension of such order, or to continue to divert out of order of the priority established in section 875.5, as authorized under sections 875.1, 875.2, or 875.3, may be required to submit and certify information identified on a schedule established by the Deputy Director as a condition of continued suspension or conditional suspension, or of certification or petition approval. The required information may include, but is not limited to, the following:
- (1) The water right identification number(s), well information, or, if not applicable, other manner of identifying the water right under which diversions continue. For wells, this includes the location (GPS coordinates) and depth to groundwater.
  - (2) The public water system identification number for any public water system served by the diversion.
  - (3) How the diverter complies with any conditions of continued diversion, including the conditions of certification under section 875.3.
  - (4) Any failures to comply with conditions, including the conditions of certification under sections 875.2 or 875.3, and steps taken to prevent further violations. Conservation and efficiency efforts planned, in the process of implementation, and implemented, as well as any information on the effectiveness of implementation.
  - (5) Efforts to obtain alternate water sources.
  - (6) If the diversion is authorized under an approved petition filed pursuant to section 875.3, subdivision (d) or 875.2, subdivision (c)(2), progress toward implementing the measures imposed as conditions of petition approval.
  - (7) If the diversion is authorized under section 875.3, or cannot be quantified on the basis of amount per person per day under section 875.2, subdivision (c)(2):
    - (A) The rate of diversion if it is still ongoing;
    - (B) Whether the water has been used for any other purpose; and
    - (C) The date diversion ceased, if applicable.
  - (8) The total water diverted for the reporting period and the total population served for minimum human health and safety needs. The total population must include actual or best available estimates of external populations not otherwise reported as being served by a diversion, such as individuals receiving bulk or hauled water deliveries for minimum domestic water use.

- (9) The total water diverted for the reporting period and the total population of livestock watered to meet minimum livestock watering needs identified in section 875.3.
- (10) Diversion amounts for each day in acre-feet per day, maximum diversion rate in cubic feet per second, pumping rate in gallons per minute, and anticipated future daily diversion amounts and diversion rates.

Authority: Sections 1058, 1058.5, Water Code

Reference: Sections 100, 187, 275, 348, 1051, 1058.5, 1841, Water Code

#### § 875.7 Inefficient Livestock Watering

- (a) For the purposes of this regulation, inefficient surface water diversions for livestock watering are those that divert, as measured at the point of diversion, more than ten times the amount of water needed to support the number of livestock and reasonable water quantities set forth in Article 5, section 697 (or, for livestock not addressed in Article 5, section 697, the closest analogous livestock to those listed in Article 5, section 697).
- (b) From September through March 31, inefficient surface water diversions in the Scott River and Shasta River watersheds for livestock watering, which result in excessive water diversion for a small amount of water delivered for beneficial use, are not reasonable and are therefore prohibited in light of the alternatives available and competing uses unless all of the following minimum flow requirements are met:
  - (1) The minimum flow requirements in Section 875, subsection (c) are met without any active curtailment orders in the relevant watershed.
  - (2) The diversions do not occur in the fall until the California Department of Fish and Wildlife has determined there has been flow sufficient to stimulate fall-run Chinook salmon migration.
  - (3) The diversions do not occur after November 1 until the California Department of Fish and Wildlife has determined there has been a flow sufficient to stimulate coho salmon migration, including in the relevant tributary if applicable.
  - (4) For tributary diversions, except those from Moffett Creek in the Scott River Watershed, the relevant tributary is and remains connected to the mainstem and the California Department of Fish and Wildlife has not informed the State Water Board that the connection is insufficient to support applicable adult salmon migration.
  - (5) The diversions are operated to bypass 90 percent of flow at the point of diversion, except that when flows exceed those listed below in the relevant watershed, the diversions may operate to bypass 80 percent of flow:

- (A) In the Scott River watershed when flows at the United States Geological Survey gage 11519500 located downstream of the city of Fort Jones at the northern end of Scott Valley (Scott River Mile 21), in cubic feet per second, are greater than 62 in September; 134 from October 1-15; 139 from October 16-31; 266 in November; 337 in December; 362 in January and February, and 354 in March.
- (B) In the Shasta River watershed when flows are greater than 220 cubic feet per second at the United States Geological Survey gage 11517500 located near Yreka.
- (6) The diversions are operated to bypass amounts greater than those described in subdivision (5) as necessary to avoid disturbing redds.
- (c) For diversions occurring under the flow conditions described in subdivision (b)(1)-(6):
- (1) Diverters shall notify the State Water Board of the intent to divert by e-mailing [ScottShastaDrought@waterboards.ca.gov](mailto:ScottShastaDrought@waterboards.ca.gov), including: the diverter's name and contact information; the point of diversion and water right under which the diversion will occur and the anticipated diversion amount; and the means by which the diverter will track compliance with the minimum flow requirements in (b); and
  - (2) Diverters shall maintain records of such diversions and provide them to the State Water Board upon request.
- (d) The requirements for diversions in subdivision (b)(4)-(6) do not apply to diversions upstream of Dwinell Dam in the Shasta River watershed.
- (e) Livestock diversions that would otherwise be prohibited under this section may be included in a proposal for a local cooperative solution, either on their own or as either part of a proposal under section 875 (f)(4)(B) or (C). For a local cooperative solution under section 875(f)(4)(B)(ii) or (C)(ii), California Department of Fish and Wildlife or National Marine Fisheries Service may make an alternative finding that a diversion under a local cooperative solution solely for livestock watering that is otherwise prohibited under this section will not result in redd dewatering or unreasonably interfere with adult or juvenile migration or rearing. The Deputy Director may approve such a local cooperative solution where lifting the prohibition will not cause or substantially contribute to tributary or mainstem disconnection.
- (f) The Deputy Director may suspend operation of this provision as to a particular diverter for a limited period of time upon a demonstration that the diverter's existing alternative watering system has failed.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; Environmental Defense Fund v. East Bay Muni. Util. Dist. (1980) 26 Cal.3d 183; Light v. State Water Resources Control Board (2014) 226 Cal.App.4th 1463; Stanford Vina Ranch Irrigation Co. v. State of California (2020) 50 Cal.App.5th 976.

## § 875.8 Information Orders

- (a) The Deputy Director may issue information orders to some or all water users, landowners, diverters, or other water right holders in the Scott River and Shasta River watersheds, requiring them to provide additional information related to water use as relevant to implementing this article. The Deputy Director will prioritize information orders for larger diverters and landowners or water right holders with the highest potential to impact surface flows. The Deputy Director, in determining whether and the extent to which to impose information orders under this subdivision, will consider the need for the information and the burden of producing it, and will take reasonable efforts to avoid requiring duplicative reporting of information that is already in the State Water Board's possession. Information orders shall follow the same procedures set forth in section 875, subdivision (d).

Information required in an order may include, but is not limited to:

(1) For wells:

- (A) Location of the well;
- (B) Age of well, including date of installation and first use;
- (C) Maximum pump rate and volume pumped per month;
- (D) Place of use and purpose of use (beneficial uses of water);
- (E) Projected estimate of pumping volumes at a frequency of no more than weekly; ~~and~~
- (F) Estimates or measurements of past use;
- (G) Groundwater level; and
- (H) Other available water sources.

(2) For surface water diversions:

- (A) Place of use and purpose of use (beneficial uses of water);
- (B) Type of water right;
- (C) Source of water;
- (D) Volume of storage;
- (E) Diversion rate;
- (F) Other available water sources; and
- (G) Projected estimate of diversion at a frequency of no more than weekly.

The orders may additionally request other information relevant to forecasting use, impacts to the surface streams in the current drought year, assessing compliance with this article, or in contingency planning for continuation of the existing drought emergency.

- (b) Any party receiving an order under this subdivision shall provide the requested information within the time specified by the Deputy Director, but not less than five (5) days. The Deputy Director may grant additional time for the submission of information regarding diversion and use of water upon a showing of good cause. Each landowner is responsible for immediately providing notice of any information order(s) to all water users associated with the parcel of land related to the information order.
- (c) New Diversions. For purposes of this subdivision, a new diversion means a diversion initiated after issuance of a general information 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 general information order issued under section 875.8 prior to commencement of the new diversion, unless the Deputy Director approves commencement of the diversion based on substantial compliance with the general information order or one of the exemptions outlined in sections 875.2 or 875.3.

Authority: Sections 1058, 1058.5, Water Code

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

#### § 875.9 Penalties

- (a) A diverter must comply with a curtailment order issued under this article, any conditions of certification or approval of a petition under this article, and any water right condition under this article, notwithstanding receipt of more than one curtailment order. To the extent of any conflict between applicable requirements, the diverter must comply with the requirements that are the most stringent.
- (b) Failure to meet the requirements of this article or of any order issued thereunder constitutes:
  - (1) a violation subject to civil liability pursuant to Water Code section 1846, and
  - (2) an infraction pursuant to Water Code section 1058.5, subdivision (d).  
~~Each of these can carry a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.~~
- (c) Nothing in this section shall be construed as limiting the enforceability of or penalties available under any other provision of law.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 275, 1052, 1055, 1058.5, 1825, 1831, Water Code; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419.